

*'Making a Living and Making Do' and 'Legal Instruction':
Two Stages in the Harvesting of Intellectual Property, Analysis of a
Qualitative Empirical Study*

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This paper is part of a larger empirical study based on face-to-face interviews with artists, scientists, engineers, their lawyers, agents and business partners. The book-length project involves the collecting and analysis of stories from artists, scientists and engineers about how and why they create and innovate. It also collects stories from employers, business partners, managers and lawyers about their role in facilitating the process of creating and innovating. The aim of the book is to make sense of the intersection between intellectual property law and creative and innovative activity, specifically to unpack the incentives and motives behind creative and innovative activity and to discern how intellectual property intervenes in the careers of the artists and scientists. This paper is an overview of two chapters of the book – chapters three and four.

The first chapter I discuss (chapter three), entitled “Making a Living and Making Do,” describes the transitions interviewees experience from the studio, office or laboratory to the commercial sector. In earlier chapters (one and two), I detailed how many interviewees describe the beginnings of creative and innovative as unrelated to a pecuniary motive. Despite this, interviewees describe how they care about making a living and how most of them figure out a way to support themselves through their daily work of art or science. The varied ways of making a living for these artists and scientists is worth close analysis because most of them describe their livelihood as “making do,” without a constant or predictable stream of income but enough to get by (an assumption of risk they suffer but would prefer to alter if possible). Most are grateful for the legal or business help that facilitates their pursuing art and science as a livelihood, but many legal or business models they adopt do not directly relate to intellectual property. Some industries rely on traditional intellectual properties as a mainstay of income while others eschew intellectual property and rely on other sources of income. Interestingly, most interviewees “make do” as artists or scientists by tailoring professional relationships to fit personal choices. Doing so reduces the advantage the full panoply of exclusive intellectual property rights would have had for them. This chapter parses these commercializing strategies of “making do,” which form an intricate and shifting patchwork of social and legal relationships.

The second chapter I discuss (chapter four), entitled “Instruction,” describes how the interviewees celebrate (and in some cases accept as a necessary evil) the importance of legal instruction. This Chapter details the various ways law intervenes as an external force to shape and direct the activities of the artist or scientist. According to this account, the legal regimes that might affect the on-going vitality of the creative and innovative output rarely appears until a lawyer, agent or business partner intervenes to manage or build the work as properties. Here, law is a layer of the experience or external structure that materializes later in the trajectory of creative and innovative work and arrives with a coach or a teacher.