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Intellectual Property Rights and Cultural Heritage

The case of non-cumulative and non-degenerative creation

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1 Introduction: property rights in cultural heritage, the case of non-cumulative and non-degenerative creation.

In the 1960s French *grand couturier* Yves Saint Laurent presented a collection called "Mondrian", openly drawing his inspiration from the famous Dutch painter's works. This anecdote raises many questions about intellectual property rights (IPRs). For instance, was Saint Laurent entitled to use Mondrian's paintings as a source of inspiration regardless of IPRs in Mondrian's creations, and so without paying royalties to Mondrian's heirs? Could the fashion designer argue Mondrian's paintings were a part of our common heritage and so free goods? Talk of "heritage" entails defining what portion of Mondrian's creation truly constitutes that heritage. Is it only his style of painting? The colors of his creations? And so on. To complicate matters, a few weeks later, street fashion produced clothes of lesser quality for the ready-to-wear market which were inspired by Saint Laurent's Mondrian collection. One might question whether producers were entitled to propose a collection so "very close" to Saint Laurent creations. Did Saint Laurent's creations become a heritage which street fashion could use as source of inspiration, much as Saint Laurent himself had done with Mondrian's paintings?

The case of YSL is not trivial and relates more widely to the nature of *haute couture*, painting or fashion, for instance. Another industry facing similar difficulties is French *grande cuisine*. In the 1970s Paul Bocuse created VGE truffle soup (named after the then President of France, Valéry Giscard d'Estaing). Is just anyone entitled to put a VGE truffle soup on their menu? Or some similar dish, called, say, Britney Spears truffle soup? Is VGE truffle soup part of some private heritage or of our common heritage?

All these goods are cultural goods with some creative content. In contemporary societies, science and technology are increasingly significant and command the attention of many economists. But luxury goods, fashion, design, gastronomy, and other activities contribute increasingly to economic growth. For different commentators, their ever greater impact may be related either to the development of a creativity paradigm (Caves, 2000; Towse, 2001), or to the advent of intellectual capitalism (Grandstand, 2000), or to the growing importance of semiotic products (Barrère and Santagata, 1998).

Cultural and creative goods are heterogeneous. From an institutionalist standpoint, this substantive heterogeneity has significant repercussions on the working of intellectual property rights. IPRs in the realms of science, technology, art, TV, fashion or gastronomy cannot all be identical because they have different degrees of publicness or they relate differently to market regulation. IPRs

in science and technology have been very closely analyzed. Santagata (1998) points out how they differ from non-cumulative cultural knowledge. Some types of creative labor may be formulated as explicit, logical propositions, as with scientific or technical inventions. Hence, they may be superseded by more precise, more sophisticated, more rigorous, "truer" and more powerful explanations. As inputs, it is their lot to be improved upon as part of a cumulative process. But some cultural goods avoid obsolescence insofar as they escape being killed off by incremental technical progress. In the fashion or gastronomy industries creativity-based goods are part of a non-cumulative creative process: are the creations of John Galliano better than those of Christian Dior, those of Alain Ducasse better than those of Fernand Point or Carême? Heritage assets in fashion or gastronomy comprise both tangible cultural heritage assets – e.g. goods, models, designs, dishes, recipes – and intangible cultural heritage assets – e.g. reputation, creative knowledge, and know-how-, which have not been superseded by new and better versions.

Nevertheless Santagata (1998) primarily addresses questions of artistic knowledge, hypothesizing that new knowledge exerts degenerative and vanishing effects as in the case of painting, where followers behave as epigones. The issue, then, is more one of protecting new knowledge than of protecting accumulated knowledge and constituted heritage assets. Our hypothesis is different because we consider industries like fashion or gastronomy where heritage maintains a high value in that it exerts long-term effects. Hence, in this paper, we consider cultural and non-cumulative heritage assets which exert strong and lasting economic effects through time; in other words we assume there to be non-cumulative but non-degenerative change.

Heritage strongly contributes to the production of new creative goods (the fashion of the 1960s is 'revisited' by contemporary creators to design new models) or contributes greatly to the market power of firms (for instance the reputation assets of Dior acquire value with the globalization of luxury markets). The productive effects of heritage assets are both spatial (frequently appearing in the form of cultural districts) and temporal; gastronomy and fashion illustrate this point, which is even more spectacular in the arts.

Thus, non-cumulative and non-degenerative cultural heritage is both input and output. As input and in tribute to Sraffa, one might speak of a production of creativity-based goods and creative heritage assets by means of creativity-based goods and creative heritage assets. Moreover, these inputs, being information goods, are specific because they do not disappear in the process of creation, unlike standard inputs whose value is completely absorbed (over time as with capital) into the output. For that reason they have very great social value. But, they also have strong effects on consumption.

Three main effects are observed. The first is that cultural heritage assets escape obsolescence, so their "consumption", mainly that of tangible cultural heritage assets, can be constantly renewed. Notre Dame de Paris has been admired throughout the ages, Hamlet performed down the centuries, "tournedos Rossini" enjoyed time and again, and so will things continue far into the future. The second effect is that cultural heritage shares some of the properties of public goods. There is no rivalry among consumers. The third effect is that cultural heritage, mainly the intangible kind, influences individual and social preferences, and consequently affects demand functions insofar as producers can generate demand for these goods through communication strategies. For instance, demand for Dior perfumes is related at one and the same time to the image of the great *haute couture* creator, to the "French touch", and to the Parisian heritage of fashion, art and culture. Similarly, demand for French restaurants in New York or Tokyo depends on the reputation effect of the French cuisine heritage. Some economists (e.g. Rochefort, 2001) report increasing consumer demand for heritage, which is construed as a demand for stability. Consumers are anxious to rediscover their traditions, their history; they are looking for their "roots". In the area of cultural creation, changes in demand for goods are usually related to changes in preferences and not to changes in prices. The creativity field is one where it cannot be said *De gustibus non est disputandum*.

The problem of the protection of heritage assets and not only of the protection of additions to heritage is therefore a key issue. Being mostly public goods they are freely accessible and consequently property rights in them are often "less defined" (Papandreou, 1997). As concerns efficiency and equity, the economic consequences of inconsistencies in these property rights are of great importance but are rarely studied. Significant changes have come about in recent years and many economic actors now clamor for some form of protection of the creative process and specifically of these heritage assets. At the same time, financial groups (particularly in the new luxury goods industry) seek to gain control or to buy up heritage assets because of their high potential value. It is worth while, then, in terms of

economic analysis and economic policy-making, highlighting the consequences of the absence of any clear and properly enforced rules.

Being creative spheres *haute couture* and *grande cuisine* are prime examples of this new type of production process. Both domains illustrate the sheer variety of cultural heritage assets while providing points of comparison. This paper examines why it is difficult to enforce IPRs in creativity-based industries and the strategies that should be employed in managing cultural heritage assets?

