



UNIVERSITY OF THE
WITWATERSRAND,
JOHANNESBURG



**Wealth for those who create: an exploration of intellectual property exploited
by visual artists based in Johannesburg.**

Traver Mudzonga (Student Number:1255267)

Research report submitted to the Wits University Faculty of Humanities in partial
fulfilment of Master of Arts in Cultural Policy and Management.

Supervised by Munyaradzi Chatikobo.

March 2019

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A handwritten signature in black ink, appearing to read 'Traver Mudzonga', with a stylized, flowing script.

Abbreviations

CCIS	Creative and Cultural Industries
CIPC	Companies and Intellectual Property Commission
Gov	Government
IP	Intellectual Property
SACO	South African Cultural Observatory
TRIPS	Trade-Related Aspects of Intellectual Property Rights
WIPO	World Intellectual Property Organisation
WTO	World Trade Organisation

To those who chose a career in the arts and culture.

To those who strive for the best of the arts and culture.

To those investing in arts and culture.

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**Wealth for those who create: an exploration of intellectual property exploited
by visual artists based in Johannesburg.**

Chapter 1 | Introduction – Intellectual property is property at law

Intellectual property (IP) is an invisible estate that may be created and or inherited, that some may enjoy and from which others may be ‘eternally’ barred (Phillips & Firth, 1990). Although Phillips and Firth (1990) use the word eternally, intellectual property rights are territorial and are limited for a specific period as outlined under the intellectual property categories covered in detail in Chapter 2. To avoid misinformation, intellectual property rights accord for a limited monopoly by rights holders however some categories can be periodically renewed with the Company and Intellectual Property Commission of South Africa to give the ‘eternally’ validation. The state of IP among visual artists in my country of birth, Zimbabwe and my current countries of residence, South Africa and Lesotho, has no empirical evidence upon which a detailed picture can be painted save for policy frameworks that mirror British legislation and international IP laws (Copeling, 1978; Lesotho Industrial Order of 1987, Phillips & Firth, 1990; Mukanga-Majachini & Chifunyise, 2003; SACO, 2018). A desire to see flourishing cultural-creative industries has led to research that explores intellectual property as part of many aspects towards thriving arts and cultural entrepreneurial initiatives. This research explores intellectual property exploited by professional photographers and art directors, collectively referred to as visual artists, based in Johannesburg. The exploration is about setting out to understand IP as a local phenomenon that is said to exist, yet little to nothing is known about how it works.

The research is part of the wider Cultural Policy and Management discipline with a focus on cultural entrepreneurship as part of the Creative Economy, specifically, the need for flourishing Cultural and Creative Industries (CCIs) within the Global South. It is an interdisciplinary study, including the fields of economics and law as far as providing legal and legislative framing of intellectual property (IP) among others. As an interdisciplinary study a number of complexities in the Cultural Policy and Management field have been acknowledged. Purposive sampling of seven visual artists and semi-structured interviews were used as part of the research methods explained in detail later in this chapter. This narrowed the sample field to their artistic work, particularly, photography and the intellectual property specific to it. Intellectual property, particularly copyright, aesthetic design and trademark in the case of participant visual artists, only applies to physically manifested work (Phillips & Firth,

1990; Copyright Act No. 98, 1978; Copeling, 1978; Towse, 2006; Fox, 2011; CIPC, 2018; WIPO, 2018).

The Collins English Dictionary Digital Edition (2012) defines visual art as art created primarily for visual perception and provides a list of examples that includes photography. The South African Copyright Act No. 98 (1978) bundles visual art expressions as artistic work, provided they are original. Creations of the mind by photographers and art directors become intellectual property eligible for protection when the 'ideas are reduced to material form' also known as fixation (Copyright Act No. 98, 1978; Phillips & Firth, 1990; Towse, 2002; WIPO, 2018). Photographs and their derivative artistic work, collectively referred to as artistic works or simply works, become automatically eligible for copyright protection without need for any form of registration unlike other categories of intellectual property.

The irony in the history of photography is that the invention of Daguerre's 'camera' leading to photographs being introduced to the public is graced with an intellectual property infringement (Benjamin, 1972; Whitmire, 2018). The infringement was led by a State that took advantage of patent law difficulties faced by inventors resulting in 'an acquisition to be shared by the public' (Benjamin, 1972; Whitmire, 2018). Although, the Daguerre inventors were compensated for life, one may argue that they would have enjoyed greater financial benefits in a free market, had the State not interfered. However, this public access contributed to South Africa, Cape Colony then, having its earliest photography activities recorded in 1842, a mere three years after Daguerre's invention in France (Peffer, 2009). Decades later, the South African government has also making an image reuse without renewing user license intellectual property infringement headlines, this time regarding use of a photograph of the late President Mandela (Sosibo, 2014; Harris, 2018). It is important to reflect on these two examples as they show that intellectual property rights infringement is not a twenty first century thing but dates back to time in memorial.

My preliminary assumption, going into this research, was that categories of IP related to photography and art direction were not fully exploited for commercial purposes beyond ownership. This position is also stated in the South African Cultural Observatory (2018) report regarding the South African context and by Towse (2002

& 2006) regarding the general literature on copyright. The preliminary assumption was followed by a desire to understand the current exploitation of IP across all its categories by the Johannesburg based visual artists. Such an understanding would provide the building blocks for future research and or information towards bringing about value chain innovation towards common cases of those who create within the Cultural and Creative Industries (CCIs) among other things. The research, based on collected data, focuses on copyright, aesthetic design and trademark categories of IP. In the context of South Africa, these categories include designs as defined in the South African Designs Act No. 195 (1993), trademarks as defined by the South African Trade Marks Act No. 194 (1993) and sections addressing artistic work in the South African Copyright Act No. 98 (1978) including amendments addressing such.

In legal terms, 'property' is that which individuals or legal entities such as companies can assert a right in it against some or all other persons (Phillips and Firth, 1990). The word 'property' is derived from *proprius*, a Latin word that means one's own (Phillips & Firth, 1990). Therefore, intellectual property, from a legal perspective, is the legal rights which may be asserted in respect of creations of the mind (Copyright Act, 1978; Phillips and Firth, 1990). Defining IP is significant for this research as it acknowledges the legal nature of framing the phenomenon and giving context both at local and international levels. IP is intricately related to ownership, trade, competition, industrial growth and economic development (Throsby 2001; Towse, 2006). It is divided into two primary categories; industrial property and copyright; and can exist in various forms; a new invention, brand, design or artistic creation (Phillips & Firth, 1990; Towse, 2006; CIPC, 2018; WIPO, 2018). The South African Copyright Act No. 98 (1978) and related statutes are part of a legal framework around IP; to grant an exclusionary and or exclusive exploitation right for a limited duration (Copyright Act No. 98, 1978; Design Act No. 195, 1993; Trademarks Act No. 194, 1993; Phillips & Firth, 1990; Towse, 2006). The law, therefore, provides a right to prevent IP expropriation by others in favour of the 'property' owner (Phillips & Firth, 1990).

The South African Copyright Act No. 98 (1978) does not offer a comprehensive definition of copyright save for stating various provisions to cover 'original work' (Copeling, 1978). Therefore, this research takes the aforementioned legal definition

of intellectual property to extend to. Copyright is about the granting an exclusionary and or exclusive exploitation rights to owners of original, for a limited duration (Copyright Act No. 98, 1978; Copeling, 1978; Phillips & Firth, 1990). Copyright law was initially concerned with the protection of the right to copy books and music and only about 1911 did it extend to other artistic works and objects such as photographs (Phillips & Firth, 1990; Towse, 2006). South African copyright law follows international dictates save for regarding commissioned photographs; “commissioned photographs are owned by the commissioner (client)” states the Act No. 98 (1978). This is a very contentious issue that means a freelance visual artist in the context of this research has no right to their work unless they negotiate explicitly with their clients to have their agreement come under contract law which overrides this default in the current Copyright Act (Fox, 2011).

Ownership of copyright is not straightforward even though at law it is said to belong to the author which varies when it comes to artistic work such as photography (Copyright Act No. 98, 1978). The author, when it comes to photography work is defined as the person responsible for the composition that is to frame and fashion the photograph who in today's industry is referred to as Art Director and in most cases is also the photographer (Copyright Act No. 98, 1978; Copeling, 1978; Akona, 2019; April, 2019; Durban, 2018; Evans, 2018; Goitseone, 2018 Harris, 2018). However, it is important to note that the South African law generally regards copyright ownership to rest with an author, the one who is the creator of a physical form in which ideas-creations of the mind are contained save when it comes to commissioned photographs (Copyright Act No. 98, 1978; Copeling, 1978). Photographers and art directors who made part of this research sample study were not merely responsible for pressing a camera which would not grant them copyright ownership but responsible of composing their work, even where they might employ an assistant photographer, and author the images. Part of the central research questions presented later on in this chapter, interrogated participants' copyright agreements and approach to negotiations.

When visual artists' original artistic work is transformed from mere photographs to form part of a design for either their aesthetic and or function purposes, they also become eligible for protection as industry property under the Design Act No. 195

(1993). Aesthetic design means any design applied by whatever means for the pattern, or shape of configuration or ornamentation regardless of the aesthetic quality (Designs Act No. 195, 1993). This means that a photograph, among other artistic works by visual artists, as a whole or in part, can be used for aesthetic purposes such as wallpaper motifs by Goitseone (2018). These artistic works, as designs, take into consideration shape and form as part of aesthetics to a functional product and are not necessarily inventions to be patented (Designs Act No. 195, 1967; Phillips & Firth, 1990; IP Laws Amendment Act, 1997). The work Goitseone (2018) is doing in post-production with his original images has a potential to generate wealth for those who create through transforming a single artistic work and enjoy more than one IP category protection and rewards.

The law also provides for visual artists to have their service marks and or part of artistic works to be protected under the Trade Marks Act No.194 (1993). Trademarks are registered company names, trading names, brand names, logos and other service mark devices including sound and smell that point to a particular entity or person linked to a service and or product. (Trademark Act No. 194, 1993; IP Laws Amendment Act, 1997; Phillips & Firth, 1990). Trademarks distinguish products and services connected to a particular proprietor, and the same from those of competitors (Phillips & Firth, 1990). Registered trademarks are protected from the date of registration without a need to prove reputation and they protect against unwanted competition (Phillips & Firth, 1990). Examples of registered trademark name is Nikon, a photographic equipment company registered in 1959 (CIPC, 2018). By registering trademarks, visual artists distinguish their artist works and distinguish them from those of other visual artists the same way one's signature works.

Something about the Cultural and Creative Industries (CCIs) sector has artists, those who create, considered as irrational and starving (Filer, 1986; Bridgstock, 2005). This narrative seems to be confirmed by the number of bad deals artists sign across the CCIs, and the news of artists' intellectual property legal battles, at times posthumously, through proxies (Filer, 1986; Bridgstock, 2005; Sobiso, 2018; Blignaut, 2018; ENCA, 2018). At the core of creativity is an undeniable valuing of individual talent; and CCIs are built on the notion of knowledge economy as the highest point of economic development (DCMS, 1998; Florida, 2002; UNDP, 2008;

Duxbury & Murray, 2010; Pratt, 2010). However, the wider role of creative economy within the global economics and talent behind digital landscape seem to paint a narrative of success (UNESCO Report, 2010; SACO, 2018). If those who create are generally regarded as starving artists then who is flourishing from the success stories of creative economy?

Rationale

Studying the phenomenon of intellectual property in relation to visual artists based in Johannesburg enriches existing literature on the Creative Economy and IP with Johannesburg specific information. The South African Cultural Observatory (2018) report acknowledges how little is known regarding IP within the local art and culture, a fact made valid by lack of CCIs literature addressing IP approaches. Johannesburg and visual artists have been chosen for logistical reasons and being a familiar terrain and territory to the researcher, such as, this enabled the researcher to interpret research data among others. Researchers have argued that intellectual property particularly copyright's effects are asymmetric and that it benefits the distributor rather than the content creator (Smiers, 2002; Bridgstock, 2005; Towse, 2006: 567). The history of copyright law has been a process of negotiation and conflict between traditional practices, changing political and ideological contexts and international trade agendas (Throsby, 2001; Qu, 2002; Macmillan, 2002; Smiers, 2002; Towse, 2006; Whitmire, 2018).

This research contributes towards knowledge generation on local IP approaches within the CCIs. Furthermore, the research is about making an empirical evidence-based contribution from the assumption that comes with a blind kind of familiarity. While intellectual property, particularly copyright, has been covered in general regarding the Creative Economy little can be said of Global South context (Throsby, 2001; Bridgstock, 2005; Towse, 2006; Fox, 2011; Caplan & Ullo, 2013; SACO, 2018; Weicht, 2018). The body of literature on the subject under research is not large but throws an interesting light on the economic role of copyright in relation to artists (Towse, 2006: 567). Little is known about how visual artists based in Johannesburg are exploiting IP beyond mere ownership as provided for under copyright protection (SACO, 2018; Akona, 2019; April, 2019; Harris, 2018, Evans, 2018; Lekgetho, 2018;

Durban, 2018; Goitseone, 2018). Therefore, this research is aimed at addressing this local knowledge gap.

An understanding of intellectual property makes it easier for businesses to then commercially exploit their intellectual property to both promote growth and gain competitive advantages (Caplan and Ullo, 2013). Although focusing on Johannesburg based visual artists, the research provides insight based on valid data for investors looking into local CCIs. This is driven by a deep desire to see more Global South based Cultural and Creative Industry start-ups flourish in ownership and capital. The research does not assume that those who create from the Global South are all starving. The world economic forum lists complex problem solving, critical thinking and creativity as some of the skills that will be most needed in 2020, although not exclusive for those who create within the CCIs, it is widely reported that artists possess these skills yet success is not common among them (Weicht, 2018; Bridgstock, 2005). This research study explores how various visual artists are exploiting intellectual property, which will contribute towards an understanding of the local trends and reveal how creatives can maximise the benefits. Benefits which go beyond the rhetoric question; if those who create are generally regarded as starving artists then who is flourishing from the success stories of creative economy?

Based on the idea of being able to read trends, the research contributes to the Creative Economy through reflecting on what research findings and discussion points reveal about the current IP implications in the Johannesburg Creative and Cultural Industries. On the other hand, the research is based on a specific sample of visual artists thereby contributing towards documenting local phenomena within that sector which is often tagged to the advertising industry. Thus, all three government tiers at local, provincial or at national level will be able to track the economic contribution of the sector as well as localised phenomena of possible policy shifts through this research.