Fashion and gastronomy may seem to yield insignificant or marginal goods compared with science, technology and industry. Yet even if pure creative goods are still limited, increasing numbers of traditional goods incorporate some creative dimension which is non-cumulative and has a strong economic value. A prime example is the automobile industry; the French company Renault no longer advertises itself as a car maker, a car producer or a car manufacturer but as *Renault, créateur d'automobiles*. In the future many industries may be interested in protecting and managing these kinds of creative and cultural heritage assets. This paper combines three approaches involving creativity, heritage, and property rights. It is organized as follows: section 2 analyses the reasons why it is difficult to implement IPRs on non-cumulative creative heritage assets; section 3 analyses the heritage assets of two specific industries, French *haute couture* and *grande cuisine*; sections 4 and 5 look at the management of property rights in these cases; and section 6 provides general conclusions on IPRs as they relate to cultural heritage assets.

2 Why creativity makes it difficult to implement IPRs in cultural heritage assets?

By clearly stipulating who holds the rights in each economic resource, a property rights system allows for efficient management –including inter-temporal management– of the use of resources because the holders have the full benefit of their *fructus*. It also allows for resources to be allocated, through *abusus*, to their most efficient uses. This implies a well defined system of property rights, stipulating the monopolistic boundary line around resource uses that a holder of the property right can enjoy, and, alternatively, all the uses prohibited for other people. A perfectly defined property right would be a clear definition of all the uses that the holder is empowered to make in every state of nature (Barrère, 2004): each action concerning each resource is entitled to the right of someone without any discussion and with the full consequences of those actions in any state of nature. A perfect property rights model is strictly related to the standard paradigm of the production function; we ***can*** define property rights in inputs because we can identify all the inputs; these inputs are clearly defined as homogeneous ones and are separable; we know the relationship between each input (or the marginal quantity of input) and the output; this relation is stable and reproducible, and; we can measure the value of the output. Therefore the value of the output can be distributed among the contributions from each input, so each separable input has a value as does each property right. Each resource is entitled and each property right has a value, that of the highest value among values of the actions entitled by the property right in the resource. Accordingly, each input is clearly linked to a property right and property rights do not overlap. These property rights can produce efficiency. Within a production function framework, this value of property rights is related to the productivity of the resource, and an efficient market can emerge. And, by economic theory, property rights in inputs ***must*** be defined to improve efficiency.

Three main types of problem beset property rights in tangible and then in intangible cultural heritage.

2.1. An entitlement problem

The first problem in defining property rights is to identify all resources which may be heritage assets (having creative effects at present, or only able to produce certain effects in the future), all producers of resources which are cultural heritage assets, to separate their contributions, to distribute rights between them so as to give each producer exclusive rights in and control over the effect of their creative contribution. As already observed, creators enhance cultural heritage assets through their skill but also by using previous creations and cultural heritage, depending on the attributes of permanence and non-incrementality of certain creations, so identification and the sharing of the relations effect – resource – holder is often problematic.

2.2. Transfer problems

To define property rights that can be transferred by a market process, resources have to be evaluated. Three difficulties emerge:

Evaluating the use effects of creative resources. Four main difficulties arise:

(i) Creative labor effects extend beyond particular products. It is difficult to know what effects a creation might produce across space and, *a fortiori*, in the course of time. As cultural heritage assets are public by nature, the different values of their uses have to be added and the list of their effects is never complete because new effects may appear later.

(ii) Unique cultural creations with no technological dimension, for instance in literature or painting, are not amenable to comparison, and there is no scale of value for them in terms of their quality; a Mozart concerto is not a Miles Davis composition, a Picasso is not a Poussin, and Borobudur is neither Chambord nor the Empire State Building. It would be nonsense to try to rank these works by their quality or on any scale of creativity. (Is the invention of perspective in any way superior to the innovation of impressionism or cubism?)

(iii) The most important creations are often *avant-garde* creations and are in opposition with the environment of the day. The creator is not acknowledged as a remarkable person and it is only later that his (or her) work becomes valuable. And, even if creators are acknowledged in their own time (e.g. Titian, Picasso or Mozart), how can their contribution be measured in monetary terms? And how can one differentiate between the value of a painting, say, and its value for the development of art? What is the value of the invention of perspective or of the invention of moving pictures? The question is that much more difficult because many of the effects are non-market effects. Another point is that individual appreciations and then the creation of social appreciation are highly changeable and unpredictable. While this is not very important for "small" creations (Philippe Starck's lemon squeezer, the post-it note), it is different for "major" ones (cubism) because appreciation of them depends on those representations which are contradicted by new creation. This makes the value of effects a very random value.

(iv) Creativity also affects consumption by offering new goods and by influencing individual preferences. It does not correspond to an alignment on individual preferences but, more, to the production of novel goods, previously unknown to consumers, and new wants. What procedure can produce a rational or reasonable evaluation of such an effect, and capitalize that effect over time?

These difficulties are mainly related to the permanence and the non-incrementality of creations and to their non-reproducibility and non-comparability, factors which make them unique.

Inferring the value of resource uses from the value of their effects.

Permanence and non-incrementality of creations give rise to other difficulties.

Firstly, it is very difficult to separate the productive contributions of each input: is a goal scored by Raul the fruit of Raul's efforts and genius alone or is it also, and if so to what extent, the result of contributions from Zidane and Ronaldo?

Secondly, the effect frequently depends on creative labor and on a heritage effect. How can the new value be divided between direct creative labor and cultural heritage assets? Heritage assets are not standard inputs whose value is given by the market. Monet's painting *Impression soleil levant* is also the product of a social environment, which is not a purchasable input. And, if the creator produces thanks to a social heritage, it is impossible to conceive of a production function incorporating that heritage with which to evaluate marginal productivity. Picasso learnt how to paint and drew inspiration from the paintings of Poussin, Ingres, Puvis de Chavannes and Cézanne; but greater use of the "Ingres input", say, would not have increased his output or improved its quality.

Assigning value to a resource.

The idiosyncrasy characteristic of tangible and intangible cultural heritage assets generates further problems.

In a creative process, creativity is the main input. Even if other inputs make significant contributions (the Stradivarius of a violin soloist, the caviar of a chef's recipe), the end-result depends mainly on creativity because a creative producer obtains a very different result from a non-creative one. And some creative inputs are unique, specific, or idiosyncratic (the talent of Maria Callas, John Galliano, Alain Ducasse, Pelé or Picasso), so their potential market is a very small one and does not provide a suitable, stable reference standard.

Creative inputs do not operate in a standard way, so the relation between resources and the value of their effects is often indeterminate. Unlike with the production function, the technological combination is unknown, it is difficult to evaluate each input and the measure of time spent is a non sense (What does it matter in terms of the development of society whether Haendel's Messiah was composed in a week, a month or a year?). The creation of the artist or of the fashion stylist is produced out of nothing, or out of an economic resource, or out of inputs, except for that unique, non-standard resource, be its name genius, creativity, inspiration, or illumination: Yves Saint Laurent claims that in the mornings he daydreams in his office and suddenly an idea comes to him; then he picks up a pen and sketches a garment. After nights out at discotheques John Galliano goes to his office when he has a "flash'; he summons his assistants, he tells them of his visions; they get down to work and he goes off to bed. How can any true measure of their talent be established?