Aim, objectives and research questions

The research explores IP practical existing phenomenon in the Johannesburg CCIs which has not been fully understood. One may argue for an examination or any other approach to research but such are best employed with a framework and for well-

known phenomena. This study was discovery driven with a need to seek out and understand what is out there and how it works.

The research objectives are to identify the categories of IP exploited by visual based in Johannesburg; gain an understanding of the IP works in practice for the visual artists and the process of engaging clients in relation to their IP rights. These objectives led to three primary research questions as follows:

1. What categories of intellectual property (copyright agreements) do visual artists based in Johannesburg work exploit?
2. How do visual artists, based in Johannesburg track and manage their work to make sure that their intellectual property and copyright agreements are protected?
3. How do visual artists, based in Johannesburg negotiate and frame their copyright agreement with a potential client?

These central research questions assisted in narrowing down the scope and assisted in the research methods and data collection (King et al., 1994; Haynes, 2006; Hulley et al. 2007; Farrugia et al., 2010). Thus, establishing categories of IP currently being exploited drawing on nature of artistic work, contracts and context of the research study fields. These central research questions led to an in-depth investigation into the information on South African IP laws from an individual visual artist practice point of view as well as the dynamic and complex nature of exploiting IP addressed in the following chapters. However, this research does not claim to answer all questions surrounding IP within its scope. It contributes towards knowledge generation on IP, CCIs and Cultural Policy and Management in the context of wealth for those who create from the Global South.

Conceptual Framework

The research findings and discussion points do not follow a set out theory resulting in the adoption of a conceptual framework which addresses the main two phenomena, IP and boundaryless career approach. The research data delves in the

realms of law as IP is defined and protected at law while on the other hand visual artists practice within the arts-culture fields dictating for a framework that balances both fields without prejudice. Here, IP follows the Anglo-Saxon as presented in the British context and formulated as a response to a growing CCIs (Copeling, 1978; Phillips & Firth, 1990; MacMillan, 2002; Towse, 2006). The second part of the conceptual framework is based on the freelance phenomenon observed from the participants which mirrors the boundaryless career approach. Whereas, it would have been impossible to have a single theoretical framework which can be applied effectively considering the interdisciplinary nature and research findings of this research. However, intellectual property presents policy and legal considerations while the research discovered the seamless nature of how research participants practice between formal and informal.

Intellectual Property (IP) is a term to describe the application of the mind to create something and it is protected by law to enable recognition or financial benefit (CIPC, 2018; WIPO, 2018). The origins of intellectual property laws have been placed within the Anglo-Saxon period with Britain featuring prominently (Phillips and Firth, 1990; and Towse, 2006). IP is divided into two categories; industrial property and copyright. IP can exist in various forms; a new invention, brand, design or artistic creation (Towse, 2006; CIPC, 2018; WIPO, 2018). These definitions of IP and its categories assisted the research to be able to read both what visual artists are currently exploiting and have a potential to exploit commercially. Creatives and Business (2016) acknowledges how intellectual property as a concept is not straightforward even among legal experts. Locally, this can be observed by looking at how the Companies and Intellectual Property Commission (2018) have a mandate over part of the IP categories with a bias towards industrial property and only film under copyright. While copyright is automatic once 'ideas are reduced to material form' internationally, the nature of a copyright agreement in South African can shift to be under contract law that regulates most of industrial property and overrides the current Copyright Act (South African Copyright Act No. 98, 1978; Fox, 2011; CIPC, 2018).

Boundaryless career approach is concerned with considering the existing informal and formal co-existence nature in visual artists' entrepreneurial practice. The

approach dovetails into what Raffo et al. (2000) and Fillis & Rentschler (2005) argue for cultural entrepreneurship being about trained, equipped and empowered individuals to respond to economic needs through creative and cultural industries. This research takes Bridgstock (2005; 2007; 2011) as the main proponent of boundaryless approach based on her articulation that resonates with Johannesburg occurrences. Scholars like Budd (1995), Hall, 1996 and Chinyowa (2017) also address the phenomenon and their contribution is cited in this research. Boundaryless career approach, as part of the conceptual framework, is also referred to as the protean career approach. A boundaryless career approach is a dynamic environment responsive 21st century trend of vocation which is driven by an individual as a professional creative practitioner rather than an organisation (Budd, 1995; Hall, 1996; Bridgstock, 2007; Chinyowa, 2017). This constant adaptation as both the environment and individual change is likened to the Greek god Proteus, who could change shape at will hence protean (Hall, 1996: 8). The concept regards sustainable employment as an ability to work on project-based employment as opposed to the traditional sense of full-time employment with one employer (Hall, 1996; Bridgstock, 2007; Chinyowa, 2017).

For purposes of the research, this concept was adopted and adapted within the context of visual artists' work ethic and approach to their businesses. This is in line with the practice of Johannesburg based visual artists being entrepreneurial in approach. Less focus was placed on their employability rather on their ability to get jobs, projects and clients therein referred to as business for their practice. The boundaryless career approach provides an academic perspective that enables an understanding of Johannesburg based visual artists' context and exploited IP negotiations. Thus, the research participants therein are viewed as entrepreneurs. Entrepreneurship in the current post-industrial cultural creative sector harnesses innovation, high skill, high-tech, high knowledge intensive, high value added, the ability to analyse and develop their own thinking (Raffo et al., 2000; Fillis & Rentschler, 2005).

Standing on the shoulder of giants in the field of IP and Copyright- A brief Literature review

The research has been, in part, framed and grounded by a wide range of literature although it draws its own conclusions. The literature review followed the central research questions and conceptual framework for scholarly voices on the subjects. This leads to the main literature review for the research being work by Copeling (1978), Phillips & Firth (1990), Throsby (2001) Towse (2002; 2006), MacMillan (2002), Smiers (2002) and Bridgstock (2005; 2007; 2011). The main literature review is in three distinct groups; local IP and Copyright, conceptual framework on boundaryless career approach, and IP and copyright from the Global North.

Copeling (1978) although writing from a legal perspective, addresses the South African Copyright Act No. (1978) in such a way that gives context, relationship its predecessor Act, interpretations and commentary leading to related Acts. This assisted this research to be grounded on the South African IP laws and pointing towards the Anglo-Saxon IP approach literature. However, since the Act has not been changed since 1978 the new one is still under consideration since 2017 save for relatively minor amendments to South African IP laws in 1997. This research had to look to the Global North for a wide range of literature on IP and IP specific to the Creative Economy. Phillips and Firth (1990) note how the IP, like Copeling (1978), works in legal terms. However, they do not focus on a specific piece of legislature but address IP as a wider legal phenomenon within the British context. Here, the British legislature context is important to take into consideration when studying South African IP laws as they mirror it (Copeling, 1978). Phillips and Firth (1990) present historical context of the origins of IP laws and offer a window into the economic landscape Britain was formulating the laws in response to. The research was provided for points of departure as how IP laws work in practice to visual artists based in Johannesburg reveals that the Anglo-Saxon IP approach is big business driven and they are individuals. This research is part of filling in the literature gap on the local context and practices in relation to IP and IP laws.

Towse (2002; 2006), MacMillan (2002) Throsby (2001) and Smiers (2002) present a perspective to IP that is specific to the Creative Economy, the arts and culture sector. Throsby (2001) as an economist argues for the wider role of the Creative

Economy plays towards development and sustainability issues. Here, IP is purely appreciated from an economic utilitarian view where Throsby (2001) emphasises protection of expression of cultural diversity that IP as a phenomenon can facilitate. However, Throsby (2001) arguments are merely by inference without directly drawing conclusions or advocating for intellectual property. Unlike, Throsby (2001), MacMillan (2002) boldly argues for IP as a way for development of culture and ensuring the same argument raised by Throsby (2001). MacMillan (2002) primarily argument is for an IP approach that is less economic rights focused and more cultural development focuses. These two arguments are important to take into consideration as they bring to the surface themes and outlooks observed during this study. April (2018), one of the participant visual artists detailed in Chapter 2, exploits his IP from an approach as advocated by the two. The literature review provided for a framework to be able to analyse a range of occurrences within the local context, although the scholars based their work from a different context.

Smeirs (2002) appears to be a radical academic and theorist arguing for abolishment of the current IP approaches, particularly the copyright system. He raises three arguments which are central to this research based on local findings and discussion points covered in Chapters 2 and 3. Smeirs (2002) argues that the current IP approach privileges big business, that digital transformation has shifted IP from merely being about ownership to a commodity of great investment in current economic shifts and that those who create are not rewarded. Again, Smeirs (2002) writes from a Global North's perspective with an attempt to consider Global South interests. However, his conclusion of abolishment of the current copyright framework as a necessary driver to organic thriving of individual creators becomes the point of departure with this research.

Smiers' (2002) abolishment of copyright does not take into account the Johannesburg context where access to internet connection seem largely drawn along the lines of privilege in this global connection age therefore abolishing IP frameworks will further alienate individual creators based on affluence levels. This research also offers a local perspective to scholars who appoint themselves spokesperson for contexts they are blind to by providing information that may assist in drawing conclusions that are not simply based on assumptions. The expression of

diverse culture and artistic work that Smiers (2002) claim to be dead due to IP rights monopoly by big businesses is alive and thriving in Johannesburg but the level of rewards and capacity to commercialise IP is indeed limited as he rightly points in general. Smeirs' (2002) arguments are important even though his abolishment of copyright may work elsewhere, in Johannesburg the need is to find ways to facilitate greater rewards for the individual as well as the big businesses.

Unlike Smiers (2002), Towse (2002; 2006) presents an overall outlook to IP, particularly copyright. Here, overall refers to her balancing act of a sober look to what IP is and implications on the economic rights aspect as well as the moral rights and culture considerations. Towse (2002) provides for a middle ground between MacMillan (2002) who is for the cultural development over the economic utilitarian role of IP approaches and Smiers (2002) who is well thought on how to bring about rewards to individual creators while bringing down big businesses in the process. Towse (2002; 2006) presents for a literature review that is general on IP approaches and considerations specific to the Creative Economy, the arts and culture in the same way Phillips and Firth (1990) do for IP within the legal context providing for this research to draw informed conclusions yet specific to Johannesburg and her visual artists.

While the aforementioned literature focuses on IP, Bridgstock (2005; 2007; 2011) is greatly invested in the boundaryless career approach albeit from an Australian context. Boundaryless career approach provides for a conceptual framework which brings into context how the formal and informal nature of visual artists' practice extends to how they exploit IP. Bridgstock (2005; 2007; 2011) is not the only one or the first to address the boundaryless career approach but is the main theorist on it for this research. She argues for a phenomenon that this research observed as freelance in Johannesburg. Boundaryless career approach, as part of the conceptual framework, captures the dynamics covered in the following Chapters 2 and 3 on how the participant visual artists' professional practice is fluid across formal and informal in nature among others. Bridgstock (2005) draws lessons from the so-called starving and well-nourished artists in Australia which can be inferred upon the current Johannesburg context. The literature review presented for similarities to be drawn

between how Global North and South contexts at times present similar environments that visual artists practice in despite of their country's' economic conditions.

The aforementioned scholars provide for recurring voices and arguments throughout most of this research in support of the wider literature review as evidenced by the range of cited academics. The research reviewed specific literature such as Santos Rutschman (2015) who argues that Global South cooperation on IP focuses primarily on “the most economically-empowered arenas of the South”. This argument is validated by Brazil, Russia, India, China and South African alignment of the patent category of IP in 2013 (Santos Rutschman, A., 2015). However, Santos Rutschman (2015) like many cited throughout this report, are not main scholars as theirs is a supporting role to aforementioned scholars. This section, the composition of the main scholars and arguments they raise confirm a wide gap in literature specific to local context on the subjects of IP exploited by local visual artists, and how IP works for them in practice. The available literature provided for a strong footing in the general IP in legal terms, IP within the general Creative Economy and the boundaryless career approach leaving a very weak footing for this research when it comes to the same within the local context. This research is also part of the local academic and industry contribution.

Research Methods | Towards credible and reliable data collection

The research is discovery driven as part of an exploration and having looked at different methods to research, three central methods were employed. Purposive sampling, semi-structured interviews and document review were employed in order to collect credible and reliable data rigorously to assist with answering the central research questions (Fusch & Ness, 2015).

Purposive sampling was employed to keep the exploration focused on the research aim through data collection relevant to established primary subjects, IP exploited by visual artists and visual artists based in Johannesburg. The initial part was to establish a criterion of selecting the visual artists then gather data on the categories of IP they exploit, and how those categories work in practice. Purposive sampling extended to how the research participants were selected on the basis of being professional visual artists with three years' experience and practicing in

Johannesburg. This was after considering a case study, and random sampling of participants which both methods I will not be using as the phenomena this research seeks to explore does not exist within a relatively well established, well documented, and or large pool easily identifiable participants (Stake, 1978; Chetty, 1996; Kothari, 2004; SACO, 2018). On the contrary, purposive sampling becomes the best approach as guided mainly by the aforementioned conceptual framework. Purposive sampling was extended to scholars, documents and newspaper articles specific to aesthetic design, copyright and trademark categories of IP, Creative and Cultural Industries, were possible the South African context, but made use of Global trends which assisted in understanding local phenomena among others. Once the visual artists sample was in place, semi-structured interviews were employed to gain in-depth knowledge following a conversational approach as part of exploring.

Kothari (2004: 97-100) argues that interviews as a data collection method allows for a personal interaction which when managed well can result in detailed information being collected within the scope of an interviewee. This is reflected in the following chapter where research findings are a result of participant visual artists opening up about the IP they exploit and how it works in practice. In order to elicit an in-depth knowledge towards the study, research questions were formulated towards a conversation driven by semi-structured interviews.

The initial research questions, at the proposal stage turned out to be academic and jargon focusing on effects and quantifying IP into monetary values in the process disqualifying participants as unqualified to comment on such. The semi-structured interview questions are in the appendix at the end of this report. The nature of interviews being semi-structured allowed for individual participants to provide their personal side of things within the context of intellectual property, their lived experiences, outlook on the subject and processes or considerations they determined to be important on the subject. This is part of ensuring that the research findings are based on empirical evidence as rigorous data collection procedures fundamentally influence the results of studies (Kallio et al., 2016). The research sought to collect as much intensive data based on each selected interviewee in order to have much to work with when analysing across potentially wider and varied trends.

However, it is acknowledged how semi-structured interviews pose a potential to collect partly irrelevant information, especially when dealing with strong willed interviewees who might mistake it for an opportunity to narrate their life stories. Knowing this meant that when the research secured participants such as Goitseone (2018), Lekgetho (2018) and Harris (2018) the interview briefs was clear on the subject to avoid making it about a new business venture opportunity or the photography institution or the copyright infringement case respectively. However, their individual lived experiences are an invaluable contribution towards this research gaining a glimpse of how South African IP laws work in practice for individual visual artists. This method facilitated for the research to collect data which the SACO (2018: 6) report points out as being unknown while answering the central research questions.

As mentioned earlier, purposive sampling was employed in selecting documents and newspapers to gain insight into the South African context on the backdrop of global trends. Document review of South African Acts on aesthetic design, copyright and trademark categories of IP, local newspaper articles specific to photography and international publications on the conceptual framework was employed. As much as human interactions are central to this research, the assumption was that information can be obtained from certain documents, some of which are not specific to the fields of this research such as going through court cases under the South African government documents in order to pick up those speaking to IP exploited by the participants. However, cases accessed through LexisNexis and other online archives of public South African court cases proved to be more applicable to industry rights within other sectors not specific to artistic work by participant visual artists therefore not featured in this research.

Although newspapers cover a number of IP, particularly copyright stories, the research found a few specific to photographers which are cited throughout this report, unlike music and other sectors. Carrying out document reviews provided for a sound academic framework especially where IP seem to be well written about in the Global North over a greater period than in Johannesburg. This method reviewed how this research is contributing towards local specific knowledge, a gap made evident by lack of documents on how IP works in practice in Johannesburg or South Africa.

When it comes to scholars, documents reviews provided for scholarly, legal and articles upon which the local phenomena are best understood through inference, at best. Document reviews were also about addressing the assumption, which turned out to be fact, that there are no readily available information relating to Johannesburg CCIs as suggested by Gregory (2016) and SACO (2018). The court cases were a way of searching for data that might be available by another name after discovering that some of the participant visual artists has their IP agreements tagged and considered under contract law due to how South African laws are interpreted when it comes to contractual arrangements.

The geographical location of this research is important due to logistics and the dynamics Johannesburg provide as a city considered an economic hub. This is about a need to work within a familiar geographical context, as an urban dweller which provided for a general appreciation of local Creative and Cultural Industries. Gregory (2016: 158) in his research on CCIs in Johannesburg, notes that in terms of geography most creative enterprises in Johannesburg are scattered across the northern suburbs of the city. This is not unique to Johannesburg or the Global South as scholars in the Global North have identified creative clusters as an urban settlement phenomenon (Florida, 2002; Duxbury and Murray, 2010; Pratt, 2010). Yet, it must be acknowledged that by default being situated in Johannesburg may have availed access to a diverse range of visual artists as the participants turned out to be originally from different parts of South Africa like Durban (2018) who relocated from kwaZulu Natal province and the world like Harris (2018) who is Jamaican of British citizen. The phenomenon of creative clusters is as a result of the post industrialisation, shifting cultural behaviour, globalisation and digital impact resources (Florida, 2002; Duxbury and Murray, 2010; Pratt, 2010). However, this research did not treat Johannesburg and its specific places as creative clusters but focused on individual visual artists part of whose practice is based in the city.

The aforementioned methods and geographical consideration were employed as part of collecting intensive relevant data guided by the two pillars of the research conceptual framework, IP exploited by visual artists based in Johannesburg and boundaryless career approach (Chetty, 1996; Kothari, 2004; Fusch & Ness, 2015). The two pillars of the research conceptual framework indicate a relatively complex phenomena that also led to more than one method for data collection being

employed to increase room for credibility and reliability of collected data. The collected data was then organised according to their sources, interviewees, recurring themes and IP categories for analysis purposes. This assisted in keeping track of data sources and ensuring that sub categories are analysed individually before making broad conclusion. The data was then finally analysed according to the central research questions as each question provides specific guides and scope under exploration. This is by no means to claim perfection on the part of the research methods. The research methods assisted in the collection of credible and valid data for analysis, making comparison, looking to academia for possible pointers and leading to draw conclusions as revealed in the following chapters.

Introduction to research report chapters

Intellectual property and boundaryless career approach, as the research conceptual framework, are tools towards exploring intellectual property exploited by visual artists based in Johannesburg. These two were identified as having a symbiotic relation within the context of how IP works within the practice of visual artists based in Johannesburg.

In **Chapter 2**, the report introduces the participant visual artists by way of brief biographies before delving into the research findings. This chapter offers a window into how South African IP exploited by visual artists work in practice. The research findings cover documents reviewed in line with data collected from participant visual artists. Chapter 2 ends with boldly noting, as other scholars have, that “IP is an economic right that enable trade to take place in information good; creations of the mind” (Copeling, 1978; Phillips & Firth, 1990; Cohen, 2000; MacMillan, 2002; Smiers, 2002 Towse, 2002: 3 & 2006; Maskus, 2004; Montgomery & Fitzgerald, 2006; Gillespie, 2007; Schlesinger & Waelde, 2012; Andanda, 2012 & 2013; Santos Rutschman, 2015; SACO, 2018). This leads to **Chapter 3** addressing discussion points based on research findings covered in Chapter 2 as part of further answering the central research questions. Here the main scholarly discussants in this chapter are the interviewed visual artists, Towse (2002; 2006), Copeling (1978), MacMillan (2002), Smiers (2002), Bridgstock (2005; 2007) and Phillips & Firth (1990). Chapter 3 draws new conclusions on each discussion point and it is part of making a case for the main research argument, the summation of the exploration, mentioned afore and

at the end of this chapter. **Chapter 4** then addresses the relevance and significance of this study by way of presenting reflections drawn from chapters 2 and 3. These reflections are summed up by an invitation to view visual artists as business start-ups, addressed in detail at the end of Chapter 4.

This study presents a research argument as follows:

The three categories of intellectual property exploited by visual artists based in Johannesburg, their commercialisation, policing, and negotiations for IP agreements reflect South African IP approaches that privilege the corporate over an individual who creates. The argument is drawn throughout the following four chapters. You are now invited on an exploration of IP exploited by photographers and art directors, collectively referred to as visual artists in this research due to the nature of their artistic work. Although intellectual property may be accessible, handled and managed in a way that is mostly legal; the following Chapter 2 presents it in a relatively simple way to grasp, based mainly on data provided by participant visual artists without losing the academic and legal perceptions as presented through various scholarly voices cited in this report. This is one of many first steps towards a local voice exploring how IP works on the ground and one day a drive towards wealth for those who create, an environment that rewards all stakeholders instead of simply privileging big business.

Based on the research findings and discussion points addressed in the following Chapters 2 and 3; the primary research argument is that:

The three categories of intellectual property exploited by visual artists based in Johannesburg, their commercialisation, policing, and negotiations for IP agreements reflect South African IP approaches that privilege the corporate over an individual who creates.

Chapter 2 | Exploration of IP exploited by visual artists based in Johannesburg

This chapter focuses on research findings in line with recurring subject matter aligned to the central research questions. These findings were interpreted from data gathered, by way of purposive sampling, from research interviews, publications on South African IP laws specific to this research and newspaper articles. Seven participants were interviewed for the purposes of this research based on the purposive sampling mentioned in Chapter 1. Six are practicing photographers and art directors who seem to seamlessly balance the two roles in addition to other roles they take on project basis. One, Lekgetho fits only into the art director role, although his day job is heading a Johannesburg based photography school. The seven visual artists are profiled in this chapter to give a brief professional context of their practice in line with how they exploit IP. The South African Cultural Observatory report (2018), Copeling, (1978), and newspaper articles provided data from legal, scholarly and public domain perspectives on the research subject. This chapter reveals how IP works for individual visual artists, those who create.

Phillips and Firth (1990) note that intellectual property as a subject seems to be well articulated in the field of law, albeit with less to no rigorous training on the subject. In South Africa, IP is administered under the Department of Trade and Industry leading to one of the observations in line with MacMillan's (2002) argument on copyright for utilitarian approach addressed later in this Chapter. Where does this leave the voice of visual artists, the individuals whose work relies on IP in practice? One of the observations from this research, made elsewhere in general by other scholars, is that the South African context has visual artists articulating their creative processes from an insider expert account but not intellectual property. This is in line with international trends that most of the accounts on arts and cultural studies are 'insider' expert-practitioners' accounts, including the history of the camera and photography (Bennett, 1998: 43; Towse, 2006; Benjamin, 1972; Copeling, 1978) Yet, when it comes to the ins and out of intellectual property the visual artists become outsider accounts mostly from the field of law a phenomenon indirectly admitted to in the recent South African Cultural Observatory Report (2018: 6).

In this section, the research provides an intellectual property 'insider' account, the applied side of how IP works in practice for visual artists, based on a purposive

sample of visual artists based in Johannesburg. The visual artists were interviewed in a semi-structured conversation style around the three central research questions:

1. What categories of intellectual property (copyright agreements) do visual artists based in Johannesburg work exploit?
2. How do visual artists, based in Johannesburg track and manage their work to make sure that their intellectual property and copyright agreements are protected?
3. How do visual artists, based in Johannesburg negotiate and frame their copyright agreement with a potential client?

These central research questions were sought to be answered through a series of semi-structured interview question in appendix 1 at the end of this report. The above-mentioned central research questions were used to develop the semi-structured interview questions that are less academic in nature to avoid presenting a language that is more appropriate for economics and legal framings than the targeted participants. The semi-structured interviews struck up conversations into current intellectual property phenomena as exploited by Johannesburg based visual artists. This was about participants telling stories drawn from their experiences without being hindered by a need to aspire to a certain academic rigor or dictates. Semi-structured interviews, as part of the data collection methods, were part of acknowledging how rigorous data collection procedures fundamentally influence the results of studies (Kallio et al., 2016). Kothari (2004: 97-100) argues that interviews as a data collection method allows for a personal interaction which when managed well can result in detailed information being collected within the scope of an interviewee. The pool of participants was drawn from visual artists of diverse backgrounds, ethnicity and demographics. The youngest is in her late twenties while the oldest in his late sixty, making their reflections cut across generations and technical approaches to their work. A brief biography of the participants is presented before addressing the research findings.

Kenqu Akona | Photographer

Akona is a Johannesburg based photographer with 10 years professional practice. She has served as an assistant editor of Ogojii Magazine and works in the Wits School of Arts photography section of the Fine Arts Department. Akona (2019) had her formal training in photography at the Market Photo Workshop in 2008. She has held a number of photography exhibitions locally and abroad including being the 2012 recipient of the Women in Photography Mentorship at Market Photo Workshop (Framer Framed, 2019). “I sell my photography work up to a maximum of 10 prints, called editions in the professional photography art circles” says Akona (2019). She goes on to add that “intellectual property is a very important aspect of my work and business. But I must admit that I know little about it than I want to as it is in legal jargon and I end up leaving it to lawyers”.

Lekgetho Makola | Art Director and Filmmaker

Lekgetho is a Durban University of Technology, South Africa and Howard University Washington DC, USA alumni with technical experience across film, photography, sculpture and curatorship. Currently head of a Johannesburg based photography institution, he has over ten years in the arts and culture sector. Lekgetho is a co-founder of Kali TV, an Independent Online media organisation, a founding member at Parallel Film Culture (Washington DC) and founder of KGETHI IMAGES, an independent production company. Lekgetho describes Kgethi Images as a private company with a focus on film, photography and art. Kgethi Images’ long-term mission is to establish an online broadcast as a media distribution and engagement platform (Lekgetho, 2018). In regard to his role as head of a photography institution, Lekgetho is on record saying, “My vision is to see the photography institution’s Pan Africanist activities and programming impacting and expanding the photography practice and appreciation locally, nationally and continentally”. Lekgetho (2018) acknowledges that more can be done to train and empower photographers to gain a detailed knowledge of intellectual property and appreciate its implications for their practice. “We bring in industry experts with a knowledge of IP to talk to our students” said Lekgetho (2018) who notes that ignores about IP leads to a number of photographers signing bad deals at the beginning of their careers.

Shaun Earl Harris | Photographer and Art Director

Shaun Earl Harris is a photographer and art director of Jamaican descent born in the United Kingdom who emigrated to South Africa in 1995. His photography career spans from 1980 while in the army where he served as the chief photographer in 1st Battalion the Parachute Regiment at stages among other postings as part of taking “photos of army life and other places he travelled to” (Harris, 2018). Harris retired from the army and joined the Mail on Sunday as a freelance photographer in London, England, a post that led him to South Africa in 1994 to cover the first inclusive and democratic elections. After emigrating to South Africa in 1995, Harris founded Afrika Moves Photographic in 1997 an initiative for young photographers to gain photography skills and experience. Harris’ practice and passion has seen him collaborate with Tom Khosa and Bongani Mnguni to train youths in Johannesburg. One of Harris’ photographs, the image of former president Nelson Rolihlahla Mandela, was chosen by the Mandela family and used by the government of South Africa as the official memorial and funeral image from the 6th of December 2013. The image is part of a copyright infringement dispute that will be discussed in the following chapters.

Lady Durban | Photographer and Physiotherapist

Durban is a photographer and physiotherapist based in Johannesburg, who is a member of the South African Freelancers Association. She counts her professional photography experience to be just over 5 years from the day of first paid gig. Durban’s knowledge of intellectual property for photographers started off as a result of mentorship and contract templates shared from experienced photographers. “I was fortunate to have been mentored by experienced photographers, and have never had to negotiate my intellectual property with clients as they have always accepted my contracts as is” says Durban (2018). Durban (2018) acknowledges the need of multiple streams of income from the same work as reflected in her contracts stating images resold as stock photography at her discretion. Thinking about the future use of her photography is always front and centre of her approach, although she acknowledges that she is “terrible with business”. Durban’s career objectives are aimed at getting more commercial gigs for her photography practice.