Finally, the creative act is not reproducible; its outcome may vary with the environment or even at random. The same inputs sometimes yield a work of genius and sometimes a mediocre product; Maria Callas's performances were not the same everyday. Moreover, while production by processing of inputs is an operation which can be repeated *ad infinitum* through the consumption of the necessary inputs, some creations arise as one-off phenomena which are so radically unique that no similar outcome cannot be obtained by buying further inputs. Picasso's paintings are things of the past and now there can only be copies or paintings "in the style of Picasso"; never again will there be any original Picasso's, and this is so whatever consumption of inputs might be made.

2.3. An enforcement problem

The third problem is to enforce the definition, entitlement and transfer of property rights. As with the Mondrian dress created by Yves Saint Laurent this may be difficult. Piracy and opportunistic behaviors result from difficulties in identifying resources and in entitling them to define exclusive rights.

In some creative instances, the resource–value effects relation is not problematic and the entitlement of resources is enough to define the holder–resource uses relation (property rights in perfumes are well defined).

In other instances, the relation is more difficult to define and to evaluate but the effects remain in the private domain. Great fashion creators benefit from their creative image, from a capital of reputation and from symbolic power. Private heritage assets are then formed. These nourish many other goods such as perfumes and luxury goods, and trademarks can capture their main economic consequences. Firms have a patents portfolio or brand portfolio and manage these assets by selling or licensing them.

In last cases, the effects flow over into the public domain, as with paintings or science. Some creative products are systematically put in the common pot. Last century, who was more creative than Einstein? But Einstein earned no money for his main theoretical inventions, although some of them were a precondition for subsequent innovations and industrial applications for which patents were filed. And between private and common heritage assets there is a large field of less clearly defined heritage assets, as evidenced by the examples above.

3 The development of cultural heritage assets in two industries

3.1. Two creative industries

Our study is based on case studies of *grande cuisine* (Chossat, 2001; Chossat and Gergaud, 2003) and *haute couture* (Barrère and Santagata, 2003).

Both are creative industries. Gastronomy is a shifting discipline. Producers regularly introduce new production processes, new ideas, new recipes, and new flavor combinations in order to renew gastronomic practice. In fact, *grande cuisine* evolves under the impetus of France's leading chefs, that is, through the symbolic meaning they look to give to their production. For instance, in the 1970s some chefs united behind the *nouvelle cuisine* paradigm, much like classical musicians or even cubist painters did at the beginning of the 20th century, in order to alter the qualitative norms of their discipline and so change the symbolic meaning of musical and cultural creation.

French *haute couture* is obviously organized around creativity, its key input. Models and designs are not standard outputs but one-offs, yielding unique works, strictly bound up with individual talent. They escape the incremental character of technical progress. In the fashion industry there can be innovation and technical progress, in which case there can be incrementality but this is not its dominant feature. The principle of fashion is precisely that someone may prefer the fashion of the sixties to the fashion of the seventies but no-one can maintain that one is technically superior to the other.

The development of both was guided by strong cultural heritage assets. They include tangible and intangible cultural heritage assets. Hence, the most valuable heritage assets are, as we shall see below, intangible heritage assets, hence the difficulty of defining property rights in them. Private heritage assets such as ownership of the firm, a contract with the chef or the creator, are set against common heritage assets.

3.2. Private heritage assets

Private heritage assets have four components:

1. A heritage of craft knowledge, within the *maisons de haute couture* or the *grands restaurants*. This is transmitted down generations of workers and means they have the technical skill to perform sophisticated technical operations.

2. A private heritage of creative knowledge. The history of the *maison* and of the great creators (Chanel, Balenciaga, Dior, Saint Laurent) and the cult of creation are a major incentive to creativity. Stock inventory effect, memory effect and experience effect facilitate the apprenticeship and transmission of creativity, especially between generations. In gastronomy, there is also a history of *grands restaurants* closely associated with the legend of *grands chefs* like Dumaine, Point or Ducasse, who entered the pantheon of gastronomy by passing on their creative knowledge to new generations of chefs.

3. A private heritage of creative products. In the fashion industry this constitutes both a physical stock of designs and models and the cultural heritage of a style (e.g. the Chanel style). This is highly valuable because new creators can "revisit" old collections and styles, but, also, because it allows customers to identify a style. The gastronomic industry is in a similar situation. Chefs have a huge stock of recipes. They can introduce creativity into their dishes by "revisiting" old recipes. So, heritage plays a key role as a source of inspiration, a source of production and of contemporary creativity.

4. A private heritage of reputation. The names of the *grands cuisiniers* and of the *grands couturiers* are widely known beyond the spheres of their direct customers, and, often, over generations.

3.3. Common heritage assets

Common heritage assets have multiple contents:

1. A common heritage of knowledge of a craft. This is the case within the French – and more narrowly Parisian – fashion district. When Christian Lacroix opened his couture house in 1986 he needed highly skilled workers and had to deal with highly specialized workshops for pearls and embroidery, buttons, trimmings, and handmade textiles (Laver, 1995). In gastronomy, to become first class chefs, cooks need the support of top teams of suppliers offering the finest products (meat, butter, vegetable, etc.).

2. A common heritage of creative knowledge. This heritage implies experience effects. Yves Saint Laurent was just 21 when he succeeded Christian Dior upon his death. His first collection – the Trapeze line –, which was under the critical spotlight, demonstrated a vast culture and an ability to fit into the course of fashion. In the UK, the success of Vivienne Westwood or John Galliano is linked to the tradition of English tailors (Lehnert, 2000). The creative heritage is also the ability to design new luxury goods, close to *haute couture*, and so widen the product range. In gastronomy, there is a long guilds tradition whose conventions require cooks to become "journeymen" to learn their trade. Travel enables cooks to exchange their experience and their creative knowledge.

3. A common heritage of styles. It seems obvious that gastronomy belongs to the French heritage insofar as this activity is deeply rooted in the French identity. Indeed, many foreign tourists come to France to eat in its most famous restaurants; and at the same time, French restaurants abroad attract many lovers of the French way of life. In this respect, gastronomy can be analyzed as a French specificity, boosting the French tourism sector and including, as with other cultural goods, many pecuniary externalities: museum– Louvre, Orsay– visits, hotel bookings, wine tasting and sales, *terroir* products – truffles, snails, etc. –, and so on. Gastronomy undoubtedly contributes not only to altering, but also to increasing demand in many related fields. In the *haute couture* industry, the key word of creation is now to "revisit" the history of fashion. Old styles are the basis for new variations. Today's fashion echoes the 1970s; tomorrow, it may echo the 1940s, and so on. Ralph Lauren and Calvin Klein have been inspired by English aristocratic fashion and, for casual and sportswear, by the American pioneers' style.

4. A common heritage of tastes, i.e. a semiotic heritage. Fashion and gastronomy imply conventions to distinguish between good and bad taste. The existence of a heritage of tastes and preferences, i.e. a common reading of signs, produces homogeneous representations. In a market of sign-goods like the fashion or the gastronomy market, it allows demand to adjust to supply. It makes fashion and gastronomic dishes understandable; it makes creation credible; it legitimates the creative work as fashion creation or as gastronomic creation. Moreover, it provides a competitive advantage in world markets. The semiotic heritage leads to an image heritage. All French luxury industry goods benefit from this image effect. Consumers clamor for French fashion and luxury products (such as gastronomic ones) as carriers of the French touch.

5. An institutional heritage. The French institutional heritage of *haute couture* includes public policies to improve art, fashion and creativity, trade associations, and most significantly the institutional form of the *maison de haute couture*. The fashion industry is organized as a pyramid with the *maisons de haute couture* and their cultural creator at the apex. They occupy the key position, meaning creativity plays the key role too. This boosts incentive to be creative. In gastronomy, it seems clear enough that an institutional heritage can be invoked. In actual fact, the extent of the gastronomic market is defined by experts. For almost a century, French restaurants have been institutionalized as gastronomic ones by guidebook selection (Michelin, Gault-Millau, etc.). Even if these experts use secret criteria (Chossat and Gergaud, 2003), creativity seems to play a significant role in the selection of leading chefs. The economic fallout from selection is so important for restaurants that chefs cannot but combine creativity and tradition in their recipes in the hope of being selected.

6. The fashion industry and mainly *haute couture* uses cultural heritage as a background for creation. Sometimes, the influence of cultural heritage is very direct; for instance when Saint Laurent creates his Mondrian collection or when Lagerfeld is inspired by Watteau for new models, including the famous White Pierrot costume. Moreover, a creative district emerges allowing innovations to circulate among the arts and emulating creativity. Local creation can also take avail of other cultural heritages. Issey Miyake uses his Japanese culture to work on pleated textiles invented by Fortuny but now developed with synthetic

substances, and is influenced by origami and samurai armor. Gastronomic creation can be analyzed in terms of cultural districts. Gastronomic districts, which are regional or local ways of cooking, largely dictate the way to make dishes, to associate flavors, to combine textures, and so on. To become a first class cook, chefs have to take into account the location of their restaurant. This implies proposing a menu with *bouillabaisse* in Marseille and *choucroute* in Alsace.

Just like private heritage assets these are clearly non-cumulative but non-degenerative cultural heritage assets.

4 IPRs and management of cultural heritage assets in *grande cuisine*

As proposed above, a distinction has to be made between private and common heritage assets.

4.1. IPRs in private heritage assets

The nature of the good considered will determine the apparatus required to protect IPRs. Patents, trademarks or trade secrets are the norm for industrial goods whereas for cultural works, copyrights or *droits d'auteur* (author's rights) (depending on the country considered) are employed. Thus it seems clear that *grands chefs* can use these different mechanisms in specific circumstances.

The use of industrial IPRs

When tangible heritage assets derive from an industrial production process, the intellectual property mechanisms potentially applied are patents, where criteria of novelty and innovation are involved; an alternative form of protection is that of trade secrets. Tangible heritage assets whose originality derives from their location or their name but not necessarily from any innovative process are protected by trademarks. This protection is actually extended to the case of quality labels (e.g. in the European Union there are "protected geographical indications" or "protected denominations of origin", and in France the *appellation d'origine contrôlée* or *labels rouges*). These mechanisms, implemented by public policies, bestow an institutional and collective identity – a sort of "tradename" – on particular tangible heritage assets connected with the land (wine, cheese, poultry and so on).

Patents provide both direct and indirect advantages for tangible heritage assets produced by an innovative industrial process: direct advantages because, being in a monopoly position, the patent holder can charge monopoly rents and collect all the proceeds from demand for the good; indirect advantages because, being the first and only producer of a good when the market in it is first formed, the producer remains "the leader" in the consumer's mind once the patent has expired, that is, when competition invades the market place. Furthermore, by generating a kind of lock-in phenomenon (David 1985; Arthur 1989), patents build up network externalities in reference to the value of a good that is related to the number of its users. Although related generally to technology, network externalities may refer to the fact that demand is oriented toward a specific kind of good and determines a conspicuous consumption with bandwagon effects in a cultural demand scheme. Cooks are economic producers who may develop industrial innovations (i.e. creative methods) and then take out patents. Just consider, by way of illustration, the cases of Georges Pralus, the inventor of "vacuum cooking" and of Joël Robuchon, who was involved in developing "low-temperature cooking". Although significant these examples of chefs' innovative activity are increasingly the exception in the gastronomic market (growing complexity of technical knowledge to master). So, enforced rules devised to protect innovation would only have a marginal effect on chefs' propensity to innovate.

Trademark protection did not derive from any incentive to innovate or create. As related by Besen and Raskind (1991), the function of trademarks is to identify producers and differentiate between products. The improved information for consumers is significant insofar as the visibility of labeled products is markedly increased for consumers and producers alike. In fact, producers who obtain information from this mechanism are able to improve the quality of their own products and join the labeled producers. Chefs' trademarks are familiar to consumers. Indeed, identifying the chef's name is a

significant aid in the consumer's decision-making process. However, chefs' trademarks are not of exactly identical nature to those found in other industrial fields. Being a mechanism to convey notoriety, the trademark is not only the consequence of the chef's own input, but also and maybe primarily, the result of the guidebooks' definition of gastronomic quality. Indeed, guidebooks build up the reputations of their selected chefs, in other words a kind of "trademark", and provide a means to identify them among the 160,000 chefs working on the French market. Guidebooks bestow an institutional and commercial identity on, say, "Alain Ducasse" or "Guy Savoy".

The trade secret mechanism is manifold. For instance, is the recipe a "formula" that can be included in the trade secret category? However, when trade secrecy is evoked in French law, it is usually in reference to a *savoir-faire*. Indeed, chefs have a specific know-how that may be considered a kind of trade secret. This skill, acquired by experience (sometimes by a trial-and-error process), varies with each individual and allows chefs to customize their preparations in a certain way. Joël Robuchon's *purée* is specific to him and very different from those of, say, Alain Ducasse or Marc Veyrat. However, this sum of practical and technical information that constitutes each chef's *savoir-faire* may be contractually transferred. A chef could sell his *savoir-faire* to others under a franchising agreement. Although it is often employed for fast-food restaurants or for *restaurants bourgeois*, this mechanism runs counter to gastronomic precepts and especially to the necessary creativity of gastronomic preparations. In fact, gastronomic practice relies on the chef's personality and cannot be infinitely reproduced as with fast-food restaurants for instance.

Actually, the problem of implementation is related to the difficulty of evaluating creation. But, this is perhaps not such a problem as it may seem for industrial creative goods. Indeed, contrary to purely cultural goods, industrial goods are produced by firms, which are supposed to behave rationally. So, routines, experience, and the like mean managers can calculate the "price" of a patent, for instance, which can be revised over time depending on the invention's impact on everyday life (e.g. the vegetable mill vs. a useless invention).