David April | Photographer and Choreographer

David April is a Johannesburg based photographer whose art is driven by enjoying photography and an appreciation of his subjects. April (2019) is very aware of intellectual property being about ownership and commercial means as argued for by some scholars under the literature review in Chapter 1 (Towse, 2005; Phillips & Firth, 1990; Coperling, 1987). April, as a creative, is renowned for his dance and choreography career. He is a founder and director of David April, a consultancy and project management company that provides interactive, engaging and accessible creative movement solutions using music and dance. April's (2018) experience extends to facilitating national training programmes in arts management, conducting Arts-Culture teachers' development workshops and being part of a writing team for Curriculum and Assessment Policy for the Creative Arts from Grade R - 12 on behalf of the South African Department of Basic Education. With a career spanning over two decades in the Creative Cultural Industries, his professional photography practice is more "art for enjoyment, but does not turn down the commercial side". David (2018) is constantly reminding individuals to fully accredited to him each time they use his photography work.

Bubs Goitseone | Photographer and Art Director

Goitseone is a Johannesburg based photographer, designer and art director who holds two honours degrees and a master of fine arts degree. His approach to work "is mostly collaborating with other creatives" and working with private companies. Goitseone pays more attention to intellectual property to avoid disagreements and disappointments in the future. Having lost his first formal company after a business merger went wrong in 2012, Goitseone approach to the business of photography and art direction is well informed. "Creatives must always have lawyer, finance and arts manager or agent friends to butter trade services with, if they cannot afford to hire them" says Goitseone. He has not experienced any copyright infringements yet but has had more robust copyright agreement negotiations with other creatives when collaborating than anyone else. "You will be amazed at how many creatives find it easy to want to reap off fellow creatives of their intellectual property than your average capitalist out there" says Goitseone with an irritated soft tone.

Mathibe Evans | Photographer and Brand Strategist

Evans is a photographer, art director and brand strategist who runs an advertising agency based in Johannesburg. His career in the Creative Cultural Industries spans over two decades transitioning from actor, scriptwriter to Photographer, filmmaker, Creative Director and Brand Strategist. Evans has worked as a freelancer in various projects, while running artist development programmes in Pretoria. Through the Tshwane Municipality Mayor's office, Evans was given the privilege of being one of the co-founders of the Tshwane Arts Hub, which provided resources, funds and training. He is a Wits University postgraduate alumnus whose current practice varies from private sector, NGO'S and running a mentorship programme. Evans' (2018) keen interest in intellectual property matters is driven by advocacy for creatives to reimagine their various practices in such a way that will be more financially sustainable, through well executed branding and packaging.

Research data and present phenomena

The seven research participants were purposively sampled, interviewed as individuals and were not made aware of each other or each other's views. The semi structured interviews were of a conversational nature seeking to explore how they exploit IP in their photography and art direction practices. All the participants will be collectively referred to as visual artists in line with reasons mentioned in Chapter 1. The visual artists have a range of experiences and some have multiple incomes streams outside of photography and art direction. Professions outside of photography and art direction like physiotherapy by Durban (2018) and those by April (2019) will not make part of this research but worth mentioning in relation to how they might be of impact to their intellectual property agreements. The data collected for this research established a range of recurring themes regarding how the participants exploit IP. It was initially sorted according to categories of IP exploited, level of applicable South African IP laws and processes identified in answering research questions 2 and 3. A summary of findings is presented in Figure 1 in Appendix 2 at the end of the report.

IP Categories exploited

All participants know about the copyright category of intellectual property with a strong sense of conviction that one can argue comes from an inherent process of

creating akin to giving birth. The conviction comes from ownership of their work and a sense of being able to accrue benefits based on that ownership. Harris (2018) describes the fundamental right of ownership as one which when infringed upon can cause untold suffering on the part of a creative and copyright owner. April (2019) expressed how he does not understand why those who infringe on his copyright find it difficult to simply ask for his permission and rightly credit him for use of his work. “I do not ask for money. I simply want my photography work to be fully accredited to me. That is all.” says April (2019). The participants acknowledge that having copyrights to their work does not automatically translate to income generation.

Lekgetho (2018) argues that copyright is there to guarantee that artists have intellectual rights to their work and they “should be captioned throughout time”.

IP is an economic right that enable trade to take place in information good; creations of the mind (Cohen, 2000; Towse, 2002: 3 & 2006; MacMillan, 2002; Maskus, 2004; Montgomery & Fitzgerald, 2006; Gillespie, 2007; Schlesinger & Waelde, 2012; Andanda, 2012 & 2013 and SACO, 2018). The World Intellectual Property Organisation (2018) broadly defines intellectual property as creations of the mind: inventions; literary and artistic works; and symbols, names and images used in commerce. Responses to the first primary research question made it possible to establish that all participants exploit the copyright category of intellectual property. This is on the basis of their creations of the mind being original artistic works mostly in the form of photographs (Act No. 98, 1978; Copeling, 1978). Copyright is protected under the Act No. 98 (1978) in South Africa. The primary protection offered under the Act No. 98 (1978) is about ownership and with ownership comes associated rights available to IP owners (Copeling, 1978; Phillips & Firth, 1990).

One has to adopt a strategy on how to commercialise their IP in order to benefit economically (Gov, 2018; CIPC, 2018; Towse, 2002; MacMillan, 2002; Phillips & Firth, 1990). The visual artists, save for April (2019) translate their IP rights into wealth by way of licensing use of their work and selling limited prints in what is called editions. Editions are a way of controlling and monitoring the number of official copies in circulation of a single image which also contributes towards a favourable market price in line with the essence of copyright (Akona, 2019; Lekgetho, 2018; Towse, 2002; Phillips & Firth, 1990; Copeling, 1978). Copyright also ensures that

when visual artists publish their photography collections as a book, their rights extend to “50 years after death” leaving a potential financial benefit to their estate for as their work is in print (Copeling, 1978; Act No. 98, 1978).

Another category of intellectual property being exploited by visual artists based in Johannesburg identified during the research is aesthetic design. Aesthetic design is an industrial property category of intellectual property protected under the Designs Act No. 195 (1993). Aesthetic designs are those applied on objects or surfaces for their mere beauty to the eye (Designs Act No. 195, 1993). An aesthetic design is legally protected for 15 years, thereafter renewed annually 3 years before expiry of initial registration (CIPC, 2018; Gov, 2018; Designs Act No. 195, 1993). One can argue that this where Phillips and Firth (1990) argument about IP providing monopoly rights eternally comes into play. This provides for an aesthetic design right holder to maximise on economic benefits without undue competition within a market. Goitseone (2018) is the only visual artist from the participants who is exploiting this category of intellectual property through his photography compositions being turned into motifs for wallpaper designs. Although his registration process begun at the time of the interview, samples have already been printed and ready for bulk production. This means that one photography work under Goitseone (2018) has a potential to enjoy protection under copyright and two industry property categories, trademark and aesthetic design based on current South Africa IP laws. Evans’ (2018) photography work has a potential to also exploit aesthetic design category under his branding and packing initiatives. Although not being fully exploited by majority of the interviewed participants, aesthetic design presents opportunities for a photograph to take a number of forms on different surfaces like skateboards, t-shirts, sneakers and metal surfaces laser etching among other forms.

All the participants, save for April, also exploit the trademark category of intellectual property. Trademark falls under industrial property and directly linked to commodification of culture as the name suggests (O'Connor, 2011). Trademarks are protected under the Act No 194 (1993) and a central register is kept through the Companies and Intellectual Property Commission. In South Africa, a registered trademark can be protected forever, provided that those who hold such a right to renew the registration every ten years (Act No 194, 1993; CIPC, 2018; Gov, 2018).

This takes us back to the opening IP definition by Phillips and Firth (1990) use of eternally barred from. Like the aforementioned aesthetic design right, trademark rights have direct impact to market dominance and prohibiting competitors thereby increasing potential financial benefits for those who create.

April (2019) does not exploit Trademark category of IP, at the moment, as his practice is 'art for art's sake' concerned about ownership over commercial purposes. "I want my work to be fully accredited to me. I do not do it for the money, but I will not turn down commercial opportunities" states April (2019). April (2019) goes on to explain how a well-known South African spoken word performer was one of his photography subjects some time ago and recently approached him to use the images for commercial purposes which agreed to. What had been a 'free' photography gig to begin with turned into a paid gig later (April, 2019).

Trademarks are about identifying products and services, in this context, associated with an individual visual artist and distinguishing them from those of competitors (Act No. 195, 1993; Phillips & Firth, 1990). How does this category of IP lead to economic benefits resulting in wealth for those who create? In South Africa, trademarks are registered with the Companies and Intellectual Property Commission (2018), to prevent unauthorised use by competitors thereby guaranteeing market share among other economic linked benefits. "The CIPC (2018) administers the Register of Trademarks, which is the official record of all the trademarks that have formally been applied for and/or registered in the Republic of South Africa, since 1916" taking away the burden of self-policing from individuals. Evans (2018) is big on creatives exploiting trademark category of IP as part of a branding and packing approach towards financial stability. On the other hand, Harris (2018) and Durban (2018) view trademark as part of securing future income by prohibiting unsanctioned exploitation of their IP by any third party. Goitseone (2018) and Lekgetho (2018) argue from a point of an informed, educated and global trends observing artist who pays attention to the business side of their practice as much as they do to their craft.

The categories of intellectual property being exploited by these visual artists reflect what their artistic works qualify under South African IP laws. One has to find ways at law to derive maximum benefits from their IP resulting in a single work exploiting

more than one category (Phillips & Firth, 1990). Each category of intellectual property comes with a set time frame a work is protected in South Africa, ranging from 50 years for copyright to minimum of 15 years for aesthetic designs and minimum of 10 years for trademarks. It is worth noting that although copyright is free and without a need for registration, the other categories come with a registration fee with the Companies and Intellectual Property Commission of South Africa (2018). These IP rights provide economic benefits among them prohibiting competition, guaranteeing potential marketing share, and influencing demand and supply. This means that in the relatively small Johannesburg art circle, no one can claim another visual artist's work and try to sell it as theirs. "The art circle is quite small enough to know whose work it is without even saying. People come and tell me about my work after seeing it somewhere else" says Akon (2019). Harris (2018) also argues that your work always finds you, "it was someone who told me about my photograph of president Mandela before I realised it was being used again".

Commercialising one's IP in South Africa

The aforementioned IP categories being exploited by visual artist based in Johannesburg do not automatically translate to wealth for those who create. Commercialising IP is a process each visual artist undertakes to get their artistic work into the marketplace (Gov, 2018; CIPC, 2018). This requires a strategy which takes into account the nature of practice, business capabilities, understanding of the market and ability to generate finance among others (Evans, 2018; Gov, 2018; CIPC, 2018; Towse, 2002; MacMillan, 2002).

The visual artists share licensing as a common commercialisation method, but it is just one of many options for taking IP to the marketplace. Harris (2018) initially licensed the president Mandela picture for a single use in a book publication which was later infringed upon through unauthorised reuse. Durban (2018) clearly states in her contracts how she reserves the right to re-sale her work as stock images online. Akona (2019) clearly states how she only has 10 images in print as part of an edition from a single photograph. Licensing of IP to another party can be an effective way to exploit IP for those with limited resources to accrue maximum benefits from their artistic work (Gov, 2018; CIPC, 2018). This means that visual artists enter into an agreement with an agent, a foreign gallery in the case of Akona (2019), who then

handles the printing, exhibition and access to markets on their behalf for a fee. Any type of intellectual property can be licensed in South Africa but licensing agreements are more common involving copyright, patents, design and trademarks (Gov, 2018; CIPC, 2018).

IP Infringement | An event which drew attention to IP

Akona (2019) credits an event a decade ago as a student excited to sell an image to the South African Broadcasting Services Corporate. “I was excited to sell my images for R800 as a student. It was after 4 to 6 years later when someone told me that they had seen my work on television that I realised I needed to have known better about my IP rights back then” says Akona (2019). Today, Akona (2019) drafts her contracts and licensing agreements in a way that accounts for duration of use and potential multiple streams of income for a single photograph. “The SABC deal and how SABC still uses my image at their discretion, since it was an open cheque, has taught me more about my IP rights and how to approach future deals” says Akona (2019). From my observation, there seem to be a relationship between the amount of financial benefit a visual artist stands to benefit and how they become blind to their IP rights in the moment. Although for Akona (2019) it appears to be a student’s ignorance to the business side of getting into the marketplace, the amount of money one stands to benefit can easily make them give away their IP rights without detailed knowledge of how much they are giving away.

Harris (2018) reflects upon his experience on his major copyright infringement case that is still before the South African courts as his turning point towards a deeper understanding of IP as a visual artist. The case involves copyright infringement covering unauthorised copying and distribution of his photograph of the late president Mandela. This case is peculiar because although Harris was commissioned he had a contractual agreement stating end use and time frames of the particular photography resulting in him returning copyrights under the South African contract law instead of the default Copyright (1978) clause that would have assigned the rights to whoever commissions a photographer. For Harris (2018) most of his career has made use of agents including the army and the Mail on Sunday during his first two decades. Agents play their part in both securing gigs and looking out for the best for their visual artist clients but at times those interests come

in conflict or are not well represented. Harris' (2018) professional experience led him to question one of his agents, "I felt as if my agent was no longer representing my interests" he said in relation to his major case. It took a major copyright infringement on the part of Harris (2018) to awaken towards a deeper and detailed appreciation of intellectual property rights at some point taking classes on IP. Harris' (2018) experience has led him to seeking ways at rethinking local IP laws which made him readily available to participate on this research as it resonates with his 'advocacy drive'. Harris' (2018) event serves as a great lesson how visual artists need to have a general grasp of contracts and agreements agents enter on their behalf as part of ensuring that their best interests are kept at all times.

April's (2019) interactions with copyright infringements are on a regular basis with individuals who appropriate his work, mostly from social media, and use it without his permission. The visual artist does not have one specific event to pinpoint at but a series of events. April (2019) comes across as fortunate enough to always pick up when his artistic works' copyrights are infringed and he engages the parties who then comply. Bearing in mind that all April (2019) requires is for one to seek his permission and fully credit him when using his artistic works. "I don't do it for the money, but I will not turn away commercial opportunities" says April (2019). However, the frequency of which he is asking people to either pull down his artistic works or follow his intellectual property rights detects has led him to a keen interest in local IP laws (April, 2019). April (2019) finds the self-policing of IP exploited by visual artists like himself tiring and in need of something to be done for a more effective and efficient approach for South Africa. Self-policing presents itself as a recurring theme within themes. This shows that the current IP laws of South Africa, when it comes to implementation in practice, appear to not be effectively and efficiently serving those who create at individual level thereby having an impact on their potential economic benefits. This finding supports MacMillan's (2002), Towse (2002) and Smiers' (2002) arguments that the current copyright laws benefit publisher, the corporate, over the individual who actually does the creating.