Eventually, these mechanisms which are grounded on the industrial dimension of production, seem to be either marginal or remote from gastronomic preoccupations. A first solution might be to use tradenames. In fact, even if this kind of institutional mechanism is not grounded on creativity, it could institutionalize a label of *grands cuisiniers*, based for instance on guidebooks' lists promoting chefs who make dishes based on cultural heritage assets. This kind of apparatus could significantly clarify the notion of *grand cuisinier*: only chefs selected by guidebooks could claim the label. At present, this is not the case. Another important question might concern the legal status of this potential label – is it private or public. Moreover, one might raise the question of which items are to be protected. Creative recipes? Chefs' reputations? It seems difficult to resort to legal enforcement to make sure that every chef in every restaurant in France (and why not worldwide) does not pass off a recipe as his own when it has been invented by some other cook and is protected by a label. The case of protection of chefs' reputations is probably easier. Actually, an action in defamation is always possible and does not require strict, new enforcement rules.

A second solution would be to accept the chefs' demand for recognition through author's rights.

The use of cultural IPRs

In general, two ways of protecting cultural creations are contrasted: *author's rights* and *copyright* which differ in their subject matter, their beneficiaries, their scope and, of course, in their prevailing locus.

In fact, these two systems have multiple differences involving the existence or not of a moral right for cultural workers. They first apply distinct analyses to economic goods. In other words, whereas the copyright implicitly admits no difference between cultural and non-cultural goods, author's rights consider that cultural goods include something more than non-cultural ones: they are products of creative labor, and creators must be protected and promoted. For copyright there is no difference between musicals and training shoes (Paris, 2002), although there is a huge one for author's rights!

The application of an intellectual property right to tangible heritage assets would give an "intellectual added value" to production. First, it would symbolically increase the value of the intellectual property right owner, who would become a "cultural worker" in the consumer's mind. Second, the rights holder could also pass on that social recognition in price. In this case, one may

expect the appearance of a kind of "creative premium" playing the role of a quality signal for consumers. Moreover, an intellectual property right in tangible heritage assets could have a positive effect on creativity. Tangible heritage assets are quite clearly cultural goods. So, their consumption is influenced by conspicuous characteristics (Veblen, 1899; Leibenstein, 1950). Consumption occurs mostly in public areas. Thus, by institutionalizing producers' creativity, a definition of an intellectual property right in tangible heritage assets would stimulate an already rationed demand and accentuate its conspicuous dimension.

But one cannot overlook the point, for Throsby (2001), that attributing an IPR to a creative good, does not depend (solely) on the kind of good involved, but also on the bargaining power of its producers. In fact, some professions are not powerful enough to impose on others the acceptance of an IPR.

The international dimension of cultural heritage assets has also to be taken into account. Indeed, if a country succeeds in implementing an IPR system for this kind of goods, it might be expected that this country would become an attractive place for creators. Although some cultural heritage assets, such as monuments, cannot be moved from their location (e.g. the Louvre will always be in Paris), some *grands couturiers*, *grands cuisiniers* or maybe singers might be attracted abroad. A real change in competition and in the location of production may ensue.

Gastronomy appears to be a creative heritage asset. First-class chefs use collective memory to create new dishes. The French culinary heritage is their staple ingredient. This raises the question of whether the incentive to create is synonymous for this kind of good with a renewal of heritage. In fact, when producers are not recognized as creators (both symbolically and financially), do they have any incentive to emphasize their creativity? Aware of this lack of recognition and also of the cultural dimension of gastronomy, top-flight French chefs (e.g. Alain Ducasse, Marc Veyrat or Paul Bocuse) have long argued their activity should be protected by the author's rights system. Their main argument is that protecting them by author's rights would prevent the systematic plundering of their original recipes: it would protect them from copying. This would protect their private heritage of craft and creative knowledge. Chefs claim their activity would become profitable and provide significant incentives for cooks to continue to be original and creative. Basically, French chefs are convinced that this mechanism would lead to a virtuous cycle of improvement of quality and creativity.

Despite their claim, nothing has been done so far. Is this lack of action because the proposal is unfeasible or rather to some delay in implementation? In fact, two aspects have to be considered: the "feasibility" of recognition and its "suitability". Considering first the feasibility of applying IPRs in gastronomy, it appears necessary to define the subject matter to be protected, i.e. the *œuvre gastronomique*. Is it really possible to determine a subject matter that can be protected? Would it be the recipe? The preparation? The aesthetic form? The production process? Or something else? As for the suitability of such a definition, the perspective is very different. Are author's rights the best incentive for *grands chefs* to be creative? Answering this involves evaluating the relevance of this implementation and comparing this system with other mechanisms proposed by intellectual property.

Defining author's rights in a creative work supposes the choice of some "subject matter to protect", what French law terms *oeuvre de l'esprit*, and especially for the case of gastronomy: the *œuvre gastronomique*, in other words, the creation deriving from the author's mind. But to which part of the chef's production does this designation apply? The "food amenity in its entirety" or just a "piece" of it? The answer is not self-evident. The problem is not only linked to the rights holder alone, but to the resource on which the protection mechanism is supposed to be focused. Which resource creates value and conveys heritage?

The specificity of gastronomic good and particularly the fact that it disappears when it is consumed seems logically to exclude gastronomy from the definition of author's rights. In fact, some commentators claim that only a permanent work can be covered by author's rights. But some examples like *Land Art* (e.g. the creations of Christo), which are ephemeral by their very nature, do not theoretically exclude gastronomy from the realm of author's rights.

Furthermore, the role of guidebooks has to be taken into account. Their selection ensures chefs of their notoriety and surprisingly chefs become unique through the intervention of guidebooks. Thus, no-one other than Marc Veyrat can issue a food amenity of Marc Veyrat (the food amenity is a real extension of the "chef's personality"). So the question is not how to prevent copying but really to know whether author's rights are of any use in protecting a good that cannot be copied. In this respect, the answer is not favorable to author's rights. In fact, introducing author's rights into gastronomy would give rise to "entropy problems" related to the difficulties of exhaustively listing the actions performed by each individual involved in gastronomic creation. This system would become very complex and the existence of author's rights would prompt claims from many categories of gastronomic workers, including kitchen staff (they are physically involved in production) and restaurant room staff (slicing, flambéing, etc.). They are all "performers" of the food amenity. They might conceivable invoke their performing rights to be (as with music or cinema).

4.2. IPRs in common heritage assets

Common heritage assets are difficult and almost impossible to protect. Actually, these cultural heritage assets do not belong to any identified craftsman but to the people who make up the gastronomic profession. The French cooking style may be copied in China, but in this case there is no direct competition between copiers and the original craftsmen, for location reasons (the food amenities are not substitutable). In this respect it seems clear that the means potentially used to protect common gastronomic heritage assets are not legal enforcement rules but rely on intervention by trade unions and associations. They allow information to circulate in professionals circles.

5 IPRs and management of cultural heritage assets in the *haute couture* industry

In the *haute couture* industry tangible and intangible cultural assets, through their multiple dimensions, play a key role in the development and the competitiveness of the sector. However IPRs in them are often less well defined, hence the present attempts to clarify and to enforce them and leading firms' current strategies.

5.1. IPRs in intangible cultural heritage assets in the old model

Until the late 20th century, some heritage assets were managed within the *maison de couture*, legal concerns were not prominent, and most IPRs were less clearly defined.

- Craft knowledge heritage. As a collective knowledge heritage, this benefited individuals through training and the ambient culture. It was therefore encapsulated in part in individual's skills, increasing their worth, and circulating with them when workers changed employers. No IPRs in this collective heritage existed although it operated much like capital.

  To some degree too the craft heritage was a club product (know-how, routines, procedures, etc.), arising from synergies and associated with the specific style of the *maison*. The creator (or the *maison*) had an implicit IPR in the *usus* and the *fructus* of this club heritage but no explicit IPR and therefore no IPR in its *abusus*; accordingly it was usually not transferable. Its value was reproduced through the training of new employees coming into contact with the older ones in the *maisons*. If the *maison* disappeared, the collective specialized knowledge was generally lost.

  To some extent also the craft knowledge heritage was the collective and common heritage of the Parisian fashion district, with open access but only within that district.

- Creative knowledge heritage assets of the *maison* were more difficult to reproduce over time as creativity appeared to be an attribute of the creator, the *couturier-créateur*, even if others (stylists, managers) did contribute to those creative acts. The creator owned his individual skill and had a partial IPR (*usus* and *fructus*) in the collective creative skill to which he (or she)

was able to give rise. Conversely, IPRs could not readily be passed on; the creative knowledge and the corresponding heritage were idiosyncratic. The *maisons* were closely connected with the personality of the founder through a cultural rationale and not a managerial one. No distinction was possible between the physical creator and his creative heritage, so cultural heritage assets could not be allocated as autonomous resources and no property rights could be entitle for them. Many *maisons* disappeared when the creator died and no sufficiently creative successor could be found. As the population of firms was highly unstable and as some firms disappeared, this kind of heritage was often lost. In most cases, the market failed to organize the transfer and re-allocation of these heritage assets.

No IPRs existed in collective creative knowledge heritage assets but they were linked to a special place, the Parisian district, which protect them from absolute unregulated access.

- The heritage assets of creative products included specific models and general styles. Particular models were protected by patents (in France, IPRs in *dessins et modèles*). These IPRs were less strictly enforced (foreign buyers might copy designs) but as they were associated with the creator's style they were not very useful in other styles. Moreover, infringements were of little consequence because the relationship between customers and producers was a personal one and not a market one, so customers addressed their demand directly to bona fide producers. And, if copying did occur, IPRs would provide no solution because it would have been very difficult to prove that one stylist had copied from another rather than having been inspired by the same social and cultural atmosphere. As materials were expensive, piracy was difficult and mainly concerned off-the-peg clothes, which was not the core business of *haute couture*. As above, the styles were too closely associated with the personality of the creator founder, who was the owner and head of the fashion firm. So, these assets were not transferable, disappeared upon the death of the creator, and were lost.

- As far as the image of the creator is concerned, the reputations built up were internalized in the firm and protected by the trademark. Nevertheless, this trademark was not a market IPR but a personal IPR taking the form of the *griffe* (the creator's name). This heritage was transferable between products, hence the success of derived products (*accessoires*), but not between firms. When the firm disappeared, reputation heritage assets, whose value is idiosyncratic, disappeared too.

- Other common heritage assets (styles, tastes, institutional and cultural heritage assets) were a common property of the French fashion system. No IPRs protected them but their use presupposed an idiosyncratic connection with this system.

Therefore, in this model, IPRs can be less clearly defined without any substantial loss of efficiency and equity in the present period but with substantial losses over time:

– when the firm is hand down over time heritage assets are internalized

– when the firm disappears, market transfer of heritage assets is generally impossible.

In the new model of fashion market, the *maisons* are purchased by financial groups in the luxury goods industry. Accordingly, the question of IPRs is changing.

5.2. Privatization and management of cultural heritage assets

The new financial groups in the luxury goods industry are very keen to enhance the value of the *maisons*' heritage assets and develop a more rigorous style of management. They are confronted with two key problems. The first is the reproduction over time of the value of their heritage assets by the groups. They now operate by a long-term, managerial logic, and no longer by the cultural and individual logic of the *grands couturiers*. The second is the transfer of rights in heritage assets between firms or groups, at some point in time. New IPRs are needed to solve these two problems. They have to be separate from the person of the creator so they can be passed on, either over time or across space, within the group or within the market, and heritage assets enhanced. They have to be well defined so heritage assets can be protected and transferred. So the fashion market model implies a better definition of IPRs in creative heritage assets and the emergence of a market for them.

- For the private club heritage of craft knowledge, the main change occurs to keep it within the firm or the group over the long term. This is the case of accessory makers like Hermès or Vuitton.

Great attention is paid to workers' training. Their narrow specialization in the firm's products prevents the formation of an external labor market, so the lack of specific IPRs in club heritage assets does not avoid their transfer over time within firms. At some point in time, this private club heritage may be transferred through the market. New luxury groups take control of existing firms to develop their production of accessories.

- An important source of value for these groups is that of creative knowledge heritage assets but these cannot be separated from the personality of their creators, they cannot be managed as standard inputs and transferred over time like capital. Transferring them over time, after the death of the founder-creator, implies a decoupling between the creator as a physical person and the creator's name. The trademark provides a solution: Dior is a world famous trade mark (and was given as first name to more than one hundred children born in 2003) but Christian Dior died 50 years ago. The trademark is no longer the *griffe*. Nevertheless, this process is not easy.

- To produce new creative products from the heritage assets of creative knowledge and products implies organizing a new idiosyncratic link between the heritage of a *maison de couture* and a new creator, capable of reproducing the value of this resource. Lagerfeld has to maintain and expand the value of Chanel's creative heritage, Galliano that of Dior, and so on. When Lagerfeld arrived at Chanel he began by studying the Chanel style for several months. How could it be defined, how could new goods bearing the Chanel brand be made identifiable as continuing the Chanel spirit? If successful the heritage assets are a source of value, otherwise the potential value is lost. So the value of IPRs in the non-cumulative cultural heritage assets is only a potential value and cultural heritage assets are not standard economic resources able to circulate by themselves on a market. That fact increases the importance of the work of the new stylists and their key position in the firm; managers have to be able to allow creators to express their creativity, despite their unconventional behavior.

These creators acquire a new specific asset, their ability to maintain and expand the value of heritage assets. Accordingly a market for these skills emerges. Nevertheless, it is a narrow market. When Tom Ford and Domenico De Sole announced they were leaving Gucci, the staff began to look for successors but, as they themselves said, there were few potential candidates. Moreover, creators may use turnover, according to market incentives. These are as important as a market for stylists is emerging and it is necessary to allow for some renewal among creators. Managers seek to prevent opportunistic behaviors by giving creators a share in the profits or a share of capital, that is, to share the IPRs with them. Sophisticated contracts manage the relations between great creators and their groups. Galliano has a share in Dior's profits and capital and so has an incentive to use Dior's heritage efficiently; at first he was authorized to develop his own firm, but afterwards LVMH preferred to take the control of the firm. Internal monetary incentives to be creative may be outdone by external – market – monetary incentives to change jobs.