Evans (2018) and Goitseone (2018) events take a similar outlook where both of them appreciate past mistakes by other visual artists and are fluid enough to look at IP considerations on a client basis. This means that their approach to a deeper

understanding of IP was out of foresight. “Working with the First National Bank at their IP protected premises like Bank City where photography is prohibited, I have had to rethink what IP is” says Evans (2018). On the other hand, Goitseone (2018) says “I take into consideration that during collaborations, the ideas are not mine alone so is the IP”. Formal training and an interdisciplinary approach to their practice seem to inform how Evan (2018) and Goitseone (2018) are least concerned with sole ownership of their IP but the most economic benefits. “What is the point of owning 100% of my IP when it doesn't lead to benefits instead of a portion that has greater benefits through collaborations?” rhetorically quips Goitseone (2018). Evans (2018) sums it up as part of branding and packing approach that is about a value proposition towards constantly climbing the value chain. The foresight approach to an IP rights understanding can be best explained as part of the ‘boundaryless career’ approach argument of an ever-evolving creative practitioner (Budd, 1996; Bridgstock, 2007). It is important to note that Evan (2018) and Goitseone (2018) have tertiary education training which included entrepreneurship and business training, and potentially the reason of their outlook to their professional practice.

Durban (2018) acknowledges not having experienced IP rights infringements or aware of such yet. Her experience builds on strong mentorship that led to contracts that represent her IP considerations well. This speaks to the role mentors play where one may not have gone through a formal university training and still develop into a visual artist well informed on their IP rights. On the other hand, Lekgetho (2018) does not make mention of personal IP rights infringement but speaks in hindsight of better potential future benefits. “We usually feel that, as creators of artistic content, the legal side of things is not our concern until we come in contact with the commercial side of things” Lekgetho (2018). Both Durban (2018) and Lekgetho (2018) acknowledge the need for artists who appreciate the business aspects of their practice. In a country where legal advice on IP laws requires specialised attorneys who come at an hourly consulting rate, it is in the interest of each visual artist to visit the government services website or ask experienced practitioners in the industry on the basics of IP rights available to them.

Each visual artist has experienced and handled IP matters differently for some it was an event while a seamless series of events to others. The main observation on the

practicality of current IP rights for visual artists based in Johannesburg is that appreciation of IP rights is everyone's business.

Tracking and managing

In answering the second central research question, tracking and managing one's IP rights as a recurring theme brought to the fore that individual visual artists can do so much yet more still needs to be done. There are online platforms that search the internet web and track for artistic works using metadata saved by a visual artist such as Tin Eye (Durban, 2018). Metadata is the information visual artists input digitally with their name, year and other copyright information (Akona, 2018; Evans, 2018; Lekgetho, 2018). Metadata can be input on the camera settings and or in post-production software like Adobe Lightroom, Adobe Photoshop and Adobe Bridge among others (Akona, 2018; Durban, 2018). Digital transformation, especially social media platforms, makes it fairly easy for one to track and manage their work through data analytics (Akona, 2019; April, 2019; Evans, 2018; Goitseone, 2018; Lekgetho, 2018). April (2019) confirms that most of the copyright infringement cases he has tracked and managed have been through seeing his artistic works posted on Facebook, a social media platform. Metadata as a means of inputting IP information in this digital age for tracking purposes is relatively effective as the information can be tracked by an expert even after being deleted as in the case of Harris' (2018) images (ENCA, 2016).

Harris (2018) has employed a number of online tracking of unauthorised use of his artistic work in order to arrive at a figure to lodge in a claim. "I am seeking relief via a civil claim in the High Court of South Africa," said Harris. In an interview with the ENCA (2016) newspaper, Harris explained how tracking revealed that a Government Communications Information System employee deleted his meta data with credits to his image before its unauthorised use.

Tracking and managing one's IP rights is being made much easier with the digital connectivity (Akona, 2019; April, 2019; Evans, 2018; Goitseone, 2018; Lekgetho, 2018). Lekgetho (2018) argues that tracking and managing IP should include meta data with owner's information, the year the image was first made public or was published, the copyright symbol and which rights are reserved. The rights can

include all rights being reserved or commercial use, uses other than for educational purposes, print and publication on more than one single form of media among others (Lekgetho, 2018). There is however a need for an approach that lightens the burden of self-policing by individual visual artists. Tracking and managing findings seem to privilege the digitally connected and in the case of word of mouth having a number of people familiar with one's artistic work.

Copyright Agreements

Copyright agreements as a recurring theme came out of personal reflection on the part of each visual artist and is a direct response to the third central research question. Akona's (2019) experience from the image she sold to SABC without any considerations for IP implications taught her how to think critically about copyright agreements. The SABC's repeated use of the image over 4 to 6 years in different contexts from the original use at buying opened up Akona (2019) to how a single image has potential to generate economic benefits over time.

On the part of Lekgetho (2018) it took him back years when he was based in the USA, "My business partner and I simple has these very basic agreements of sale. There is need to committing things to paper and signing them off" he reflected. Lekgetho's (2018) current position as head of a photography institution allows him to observe national trends within the visual arts sector. "Artist don't put emphasis on signing at sale, in South Africa our context depends on tourists meaning work goes out immediately after sale without any written conditions" says Lekgetho (2018). In agreement with the committing to paper principle, Durban (2018) issues a contract that spells out all her IP considerations. "I have a contract that clearly states that I am the copyright holder and that I reserve the right to use the photography work as sock images at my discretion" explains Durban (2018). She states that clients who prefer to opt out of her standard IP considerations will have to pay a buyout fee. However, she is yet to come across a client who objects.

April (2019) is more direct and verbally explains his copyright agreements, "I tell my clients upfront to credit me when they use my work" he says. However, this does not mean automatic compliance, "I am always fighting with people over IP infringement. I don't want money, simply credit me" says April (2019). April (2019) argues that for as

long as individual visual artists have to self-police their IP rights, particularly copyrights, then South African IP laws require rethinking.

All the participants have their copyright agreements speaking to them owning all or part of IP (April, 2019; Durban, 2018; Evans, 2018; Harris, 2018; Goitseone, 2018; Lekgetho, 2018). The common part of copyright agreements addresses IP ownership and in variations articulate how a visual artist wishes to benefit from such. Some of the benefits articulate aspects of potential future income and change of use (Durban, 2018; Evans, 2018; Goitseone, 2018; Harris, 2018; Phillips & Firth, 1990). The details of each copyright agreement depend largely on the art direction concept, the nature of gig, client type and budget (Evans, 2018; Goitseone, 2018).

Copyright agreements are important particularly in a country with an Act No.98 (1978) that privileges a commissioner of photography work. The Act (1978) does not articulate on the conditions or remuneration but simply states that commissioned work has the copyright vested with a commissioner making contracts of importance to address such. The context leading to such a position is not known but interviewed visual artists are aware of it and insist on keeping their IP and signing on it. Harris said in 2006 Government Communications Information System purchased a license to use his copyright protected photograph of president Mandela in a book (ENCA, 2016). "This license was, however, limited to the one time use of the image in a book published and distributed in South Africa," explained the aggrieved photographer (ENCA, 2016). According to ENCA (2016) and Harris (2018) GCIS claimed it was engaging with the photographer to find a resolution, a position that seem to have changed. Had this copyright agreement been honoured there would be no infringement case to date. Bringing to light that having copyright agreements may not guarantee much but they provide a better footing should one approach the courts. Copyright agreements are specific to each individual visual artist, but there is a need for basics which contribute towards a shared standard towards ensuring wealth for those who create.

Negotiation

In direct response to the third central research question, participants for this research argue that negotiations are part of ensuring that individual IP rights are articulated

clearly for a contract that provides for maximum benefits. It is not enough to have agent representatives; “I realised that my agent was no longer representing my interests well in one of my major copyright infringement case” Harris (2018). Negotiations are part of the boundaryless career approach (Budd, 1965; Bridgstock, 2005, 2007 and 2011; Chinyowa, 2017). The negotiation process starts from when a potential client approaches a visual artist for a quotation or work engagement (April, 2019; Evans, 2018; Goitseone, 2018; Lekgetho, 2018).

Training

Here, training is in reflection to all three central research questions. Three of the six participants have at least one university degree directly related to photography and art direction, two has formal institutional training within the arts and culture and two trained on a mentorship formal approach. It is important to recognise the key informants training as it has a bearing on their visual arts career approach and take on IP as argued by Budd (1995), Bridgstock (2005, 2007 and 2011), Chinyowa (2017) and Phillips and Firth (1990).

Training provides for visual artists to have the ability to communicate their IP rights and potential benefits from their ownership (April, 2019; Evans, 2018; Goitseone, 2018; Lekgetho, 2018). The research established that each visual artist is having to learn more about South African IP laws as their teaching tends to be a preserve for law studies.

Concluding remarks

The research findings point to three categories of IP namely copyright, trademark and aesthetic design being exploited by visual artists based in Johannesburg. Although copyright is automatic, trademark and aesthetic design require registration with the Companies and Intellectual Property Commission (2018) in South Africa. It is one thing to own IP rights and another to commercialise it as it takes a strategy and a number of factors (Gov, 2018; CIPC, 2018). This research notes that April (2019) is more concerned about ownership and being fully accredited for his intellectual property over potential commercial aspects provided for under South African intellectual property laws due to having sufficient incomes elsewhere. To a great extent, this can be said to be true for Durban (2018) who confesses to not

being great with the business side of photography considering she is also a physiotherapist and has a partner bringing an income into their household. Does this mean that how visual artists based in Johannesburg exploit their IP reflects where their income is most dependent on? This could simply be about the ownership aspects of IP which Towse (2002) describes as moral rights being about the dignity of those who create. As observed, visual artists whose sole income depends entirely on photography and art direction appear to have a more invested on the commercial aspects of IP laws. This drive focuses on the economic rights aspects of IP which this research views as part of contribution towards wealth for those who create.

Notwithstanding the aforementioned, all the participants' professional practices follow that of the 'boundaryless career approach' observed through their responses which answered the central research questions (Budd, 1995; Brigstock, 2007; Chinyowa, 2017). The responses to the central research questions present recurring themes that reveal how each participants' professional practice is personalised, including their take on IP.

As noted, IP is an economic right that enable trade to take place in information good; creations of the mind (Copeling, 1978; Phillips & Firth, 1990; Cohen, 2000; MacMillan, 2002; Smiers, 2002 Towse, 2002: 3 & 2006; Maskus, 2004; Montgomery & Fitzgerald, 2006; Gillespie, 2007; Schlesinger & Waelde, 2012; Andanda, 2012 & 2013; Santos Rutschman, 2015; SACO, 2018). This makes the individual responses identified during this research important as they reflect how visual artists based in Johannesburg are exploiting IP among other things that can be subjects for future research.

The recurring themes follow the central research questions providing answers which speak to the practicality of South African IP laws at individual visual artists. This research study is a mere contribution towards knowledge gap, providing a building block for future research and practice to derive recommendations from and to give light to IP in the context of visual artists based in Johannesburg. One of the knowledge gaps it fills is that of how current IP laws work best for the economically privileged leaving individual visual artists to self-policy and not enjoy maximum benefits from their IP due to limited capacity to commercialise their IP among others.

The following Chapter 3 further explores findings covered herein in through discussion points. The discussion considers academic work on IP and the Creative Economy around the research findings ending with the research conclusions on each finding as a way to further provide answers to the central research questions within an academic scope of making meaning and contribution towards knowledge gap and the wider rationale for this research.

Chapter 3 | Show me the data; research findings discussion points

This chapter is a discussion based on the research findings answering the central research questions covered in the previous Chapter 2. The focus is on the three categories of IP found to be exploited by visual artists based in Johannesburg. The discussion of findings is based on scholarly works on IP in the Creative Economy and arriving at new conclusions that answer the central research questions. Chapter 2 provided discussion points on IP exploited by visual artists based in Johannesburg, commercialisation of IP, infringements leading to a deeper IP knowledge, tracking and managing IP, copyright agreements, negotiating copyright agreements and training. These were arrived at through the seven participants' responses in answering the central research questions. The research, therefore, only focuses on three categories identified to be currently exploited by the research participants; aesthetic designs, copyright and trademarks. Although there are current discussions around the 2017 South African Copyright Amendment Bill and Revised Cultural Policy White Paper, this research scope looked more into existing IP approaches to avoid speculations based on work in progress that might not be signed into law. This is not an omission of critical South African discussions but an acknowledgement of this research's aim and need for future research on other related fields it contributes to within the body of knowledge. The main discussants in this chapter are the interviewed visual artists, Towse (2002; 2006), Copeling (1978), MacMillan (2002), Smiers (2002), Bridgstock (2005; 2007) and Phillips & Firth (1990). This discussion considers academic work on IP and the Creative Economy around the research findings ending with concluding remarks on each discussion point. It can be argued that this chapter is in essence about developing a discussion which further makes a case of the research argument through addressing research findings as discussion points as they directly answer the central research questions.

The first discussion point is intellectual property (IP) exploited by visual artists based in Johannesburg. This discussion point is based on Chapter 2 findings that directly answer the first primary research question. For the purposes of this study and discussion, IP is limited to the identified three categories exploited by visual artists based in Johannesburg; copyright, aesthetic design and trademark. The research findings established that the participant visual artists might not have the technical terms accessible to the policy making and legal fields but have a general to detailed

appreciation of their IP rights. This appreciation of IP agrees with Phillips and Firth (1990) argument that IP is an invisible estate that may be created and or inherited, and that some may enjoy and from which others may be eternally barred.

Towse (2002; 2006), although writing about copyright in general within the context of Creative and Cultural Industries, goes further to state that IP laws facilitate *economic rights* that provide for one to benefit economically and *moral rights* that protect integrity. These arguments were expressed throughout all the semi-structured interviews, even April (2019) who is not as concerned about economic rights as he is about his moral rights provided for and protected by IP laws reflects an appreciation of his IP rights.

Macmillan (2002) argues that the Anglo-Saxon approach, which South Africa adopts by mirroring the British IP legislature as identified by Copeling (1978), on IP laws places the interests of corporates ahead of individuals who create. This can be observed from how the initial IP laws in Britain were a direct response to mass production around industries making the laws more responsive to big businesses (Towse, 2002; Phillips and Firth, 1990). To further exacerbate this, Smiers (2002) argues that the current IP approach is set in such a way that facilitates for a few cultural conglomerates to acquire IP rights across the globe through the help of the World Trade Organisation agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) at the expense of individual creators. It is important to bear in mind that in legal terms, 'property' is that which individuals or legal entities such as companies can assert a right in it against some or all other persons (Phillips and Firth, 1990). Smeirs (2002) further argues that, although copyright is about rewarding those who create, the current approach takes rewards from artistic creation to the hemisphere of big businesses. How then can wealth be shared with those who create also?

This research observes that the arguments raised by MacMillan (2002) and Smiers (2002) are valid within the context of how South African IP laws are working in practice based on the participant visual artists' experiences. The South African copyright Act No. 98 (1978) grants IP rights to those who commission. Based on the data gathered from research participants, those who commission fall into the big

businesses, corporate description. Although, Smiers (2002) argues for the abolition of copyright as being better for artists and the *Third World* countries this research advocates for an approach to IP laws which brings visual artists and individual creator's interests to match the current corporate centred ones. Smiers' (2002) is based on how the current IP approach, through digital connectivity, facilitates for a few privileged to acquire IP rights around the world then put a cap on diversity of expression as part of exclusivity that maximises their return on investment.

Intellectual property is intricately related to ownership, trade, competition, industrial growth and economic development'; this should also extend to the individual creator in the Global South (MacMillan, 2002; Smiers, 2002; Throsby 2001; Towse, 2002). IP laws should not only benefit those with the means of production while prejudicing those who create. This is not to advocate against big businesses, rather to explore ways to also reward those who create, the visual artist through a multifaceted approach to IP policies and laws.

Commercialisation of IP by visual artists based in Johannesburg

"One has to constantly be looking at their brand strategy and packaging in order to benefit commercially from their artistic work" says Evans (2018). Artistic works by visual artists based in Johannesburg constitute part of industries that are most dependent on IP laws. Having IP laws is one thing and benefiting from one's IP rights is another. The onus is upon visual artists, as with other IP rights holders elsewhere, to find ways to derive maximum possible benefits from both their moral and economic rights as provided for with IP laws. One of the ways participants commercialise their IP is through user, publication, exhibition and broadcasting licensing (Akon, 2019; Durban, 2018; Evans, 2018; Goitseone, 2018; Harris, 2018). Organisations such as the Dramatic, Artistic and Literary Rights Organisation (DALRO) we set up to assist with administering copyright aspects on behalf visual artists who enter into an agreement with them for such a mandate.

April's (2019) user licensing is not the typical commercialisation leading to financial benefits but mostly to cultural value where he prides his work and subjects as part of the art for art's sake enjoyment. Commercialisation of IP in Johannesburg takes on the form of 'boundaryless career approach' as argued for by Bridgstock (2007;

20011) where each individual visual artist has to be fluid and create tailored IP agreements as part of being responsive to ever changing client needs like the Greek god, proteus. Although Bridgstock (2007) argues for employability, the ability for artists to gain work on a project basis, a phenomenon commonly known as freelancing in South Africa, her arguments of a constantly up-skilling and environment responsive artist stand valid for the Johannesburg context. Johannesburg based visual artists are constantly looking for ways to commercialise their IP including collaborating and working on a right share ownership with big businesses. Bridgstock (2011) argues that creative graduates often find it difficult to become established professionally, in general, and the boundaryless career approach is about career management competence and intrinsic career motivations towards positive outcomes. This is besides the fact that there is increasing evidence that the creative industries are essential to national economic growth as well as social and cultural well-being, argues Bridgstock (2011).

MacMillan (2002) argues that within the Anglo-Saxon model of copyright law on economic rights favours significant bases of private power leading to a few benefiting within a monopoly. This is contrary to MacMillan's (2002) advocacy for the role of IP in cultural development and the integrity of creators mentioned earlier as moral rights but also acknowledge how IP laws are used to drive trade at multinational levels. The individual artists may be struggling to derive maximum benefits from their IP because the South African commercial space favours big businesses. MacMillan (2002) observes how a state driven approach to IP laws can result in wider benefits as advocated by the American government leading to the World Trade Organisation agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). This research observes how agreements like the TRIPS are set up in a way that effectively benefits the Global North through deriving income across borders from their IP rights. This is not malicious in any way but shows how a countries approach to IP laws has a potential to create an environment that enables local IP rights owners to generate wealth from their artistic work.

Visual artists based in Johannesburg also commercialise their IP through legal means to extend the limited duration of their right such as registering their qualifying artistic works for trademarks, and where applicable aesthetic designs. Goitseone

(2018) has copyrighted images composed under his trademarked practise and in the process of registering some of them under aesthetic design as part of his wallpaper designs. Phillips and Firth (1990) argue that for one to enjoy maximum commercial benefits from their IP, they must seek legal means to extend the duration of their exclusive rights and market monopoly as long as possible. All the participant visual artists with trademarks are protected at law forever, provided they renew their trademark with CIPC (2018) at ten years intervals. This is provided for in the Copyright Act (1978) where artistic work can enjoy full copyright protection under the Act and be subject of an industrial design under the Designs Act (1993), a phenomenon highlighted by Copeling (1978) and in agreement with Phillips and Firth (1990: 5). Even for artistic work that is simply copyrighted with a guaranteed fifty years protection from the date of fixation, an individual visual artist can decide to publish a collection of their work in literary form and it becomes eligible for protection for a further fifty years from their death. The law, therefore, provides a right to prevent IP expropriation by others in favour of the 'property' owner (Phillips and Firth, 1990). However, if the South African playing field is unfavourable for individual creators, the visual artists, then a longer period of exclusive rights will not automatically translate to wealth.

The first research question eliminates a blanket approach to IP exploited by visual artists based in Johannesburg resulting in identifying copyright, aesthetic design and trademark categories being exploited by all the seven research participants (2018). As noted earlier, only one out of the seven further exploits the aesthetic design category of IP protected under the Designs Act No. 195 (1993). The economic benefits of IP within the Cultural and Creative Industries are not only monetary, even for the six participants whose artistic works seek to derive the most of financial rewards. As noted by Phillips & Firth (1990) and Towse (2005) that CCIs have typically developed under IP protection making their economic organisation and value driven by IP laws to a greater extent. All the interviewed participants exploit copyright, one aesthetic design and six trademarked their practice through registering as a business entity as part of commercialising their IP.

It is important to note that South Africa is part to a number of international IP treaties by virtue of being a World Intellectual Property Organisation and BRICS member

resulting in how its national IP laws are formulated (CIPC, 2018; SACO, 2018; Rutschman, 2015; Nkomo, 2013). Some of the treaties have a specific focus on categories of intellectual property and resultant amendments at local level as can be observed with the IP laws Amendment Act (1997). Governments tend to favour IP laws with a perceived direct positive impact to their GDPs as can be observed with how the BRICS IP Treaty centres only on patent category of IP (Rutschman, 2015). This is not all negative as “instrumental values” those that usually have a figure as part of their resultant effect on nations’ socio-economic outlooks are also at the heart of visual artists (Towse, 2005; Holden, 2006: 16). Visual artists refer to it as their rate card, meaning how much they charge for their services and products, calculated per hour (Akona, 2018; Durban, 2018; Evans, 2018, Harris, 2018; Goitseone, 2018). Instrumental value is directly impacted by South African IP laws as they protect from unwanted competition providing IP rights owners with an environment to derive maximum possible benefits from their artistic works, all things being equal (Copeling, 1978; Phillips & Firth, 1990). However, as revealed through the research findings, not all things are equal within the South African context. It is crucial for South Africa to understand how IP laws work in practice for her visual artists then negotiate for favourable statutes in these global agreements in turn opening up a wider market share abroad.

Tracking and Managing

The second central research question which explores protection, management and policing of IP exploited by visual artists based in Johannesburg reveals gaps in how IP laws affecting their practice are implemented locally. Responses directly linked to this central research question reveal that individual visual artists based in Johannesburg self-police their IP rights, particularly copyright. The tracking and managing appears to be on an ad-hoc basis where most rely on word of mouth, that someone who knows their work will come around and report back on it. Akona (2019), Durban (2018), Evans (2018), Goitseone (2018) and Lekgetho (2018) argue for the role metadata plays in the digital era. They argue that metadata as a tool for tracking as it carries copyright information over and above data about an image such as camera settings when it was taken. Here, metadata carries IP information edited and stored through a camera and or post-production software like those offered by Adobe. A case in point is the Harris (2018) case regarding the re-use of his image of

the former president, Nelson Mandela after his death. Harris (2018) only found out through third party sources, and information on public record indicates that his credits were erased from the image (ENCA, 2017, Blignaut, 2018;). Piccinini, Gregory. and Kolbe (2015: 1634) identify digital technologies to be combinations of information, computing, communications, and connectivity technologies, such as social media, mobile devices, analytics, and cloud computing. Steyn (2017) a professor and head of Cranefield College attributes an increasing digitisation and interconnection of products, value chain innovativeness and business models as a characteristic of the Fourth Industrial Revolution.

The research revealed that self-policing of IP exploited by visual artists and relying on digital meta data as part of it can only do so much. The ongoing case of Harris (2018) reveals how a government employee scanned, removed artistic work credentials making part of its metadata and sent out the image (Blignaut, 2018). Harris (2018), through his agent PictureNet, are said to have entered into a single use agreement for an image of then president Mandela for a book publication (Blignaut, 2018; ENCA, 2014). The government department renewed a license for another use of the imaged, but it is said that the image was never removed from a government system after the end of their copyright agreement (Blignaut, 2018). This resulted in the photograph being part of images shown to the Mandela family and the one they chose for his funeral (ENCA, 2014; Blignaut, 2018). Part of the Harris' IP rights said to be infringed upon in this case include the right to copy, distribute and economic rights. However, the government did not seek out to negotiate and or renew their copyright agreement with Harris (2018) or his representatives. If there was a centralised registry and statutes as with trademarks, patents and designs then the Companies and Intellectual Property Commission of South Africa would have picked it up, police it and manage it to the benefit of Harris (2018) and his representatives. Yet, the self-policing left an individual visual artist facing off the government, based on the information in the public domain, which is changing goalposts in what appears like dragging until Harris is too tired to stand for his IP rights. This is the same government with the responsibility to put in place policies that enable visual artists based in Johannesburg to benefit from their IP.

The aforementioned case exposes how local approach to self-policing is in direct contrast to MacMillan's (2002) argument that the TRIPS were advocated by the American government as a way to protect and police American IP all over the world. On the other hand, Smier (2002) advocates for abolishment of the copyright system for an organic approach that will lead to cultural diversity, increased creativity inspired by competition by disempowering big businesses who create a monoculture through using exclusive rights for mere financial benefits and finally leading to those who create making their own money. In the current South African context of self-policing, a move towards abolishment of IP laws will not benefit those who create but further worsen the environment as big businesses already have access to capital to commission as they please. As noted earlier, the categories of trademark and aesthetic design are registered with the CIPC (2018) and one can easily search registered trademarks and the commission takes on the policing part as it will not register to another what another has registered already.

Trademarks and aesthetic designs as a way of policing, provide for visual artists to grow their reputation akin to an institution providing them with what Holden (2006: 17) describes as institutional value. Although Holden (2006: 17) specifically refers to an organisation's public reputation, the "processes and techniques that organisations adopt in how they work to create value for the public" the context can be conferred on visual artists practice. Visual artists' brand reputation as institutional value is akin to public value and cultural organisations play a role in creating this value through their day to day existence which then becomes enshrined in a registered trademark and aesthetic design (Trade Marks Act, 1993; Phillips & Firth, 1990; Holden, 2006). South Africa needs to fine tune what she already has; making the same IP approach that is working for big businesses to take into account those who create.

An all-encompassing IP approach will facilitate for national and effective means of tracking and managing IP locally and across the globe. This is not asking for a wheel to be reinvented by the Department of Trade and Industry in South Africa has the capacity to take on such the same way the global financial system taps across nation and as being seen through the TRIPS agreement. MacMillan (2002) and Smiers (2002) acknowledge the global approach to IP for local context and diverse cultural expressions. This means that South Africa has to be responsive to the times.

Although the current South African Copyright Act is under review, the last amendments to all IP laws as a whole was last in 1997 before digital transformation leading to social media platforms was a thing, so to speak. This is not to say the entire IP laws of South Africa need to be overhauled rather they need to be revisited, constantly, in order to create an all-encompassing framework that benefits all those who create from individuals, corporates and disenfranchised community groups within the Republic.

Phillips and Firth (1990) note that institutions that offer legal studies in the United Kingdom seldom fully equip students in the area of IP resulting in experts on IP laws being self-taught. This is important to note locally as the same seems to be true and what happens and happened in the British context including courts sets a tone for South Africa considering that the local IP laws mirrors it (Copeling, 1978). If IP laws experts are ill-equipped at training and with minimal focus on the Cultural and Creative Industries what are the effects on how visual artists based in Johannesburg benefit from their IP (Phillips & Firth, 1990; Towse, 2002)? There is a need to acknowledge that one of the reasons local IP laws are not responsive to how IP is currently working in practice is that Global South countries are not investing in Research and Development of such. The result is adopting Global North driven agreements which work best in the interest of their domestic artistic work creators. It is not enough for the South African Cultural Observatory (2018) report to acknowledge that little is known about how IP in practice. Those economies that do not enable IP commercialisation, tracking, managing and enact favourable IP laws for their local creators will help in making other countries wealthy.

Copyright agreements and negotiations

The research gained insight into how each individual visual artist based in Johannesburg prioritises their IP benefits differently. The individual aspect cannot be ignored when considering an IP approach best tailored for South Africa. This is in contrast with MacMillan (2002) who argues for IP approaches that emphasize cultural development. MacMillan (2002) is critical of the current Anglo-Saxon IP approach identified to be mirrored in South Africa as it places utilitarian, what IP laws can do for the CCIs economically over the aspects of culture. Bearing in mind that IP is intricately related to ownership, trade, competition, industrial growth and economic

development; it is up to a rights holder which aspect is emphasised ahead of others (CIPC, 2018; SACO, 2018; Santos Rutschman, 2015; Nkomo, 2013; Throsby 2001; Towse, 2006).