Lastly, IPRs do not allow strictly and clearly separate use of Dior's heritage for producing Dior goods and for producing Galliano goods. Hence, there is a "hold-up" problem. Dior's heritage contributes to increasing Galliano's reputation and not only the firm's reputation. The owner of the heritage (the firm) is not the sole user of the heritage and cannot precisely organize its utilization by his employees, including the creator. So, the economic links between old heritage assets, new heritage assets, creators and firms are a very important point but the legal links are now not sufficient enough to manage them all. Contracts and IPRs remain incomplete. And problems remain, as with the break between Tom Ford and the Pinault group.

5.3. Reputation heritage assets: from name to trademark

The reputation heritage assets procure growing value for luxury goods industry groups where the market for luxury goods moves into mass production. Groups are then keen to strongly enforce IPRs in trademarks.

These IPRs allow them to use their pre-existing reputation for new types of products: obviously they create new accessories to propose an all-round set of luxury goods to consumers (Vuitton produces not only luggage but has moved into bags, shoes, pens, watches, and so on; Hermès has added a garment collection designed by Jean-Paul Gaultier to its traditional accessories). IPRs also allow corporate restructuring in this growing industry.

Another main objective of these groups concerns the image heritage of the *maisons*: the name of Dior or Saint Laurent is still a sign of quality and creativity, and fashion goods are semiotic goods.

But their creators are dead or retired. The problem of the present owners is to transfer the positive image of the great creators who founded their *maisons* to the name of the firms. Therefore, the task is to start from the "fashion designer's name" – the *griffe* (an association between the creative products and the name of the creator, a personal IPR) – and to move to the trademark (an association between the products and the name of the firm, a market IPR). This transfer allows the value of the designer's name to be extended over time and space. The value outlives the *grand couturier* and extends beyond a particular work to cover the whole product range.[1] The groups organize communication policies to enhance the reputation of the mark: creation of museums or exhibitions (e.g. Yves Saint Laurent and Giorgio Armani at the Guggenheim), purchasing of stores on the main squares of the world's major cities.

Now, the capitalization of heritage in the brand allows the transfer of IPRs in reputation heritage assets. Financial groups can buy and sell firms and associated trademarks: Gucci's heritage value can be used both by PPR and by the LVMH group because Gucci is no longer a creator's name but a brand. Nevertheless, the value of trademarks is very uncertain: in 1977, sales of the Armani women's collection were 800 million lire; three and half years later they were 40 billion. And how can a mark be valued when the creator is dead or has left? What would be the value of Cardin's enterprises without Pierre Cardin or of YSL without Saint Laurent, or Gucci without Tom Ford? And how can the value of Gucci be split between Tom Ford, the creative stylist, and Domenico de Sole, the creative manager (Beaufumé, 2000)?

5.4. Creative piracy and vulgarization of creation

In the fashion industry it is very difficult to delineate an IPR in a specific product. Although there is some degree of creativity in mass-production, most cultural creativity is concentrated at the apex of the pyramid, in the *maisons*. There are two main types of creative piracy.

First is piracy from firms and countries which simply copy designs and models and supply a less expensive product; they save on creative labor and sometimes use inferior quality materials. This kind of piracy benefits from lower wage costs. French and Italian professional institutions have obtained a "designs and models" statute, immediately applicable, and are working on European projects for a directive on author's rights and designs and models to improve protection in every country (Benhamou, 2001). They fear European enlargement will lead to a marked upturn in piracy.

A second type of piracy is the creative piracy of mass fashion. The protection of designs and models cannot, today, prohibit the use of new models of *haute couture* by the manufacturers of mass fashion. It can prohibit complete product piracy: a firm cannot sell a garment labeled Saint Laurent unless it has been produced in the Saint Laurent workshop. But, under the present legal system, nobody can prohibit street fashion from copying the style and specificities of a model. And the new fashion technologies enable faster copying. Professionals speak of the Zara fashion model: two weeks after the *haute couture* and *prêt-à-porter* collection fashion parades in Paris, anyone can find very similar products in Zara's shops. IPRs are inoperative against this kind of copying:

– There can be no confusion: prices and quality are very different; but mass fashion manufacturers can therefore save on creative work and confine themselves to adjustment work.

– As in the age of the dress-creator it would be very difficult to demonstrate that one stylist has copied from another and, even more difficult because creation is more inspired by the social and cultural atmosphere; some organizations are specialized in the production of trend selection (*cahiers de tendances*). Nevertheless, it is common knowledge that creative piracy is systematically organized. Trade organizations are lobbying to define better protection of IPRs, first and foremost within the European legal system.

Another means of combating both types of piracy is to play on consumer preferences. The policy of *haute couture* and *prêt-à-porter de luxe* firms is, thus, a communication policy to persuade consumers of the social value of a brand. Simultaneously it is a policy to increase the brand's value, to

[1] The value of the brand image is especially important for some products in the luxury goods industry such as perfumes. In the case of the perfumes of the French *haute couture* firms, the value of raw materials represents less than 10 per cent of the price; the greatest value is imparted by the brand image and the general image of French luxury goods.

differentiate it from the standard brands and promote it as a luxury brand, if possible a star or superstar brand.

5.5. IPRs in common heritage assets

The two main issues here are the management of common heritage assets so they can be reproduced over time and to make them productive.

The common heritage of craft knowledge is a configuration of specific assets. They are closely associated with a local geographical context and are non-transferable assets. No market can be organized for them, no IPRs can exist. These assets are formally freely accessible but, in fact, can only be used if firms choose a local installation. Geographical localization constitutes an entry barrier and creates an idiosyncratic relation for firms currently benefiting from these assets. One major consequence of the lack of property rights in this heritage is the absence of any economic management of it. Nobody is responsible for the reproduction of the heritage over time and firms can operate as free riders. In fact, the crisis in *haute couture* has led to a contraction of the craft sector traditionally linked to it and to the loss of highly qualified skills. Public policies are required to manage the economic value of these heritage assets. The institutional heritage of the *maison de haute couture* model is not legally protected either. It may be duplicated abroad but it is connected to the specificities of the Parisian fashion district and to its specialization in a very restricted sphere of the fashion system, that of *haute couture*.

The creative knowledge heritage is also locally embedded, but is not controlled by any market or any property rights. It favors French firms but foreign ones can benefit from it by relocating in the Parisian district, by purchasing French firms and by hiring creators who have benefited from this creative atmosphere. The common heritage of styles is a common one but represents a higher value for the firms which produce culturally similar creations. No IPR is defined in these assets and free access is the rule. The same is true for the common heritage of tastes, the semiotic and image heritage of Parisian *haute couture*, and the French touch. Accordingly, French firms attempt to associate the image of French luxury goods closely with their brands: advertising for perfumes invariably states the brand and the name of Paris. This is currently the only way to avoid piracy and the proliferation of pseudo "Made in Paris" commodities. In the future, there may be a local protection of geographic origin: some firms and institutions would like to obtain some form of protection and draw up legal strategies.