This research is not about pitting moral rights against economic one but wealth for those who create. In the case of April (2019) his wealth is in his moral rights being respected among other intrinsic values he stands to benefit from his photography work. IP laws should provide an environment that protects and promotes all stakeholders instead of appearing to favour big businesses in practice. Smiers (2002) argues that digital transformation has facilitated for big business to invest in IP by amassing rights through global connectivity resulting in them becoming cultural conglomerates. These cultural conglomerates such as Corbis, the world's largest image archive and licensing company once owned by Bill Gates one of the world's richest people before selling it to Visual China Group, means of distribution, large market shares and come with vast financial resources leading to a monopoly which dictates nature of IP agreements those who creates are hand managed to enter (Smiers, 2002; Zhang, 2016).

Visual artists in South Africa practice in an environment that does not provide for the entrants and or weak negotiators to sustain market dominance (Akona, 2019; Evans, 2018; Goitseone, 2018; Durban, 2018). The research findings establish that there are a number of factors contributing to how visual artists based in Johannesburg negotiate copyright agreements with potential clients. Durban (2018) argues for a standard contract for each of her art direction and photography jobs which includes a copyright agreement. She revealed that her initial standard contract was handed down to her by an experienced photographer familiar with South African IP laws before moving to Johannesburg (Durban, 2018).

Pienaar and Spoelstra (1991) argue that negotiation is a skill that must be learnt and that the act of negotiation is a process, between parties, towards an interest-based agreement. This agrees with the research findings where all seven participants, separately, acknowledge the role of individual negotiation skills and how client-power dynamics contribute towards each copyright agreement. Regardless of the existence of intellectual property laws in South Africa, the onus is upon an individual visual

artist to clearly communicate and negotiate a copyright agreement for maximum possible rewards from their IP. There is a need to work around the Copyright Act (1978) provision on commissioned photographs and avoiding IP infringement related pitfalls encountered by other visual artists in the past (Sosibo, 2014; ENCA, 2017, Blignaut, 2018).

None of the interviewed visual artists mentioned the Dramatic, Artistic and Literary Rights Organisation (DALRO), an organisation founded in 1967 that can administer various aspects of their artistic work copyrights such as reproduction. It is important to acknowledge the role DALRO plays in taking away the copyright licensing burden from visual artists and there might be a need for future research into the organisation's impact in relation to photographers. DALRO has the capacity to license local visual artists' works regionally and globally through its wide network, for an 'administrative' fee. This means that visual artists based in Johannesburg may have an institutional representative to take care of the aforementioned need for client to client negotiations among other variables towards maximum rewards from their IP. Here, I use 'may' because I am careful not to pass an opinion formed from a desktop research on DALRO without a detailed understanding of why the research participants did not make mention of it.

Considering that the creative and cultural commodity production is increasingly being subjected to laws of capital, visual artists have to be taught about negotiation (O'Connor, 2007; Pienaar & Spoelstra, 1991). This is not to say that visual artists should master all fields, as part of the research conceptual framework, but appreciate them as part of the boundaryless career approach in an environment increasingly looking into the Fourth Industrial Revolution (Budd, 1995; Hall, 1996; Raffo et al., 2000; Fillis & Rentschler, 2000; Bridgestock, 2007; Chinyowa, 2017; Steyn, 2017). Gaining an appreciation of related sectors has shown that of the interviewed visual artists, Evans (2018) and Goitseone (2018) have a competitive advantage as their university qualifications included courses in entrepreneurship and business management. This is in sharp contrast with Harris (2018) who acknowledges that his deep interest in intellectual property laws now is "as a result of the painful journey" of dealing with the ongoing IP infringement of his photography work of former president Mandela.

The research established that, in most cases, those who commission photographers and art directors based in Johannesburg tend to offer a raw deal that takes advantage of artists' plight save for well-established ones who afford IP legal experts to negotiate their contracts. The Bill of Rights in the South African constitution (1996) is clear regarding property that "the amount of the compensation and the time and manner of payment must be just and equitable...". However, the copyright category of intellectual property seems to be the less commercially viable as compared to the well policed and regulated industry property category, aesthetic design and trademarks registered with the CIPC (2018). Copyright agreements are increasing becoming about setting a platform for future work and repeated income from one job (Akona, 2019; Durban, 2018; Evans, 2018; Goitseone, 2018; Harris, 2018; Towse, 2005). Appendix 3 at the back of the report shows some of the clauses each participant visual artist includes into their copyright agreement followed by a list of clauses each visual artist should consider when drawing up such.

Concluding remarks of discussion

Having gone through the aforementioned discussion points; the primary research argument is that the three categories of intellectual property exploited by visual artists based in Johannesburg, their commercialisation, policing, and negotiations for IP agreements reflect South African IP laws that privilege the corporate over an individual who creates.

The preliminary assumption, going into this research, was that categories of IP related to photography and art direction were not fully exploited for commercial purposes beyond ownership. However, during the course of this research a shift has occurred upon realising that wealth is subjective to each participant visual artist and IP rights facilitates for such. This means that visual artists based in Johannesburg commercialise their IP for utilitarian benefits, mostly in the form of financial benefits, and or intrinsic benefits such as described by April (2019) as art for art's sake. This chapter highlights points of discussion derived from the research findings addressed in Chapter 2. The South African IP landscape is not in isolation but fits into international conversations necessitated by globalisations among other considerations as discussed. This discussion chapter is not about bashing Global

South policymakers rather a call to put local contexts into perspective. Intellectual property is not exclusive to the Cultural and Creative Industries presenting a phenomenon that delves into a combination of fields with a wider international scope (Copeling, 1978; Phillips & Firth, 1991; Towse, 2002; CIPC, 2018; SACO, 2018; WIPO, 2018). This presents a battle of expediency of sorts which is relatively not seen in other industries or sectors, including at policymaking levels (Matarasso & Landry, 1999; Yúdice, 2003). Yet, it is important to constantly and collectively work towards an environment which enables those who create to thrive while incentivising big businesses at the same time. In the following Chapter 4, titled *So What* after Miles Davis' composition, provides reflections that seek to shift future conversations on IP from positions of expediency to those based on how IP approaches apply in practice within the context of this research scope.

Chapter 4 | ‘So What’: Reflecting on relevance and significance of the study

Having analysed research findings as discussion points in the previous Chapter 3, this chapter reflects on the ‘so what’ part of the research. ‘So what’ now that the research has come up with new conclusions on each finding in answering the central research questions? The research is part of contributing towards a wider and in-depth knowledge generation on intellectual property in relation to the local creative economy. This is a reflection on the exploration’s findings and points of departure that future work may build upon. The research does not claim to be ‘a wonder pill’ rather a contribution towards insights, at times beginning of insights, into practical realities of intellectual property exploited by visual artists. These reflections may be of interest to visual artists based in Johannesburg, arts and culture administration departments at various government tiers, organisations and individuals whose work fall within the research and development of Creative and Cultural Industries, academics, institutions of arts and culture knowledge generation, and the wider CCIs stakeholders.

The research findings and discussion points addressed in the previous two chapters have been summed up into an overall research argument:

The three categories of intellectual property exploited by visual artists based in Johannesburg, their commercialisation, policing, and negotiations for IP agreements reflect South African IP approaches that privilege the corporate over an individual who creates.

On the backdrop of this research argument, this reflection chapter sets out the relevance and significance of this study through offering ways of rethinking the current context towards an inclusive environment which also rewards visual artist, those who create. This reflection has a bias towards viewing and treating visual artists based in Johannesburg as start-ups which will be addressed in detail at the end of the chapter. Wealth for those who create can be achieved through many approaches within the current phenomena visual artists based in Johannesburg exploit their IP. This chapter is only but a contribution to a bigger picture.

It is important, at this point, to briefly outline the Cultural and Creative Industries context that visual artists based in Johannesburg practice in. The study gave a sense of individual visual artists striving for the best, albeit in silos. Of the seven

interviewed participants, three have had professional interactions based on a leading Johannesburg photography training institution. Although all the participants have a great sense of agency regarding intellectual property, one gets a sense of accepting the status quo to avoid the burden of dealing with such a complicated phenomenon. Akona (2019) describes the task as one that will drive an artist insane from merely trying to follow up on each IP infringement. Harris (2019) reflects on how his copyright infringement case has revealed that there is no support for the individual and he is now looking for like-minded practitioners to help look at IP laws in practice. April (2019) expresses how self-policing one's IP rights is such a toll. Evans (2018) and Goitseone (2018) acknowledge how IP legal advice and approaching the courts does not come cheap. Durban (2018) argues that even though one can have great mentors for advice, one is on their own when it comes to practice. How then do practitioners whose practice seem to be on an individual basis be drawn into a collective to address matters arising from the research findings and discussion points?

A collective lobbying for an IP approach that rewards those who create

There is a need for visual artist based in Johannesburg to find each other on matters that require a larger collective such as for purposes of lobbying government for policy considerations. There is the Visual Arts Network in South Africa (VANSA) that assists visual artists in a number of capacities but all the research participants did not mention being members or how it possibly ties into their practice in relation to IP. Therefore, this section will not reflect on possibly existing organisations which were not subject to the findings. Not all hope is lost, there are some boundaryless career approaches that can be taken at individual level to facilitate wealth for those who create within the current Johannesburg context. Here, the collective and the individual can be virtually connected due to digital technology and in no way is this about setting up another 'arts organisation' or commission.

Digital transformation has enabled global connectivity resulting, at times, Global South cities having a global impact greater than their countries (Florida, 2002 and 2005; Landry, 2012; Pratt, 2010; Duxbury, 2004; Duxbury and Murray, 2010; Lucas Jr et al., 2013; Piccinini et al., 2015; Kulez, 2017). Visual artists based in Johannesburg can take advantage of this to join global conversations on IP

approaches and the wider Creative Economy trends for their voices to be taken into consideration without leaving it to multinationals and governments only. Collective and individual lobbying approaches will provide clarity on the practicality of current South African IP laws to an individual visual artist. This reflection is of significant to visual artists, those investing in the art at small scale level, and institution of arts knowledge development among other stakeholders.

Although there is a Copyright Amendment Bill (2017) yet to pass before parliament, the current IP laws of South Africa are over two decades old dating back to times before the currently being experienced digital transformations were at play. This research will not go into the potential Bill in detail as it has its own ongoing national conversations that may need to be looked in a separate research study in the future. All the interviewed participants mentioned use of digital tracking and the role social media platforms play in securing their copyrights yet popular and largest global social network, Facebook only turned fifteen years this year (Abadi, 2019; Erdei, 2019). The implications of this are that the participants rely more on South African contract laws and the Department of Trade and Industry to find ways to best exploit their intellectual property than the current IP laws and the Department of Arts and Culture. This phenomena revealed by the research can be embraced that the practice of visual artists tags across government departments. Institutions of arts knowledge generation need to look closely at this in order to advise on the available channels for best rewards for those who create.

This is not to say that the IP laws are now redundant, but as Phillips and Firth (1990) argue that IP holders have to constantly find ways, at law, to best exploit their IP rights. The Copyright Act (1978) in question is over forty years old and more of a reflection of the British legislative context of that era and a South Africa where majority, including women, had limited to no economic rights under the apartheid government (Brooks, 1948: 143; Copeling, 1978; Christies & Collins, 1982; Nawa et al., 2014: 167; O'Malley, u.d.). The visual artists based in Johannesburg require IP laws that are responsive to both their local context and international trends to best exploit their intellectual property. Collective lobbying for research and development will lead to more regular knowledge generation that will facilitate availability of

constant current data upon which policy decisions are made from local to national government. This research is part of such knowledge generation.

The three categories of intellectual property; copyright, trademark and aesthetic design currently exploited by visual artists based in Johannesburg have their minimum standards of considerations that need to be made available in a simple language. Goitseone (2018) is beginning to exploit aesthetic design category because of his business partnership into wallpaper. “If I had known about the different categories of IP earlier in my career, I would have exploited them from the onset” says Goitseone (2018). Akona (2019) agrees with Goitseone (2018) and goes on to state that “I do not know much about IP, not from a point of ignorance, because IP is pretty much a preserve for the school of law and in a legal jargon”. This inaccessibility of IP knowledge is revealed through how all the participants took a keen interest after experiencing IP rights infringement, directly or implied (Akona, 2019; April, 2019; Durban, 2018; Evans, 2018; Goitseone, 2018; Harris, 2018).

South Africa, as a BRICS member country can learn from the history of copyright law in China that has been a balancing act conflict between changing contexts at local levels and international trade agendas (Qu, 2002). All interviewed participants, based on their experiences, argue that the current IP laws favour corporates, the affluent, large institutions and government departments. Yet it appears as though the majority of those who create do not fit most of those categories leaving them at the mercy of those controlling the means of production. However, should the Copyright Act Amendment (2017) sail through Parliament, it must be noted that there are steps towards addressing the copyright category of intellectual property from being the so-called poor cousin among other categories. This in part will be facilitated by statutes which address royalties and resale royalties of artistic works calculated for a period of 50 years after author's cum visual artist's death (Copyright Act Amendment, 2017). This research contributes towards literature that is CCIs sensitive by presenting legal jargon in relatively simple terms without downplaying legislature.

It is important to acknowledge that CCIs are complex and multidisciplinary in nature, dealing with the interplay of various sectors (O'Connor, 2010; UNCTAD, 2010; RWP, 2017; Chinyowa, 2017). CCIs are a resultant of the industrial revolution era which saw the mechanisation of primary production like agriculture and a revolution in

power generation leading to increased innovation that transformed social, cultural and economic conditions (O'Connor, 2010; Investopedia, 2017). Therein lies the root of why Anglo-Saxon approaches to IP laws favour IP utilitarian in the context of big businesses (MacMillan, 2002; Towse, 2002; Phillips & Firth, 1990; Smiers, 2002). IP laws were first created as a response to CCIs, the big business context. This means that the current South African IP laws are perfectly doing what IP laws were initially created to do, benefit the corporate. The research acknowledges this and makes a case for individual visual artists, those who create, to be included in benefiting from their IP.