To increase the productive uses of these common heritage assets both public and professional policies are implemented. Museums and exhibitions maintain and expand the semiotic and image heritage. They improve the image of the country and of its creative products as in the case of the "young British artists" campaign. Professionals now think that cultural institutions and policies have a big economic impact on fashion and luxury goods industries (Muller, 2001). They organize industrial policies and partially transform common heritage assets into collective heritage assets, with a collective partial management.

Luxury goods groups like LVMH and PPR are particularly interested in the image of creativity conveyed by these creations and develop sophisticated and expensive communication policies. They appropriate a part of the common heritage of the age of aristocratic luxury and transform it into a market and into democratic luxury. In this new age, mass markets need powerful images for their goods. The use of heritage is therefore an essential competitive resource. Even so, the common character of the reputation of *haute couture* leads to some difficulties. Financial groups in the luxury goods industry are mainly interested in the earnings from accessories (perfumes, bags, shoes, watches, pens and so on); *haute couture* itself is no longer profitable but its creativity is the origin of image and reputation effects. Therefore there is a contradiction: reproducing the reputation heritage entails reproducing the creativity of *haute couture*, but these groups are seeking to disinvest in *haute couture*. And private strategies can lead to free riding; every group wishes to benefit from the reputation but none of them are willing to invest in *haute couture*. The question is serious because reputation in creative industries is unstable; for instance, the idea that French creativity has been superseded by Italian creativity may easily become a commonplace and lead to bandwagon effects. Therefore, private groups are calling for collective and public policies.[2]

[2] Cf. the Parisian project of the *Cité de la mode*, with participation of the profession and of central government.

6 Some concluding remarks

Proposing an analysis of cultural heritage assets in terms of IPRs implies first substituting a "substantive approach" for a "formal approach". Economists have to specify the nature of tangible and intangible cultural heritage assets. Their specificity is extreme insofar as they are very distinct of each other, and they depend on the paradigm of creation meaning that they are not reproducible or on weakly so, they are not comparable, and so on. In fact, they may be of many sorts: fashion, luxury goods, design-based goods, gastronomy, etc. Once done, it is necessary to find among existing IPRs the ones that can be applied to creative goods and non-cumulative creative heritage assets. This specificity prevents any universal model of IPRs in cultural heritage assets being proposed. For instance the solutions for *haute couture* are not transposable to *grande cuisine* and lead to different strategies.

However, in neither case can any perfect IPRs be defined for cultural heritage assets. The replacement of a market model of fashion by the elitist model of the *couturier-créateur* leads to a development of IPRs to organize the protection and allocation of creative resources, and particularly of cultural heritage assets whose value is growing. Nevertheless, the specificities of such heritage assets prevent the building of a market of IPRs in cultural heritage assets. The standard model of property rights, founded on the paradigm of the production function and of the consumption function, is partially irrelevant depending on the specificities of cultural heritage assets. In the case of gastronomy, heritage assets are even more poorly protected. Four types of problems arise. First is the common character of many cultural heritage assets which involves the incompleteness of the property rights to be defined (e.g. the case of the YSL collection). Second is the difficulty of separating cultural heritage assets and the persons of their builders deriving from the exclusivity of property rights. A third limit can be found in the transferability of property rights, and the fourth one is related to the difficulty of enforcing property rights in creative cultural heritage assets.

Finally, these difficulties linked to the definition and to the implementation of property rights in cultural heritage assets allow economic actors to develop strategies concerning the uses of cultural heritage assets. From that point of view, cultural heritage assets become portfolios and the recognition of goods as creative ones increases revenues. This proves the case for gastronomy where guidebook selection and increasing value of restaurants are interconnected. And it is also true for *haute couture* when luxury groups like LVMH manage their luxury trademarks through property rights. One may wonder whether this management scheme of cultural heritage assets might not tend to evacuate the creative character of these heritage assets and change them into economic values that can be readily be traded on a market place.

References

Arthur W.B. (1989). "Competing technologies, increasing returns and lock-in by historical events", *Economic Journal*, 99, 116-131.

Barrère C. (2004). "Property Rights and Judicial System" in Colombatto E. (ed.), *A Companion on Property Rights*, Edward Elgar, fourthcoming.

Barrère C. and W. Santagata (1998). "Defining art. From the Brancusi Trial to the Economics of Cultural Semiotic Goods", *International Journal of Art Management*, 2, 28-38.

Barrère C. et W. Santagata (2003). *Une économie de la créativité et du patrimoine : la mode*, Rapport pour le Ministère de la Culture, Paris.

Beaufumé F. (2000). *Rencontres européennes du textile et de l'habillement***.** Hyères 2000. www.festivals-hyeres.com/rencontre1.

Benhamou F. (2001). *Rencontres européennes du textile et de l'habillement***.** Hyères 2001. www.festivals-hyeres.com/rencontre2.

Besen S.M. and L.J. Raskind (1991). "An Introduction to the Law and Economics of Intellectual Property", *Journal of Economic Perspectives*, 5(1), 3-27.

Caves R. (2000). *Creative Industries, Contracts between Art and Commerce*, Harvard University Press, Cambridge, M.A.

Chossat V. (2001). *Les processus de sélection sur un marché, le cas de la grande cuisine***,** Thèse pour le doctorat en sciences économiques, Reims, France.

Chossat V. and O. Gergaud (2003). "Expert Opinion and Gastronomy : The Recipe for Success", *Journal of Cultural Economics*, 27, 127-141.

David P.A. (1985). "Clio and the Economics of QWERTY", *American Economic Review*, 75(2), 332-337.

Grandstand O. (2000) *The Economics and Management of Intellectual Property. Towards Intellectual Capitalism*, Edward Elgar, Cheltenham.

Laver J. (1995). *A Concise History of Costume*, Thames & Hudson, London.

Lehnert G. (2000). *Histoire de la mode au XX° siècle,* Könemann.

Leibenstein H. (1950). "Bandwagon, Snob, and Veblen Effects in the Theory of the Consumer's Demand", *Quaterly Journal of Economics*, 64, 183-207.

Muller B. (2001). *Rencontres européennes du textile et de l'habillement***.** Hyères 2001. www.festivals-hyeres.com/rencontre2.

Papandreou A.A (1997). *Externality and Institutions*, Oxford University Press, London.

Paris T. (2002). *Le droit d'auteur: l'idéologie et le système*, PUF, Paris.

Rochefort R. (2001). *La société des consommateurs*, Poches Odile Jacob, Paris.

Santagata W. (1998). "Propriété intellectuelle, biens culturels et connaissance non cumulative", *Réseaux*, n°8889, Paris ; « Proprietà intellettuale, beni culturali e conoscenza non cumulativa »,italian version, *Economia della cultura*, 1998/3, Il Mulino, Bologna. .

Steiner G. (2001). *Grammaires de la création*, Gallimard, Paris.

Throsby D. (2001). *Economics and Culture*, Cambridge University Press, Cambridge, U.K.

Towse R. (2001). *Creativity, Incentive and Reward, An Economic Analysis of Copyright and Culture in the Information Age*, Edward Elgar, Northampton.

Veblen T. (1899). *The Theory of the Leisure Class*, Macmillan.