The Johannesburg CCIs are not only made up of big business and there is a need to consider the local context. The “creative economy” is an evolving concept based on creative assets potentially generating economic growth and development (UNCTAD, 2010: 10). This research argues for looking at current South African IP laws with fresh eyes in order to also reward individual visual artists in the realm that has traditionally been for corporates. Copyright, trademark and aesthetic design have to be revisited with visual artists in mind and find ways they can facilitate commercialisation of IP by individual visual artists. However, revising current IP laws rests with policymakers and this research serves as a point of reflection with limited scope on presenting justifications for policy shifts leaving room for more research to be done on this. Effective lobbying should not be left to visual artists based in Johannesburg only, while as experts of their sector, there is a need of pulling together by stakeholders. The stakeholders include consumer representatives, policymakers, aggregators, art buyers, art educators and financial services among others with an interest in artistic works by photographers and art directors. An inclusive approach to South African IP will contribute positively to the national economy and towards wealth for those who create.

The ‘so what’ part of this research is for an investment in research and development that critically looks at how IP laws work in practice across the CCIs to inform policy formulations and institutions mandated to administer IP in South Africa. The onus is upon the Department of Trade and Industry to reflect on an IP approach which takes into account the diverse nature of local industries that requires considerations specific to particular trades. Getting this balance will require what Matarasso and

Landry (1999) describe as performing a balancing act. Robinson and Acemoglu (2012) argue in their acclaimed work, *Why Nations Fail*, that nations which have succeeded or are on a path to success tend to be those with “inclusive institutions”. In the context of South Africa, the institutions can be viewed as the Departments of Arts and Culture, and Trade and Industries among other arts organisations at local levels. While South African IP laws mirror international trends, the research findings and discussions points call for an inclusive approach that considers the individual visual artist as much as the corporate.

IP Commercialisation is a skill that can be acquired

The research findings and discussion points show that visual artists based in Johannesburg have very unique experiences in relation to exploiting intellectual property. However, these unique professional experiences map out recurring themes such as how having a formal business training covering IP laws and an experienced mentor to give a standard contract guideline provided an informed professional take for Durban (2018), Evans (2018), Goitseone (2018) and April (2019). On the contrary, ill equipped visual artists enter into agreements blindly at the expense of their IP rights, and ultimately business. “My experience, as a student, when I should an image to the South African Broadcasting Corporation for R800 without any IP rights considerations became my wakeup call 3 to 6 years after” reflects Akona (2019) on how much she gave away without knowing. This research argues for continuous capacity building to equip local visual artists and arts practitioners to be competitive even on global platforms and maximise their IP benefits.

One may argue for the role of agents, attorneys and talent managers but Harris (2018) experience shows that there is a need for bare minimum appreciation of IP rights and laws instead of risking an over reliance on an agent who might end up not representing a client's interests. Taking visual artists based in Johannesburg professional experiences through the boundaryless career approach and IP conceptual framework of this research provides a way forward that is already at play in their IP commercialisation, albeit at individual level. The “boundaryless career approach” frames how visual artists based in Johannesburg can increase their benefits from IP exploitation through personal development (Hall, 1996; Bridgstock, 2007; Chinyowa, 2017). Here, the approach seeks to constant equip visual artists

with skills and knowledge directly linked to commercialising their IP over and above the current licensing they are doing. Visual artists do not have to only learn from past mistakes. For Akona (2019) the SABC past experience mentioned in Chapter 2 may be her “learning curve” into her professional practice but it need not repeat to future visual artists.

Rethinking IP in a digital and information era for visual artists

Internet connectivity has been shown to play an important role in how visual artists based in Johannesburg track and manage IP rights of their artistic work. This points to the role digital transformation plays in impacting the Creative Economy and validates Piccinini’s (2015) argument on the impact of digital transformation on the Creative Economy. Piccinini (2015) argues that consumer behaviour and changing needs are informed and captured through digital technologies resulting in contributing to how producers innovate. This can be taken into consideration how tracking and managing one’s IP becomes daunting if left to individual visual artists to self-police considering their artistic work has a potential to reach the world at the click of a keyboard. This research argues for a relook at data costs for CCIs practitioners. The research invites the Departments of Trade and Industry, and of Arts and Culture to draw up an incentive for internet service providers who provide relatively cost internet connectivity to visual artists and among other arts and culture professionals.

Digital media impact on connectivity has enhanced communication and the processes of exchanging value resulting in consumers’ willingness to pay (WTP) based on an informed perspective (Piccinini, 2015: 1641; Pink, 2015). One may argue that an IP approach which policies on behalf of visual artists will make their artistic work more expensive for the consumer by the WTP is based on their derived value not price tag consideration only. Digital transformation is not only applicable to the arts and culture but all areas of life, and it has resulted in power shifts in market structures and “creating a fundamentally new source of value” (Lucas et al., 2013; Piccinini, 2015: 1642). This means that tracking and managing one’s IP rights cannot be a preserve for the individual visual artist but calls for a pulling together of minds and resources towards more effective ways. As noted that as far back as 2013, Harris’ (2018) artistic work had metadata containing his and agent’s credits deleted

by a government employee carrying out part of official employment duties (ENCA, 2017). there is need of a digital media policy that captures how individual visual artists are rewarded for their artistic works.

Kulesz (2017), with specific reference to how digital technologies have transformed the cultural scene, identifies four themes as impact areas; access to culture, creativity, cultural industries, and civil society. Access to culture has been transformed with now available global connectedness making available more cultural offerings than consumers had access to in the past. This has direct copyright implications that need revisiting in practice and at law. It cannot be said enough how digital technologies are having a significant impact on cultural scenes, society and economics among other areas of life.

The South African IP approach has to take into consideration that intellectual property has a potential to grow the Creative Economy in this digital and information era. Smier (2002) argues that IP has become an important commodity that big businesses invest in. Yet the local IP policy scene seem to be decades behind. There is much still to be harnessed and understood to impact positively on the producer-consumer relationship and the cultural scene cannot afford to leave it to IT specialists alone. Digital considerations have a potential to help visual artists derive maximum benefits from their ownership of intellectual property rights. The digital media impact is a global phenomenon, however due to the digital divide, it cannot be assumed that its impact is uniform across the globe which requires a more local focused approach.

Copyright agreements should be part of rewarding those who create

There is need of rethinking copyright agreements as a contribution towards wealth for those who create. The research findings and discussion points revealed an organic learning based on infringements and need to commercial IP by visual artists based in Johannesburg leading to their current copyright agreements. For Akona (2019), the excitement of selling her artistic work as a student to the national broadcaster without any IP rights considerations led to learning about how IP has a potential for future income. "How SABC uses my image, to this day, shows me what to lookout for and rethink my copyright agreements" says Akona (2019). There is no

default setting to IP commercialisation but South Africa can create a minimum copyright agreement standard to facilitate rewards and dignity for those who create.

The Creative Economy does not have to wait until every visual artist has experienced a few bad deals in order for great business practices. While boundaryless career approach places the onus of individual visual artists, there is a need for an enabling environment in part facilitated by progressive and inclusive approaches to policy making and 'good' business practices. Progress and inclusive how? As a starting point, instead of policies that merely mirror what is working in the Global North without paying details to socio-cultural-economic conditions, the policymaking process has to account for its local context and implementation (Copeling, 1978). This accounting goes beyond calling out for public views to investing in research and development that maps out how IP laws work in practice. The proposed Copyright Act (2017) does take this into consideration including a clause which seeks to address bad deals that are akin to duress of visual artists by uncanny clients who might take being unethical as tough business negotiations. However, copyright agreements should not wait for a policy review but be taken into consideration in the constitution of the Republic under the property rights section.

Towards setting a standard of having standards for IP approach that benefits creatives

One of the implications from this research study is that talent alone will not sufficiently translate to visual artists recouping benefits from their IP rights. The South African Revised Cultural Policy White Paper (2017: 7) acknowledges that the local scene is rich in talent feeding creative industries but the level of development of each of the specific sectors is uneven. An observation that Chinyowa (2017) agrees with, however he argues for a relooking at arts education as the solution. As a way of emphasising the previous chapters, there is a coming together of a number of moving parts needed for visual artists to benefit from their IP. There is no one simple answer or recommendation to offer.

Here, negotiations and the boundaryless career approach are reflected on in the context of the relationship between culture and power. Johannesburg based visual artists are constantly negotiating their IP rights with each potential client (Akona,

2019; April, 2019; Durban, 2018; Evans, 2018; Goitseone, 2018; Harris, 2018). Ideally, negotiations are about the process of reaching an agreement over mutual interests, but they bring with them power dynamics (Piennaar and Spoelstra, 1991). The local Creative Economy is part of what Deacon (2009) describes as a complex phenomenon of policy-making, political processes and economic considerations. In South Africa, this is driven by relatively centralised policy-making processes, politically partisan towards ruling party's view as decision makers are guided by their political party ideologies and 'elite-oriented' with relatively minimum input from the general public. Here, elite-oriented in the context of South Africa is informed by political economist, Moeletsi Mbeki's (2008) description of the relationship between government and the energy, mining and commerce. This presents a complex negotiation and boundaryless career approach phenomenon for visual artists. It is further exacerbated when critically analysing the role of State in matters of culture and by extension IP laws with specific considerations to the Creative and Cultural Industries. What is best for local CCIs including how statutes may create an enabling environment for maximum IP benefits for visual artists will not always align with the Energy, Mining and Commerce sectors. However, this research argues that it is important for South African IP approaches to break away from the Anglo-Saxon tradition of privileging big businesses over individuals as individual contributions go a long way in the Creative Economy.

There seem to be a distrust of the State in its approach towards local Creative and Cultural Industries governance which can be understood when looking at culture. Shepherd and Robins (2008: 39) acknowledge culture as an authorising platform for both lifestyle choices and intellectual analysis which resonates with the definition of "culture is plural" and about trained in, criteria of civil; a way of life (Williams, 1983; Herder & Foster, 2002). Fanon (1963) states "culture is present, the now" and in light of this view makes the role of State the more crucial in its matters. This is not to say the South African government has a questionable role in matters of culture and CCIs. It is also important to note that being critical of the State in order to achieve the highest possible results towards an inclusive fluid and dynamic IP laws is a hallmark of democracy. The research revealed that for wealth to be realised by those who create in South Africa, there in need of public private partnerships and policy shifts which are informed by how IP works for individual creators.

Negotiations and boundaryless career approach are too weighty to dump on individual visual artists. The research reveals that South Africa has no standards to guide the individual creator leaving them open to being taken advantage of. The Johannesburg context presents multiple complexities that require an interdisciplinary approach towards an environment for maximum benefits for those whose creations of the mind results in IP rights. There is need for putting in place minimum standards that guide how individuals can be guaranteed rewards from their IP regardless of their level of understanding legal framework around IP the same way human and property rights are enshrined in the constitution of the Republic.

A paradigm shift

This research study revealed that there is a need for a paradigm shift towards respecting of IP as any other property which enjoys property rights as enshrined in the constitution of the Republic. As mentioned afore, Intellectual property is intricately related to ownership, trade, competition, industrial growth and economic development (Throsby 2001; Towse, 2006; Akona, 2019; April, 2019; Durban, 2018; Evans, 2018; Goitseone, 2018; Harris, 2018). Intellectual property is an invisible estate that may be created and or inherited, and that some may enjoy and from which others may be eternally barred (Phillips and Firth, 1990). This research set out to explore IP exploited by visual artists based in Johannesburg guided by the following central questions:

1. What categories of intellectual property (copyright agreements) do visual artists based in Johannesburg work exploit?
2. How do visual artists, based in Johannesburg track and manage their work to make sure that their intellectual property and copyright agreements are protected?
3. How do visual artists based in Johannesburg negotiate and frame their copyright agreement with a potential client?

As a way of concluding this reflective chapter, instead of making recommendations may I invite you towards a paradigm shift towards containing the multiple complexities covered thus far. Having been trained, mostly practiced in and built two start-ups which are however no more, my personal professional bias tends to conceptualise within a creative start-up context. Therefore, seeing visual artists based in Johannesburg as start-ups with a potential to tap into the global market to the benefit of South Africa may assist to make sense of observed IP considerations.

Start-ups are newly emerged entrepreneurial driven businesses built to grow beyond geographical limitations constantly aimed at market validation and problem solving yet build without being held back by lack of guaranteed success (Robehmed, 2013; Zuckerberg, 2017). Their focus on growth sets them apart from small business, with potential to address current economic uncertainties due to automation and or technological advancement by providing “intergenerational equity” ensuring long term access to cultural access across generations (Throsby, 2013: 153; Zuckerberg, 2017).

Start-ups can be South Africa’s way of home-grown customer validated multifaceted approach creative industries contributing significantly towards national economy at the same time driving sustainable development strategies and the local rich diverse cultural expressions. This means that it is in the interest of South Africa's socio-cultural-economic and other intrinsic values that the Creative and Cultural Industries create to facilitate an environment for maximum benefits visual artists derive from IP exploitation. Towse (2005) argues that IP can provide motivation for those who create. She goes on to say that the motivation is not only derived from IP exploitation leading only to financial benefits but validation from ownership (Towse, 2005). MacMillan (2002) and Smiers (2002) argue against the current Anglo-Saxon IP approach altogether but this research argues for revisiting it as it already has aspects working together for big businesses.

Although writing specifically on indigenous knowledge, Shepherd and Robins’ (2008) notion of context results based can be observed to the one of the hallmarks of start-up. By their nature of being responsive and problem solving, they provide avenues of sustainable socio-economic development to South Africa varying from local,

provincial and national levels. As noted by Shepherd and Robins (2008) there is no one form of knowledge to which science is privy but all forms of knowledge are produced in response to specific contexts and questions. When individual visual artists are viewed as start-ups the agency for their work intricately depended on IP laws becomes more urgent in the economic scheme of things as they are more than just a business, they are cultural driven. This addresses the need for sustainable development, protection and protection of local culture which if ignored will result in start-up solutions from elsewhere built upon a foreign way of life and a continued adoption of IP laws that seem not to be in the best interests of the 'little local man'.

The research established that more attention and IP regulation is given to industry property for various reasons including its wider economic benefits realised within a relatively short time frame (Rorschach, 2015; Phillips & Firth, 1990; Copeling, 1978). This is contrary to copyright, which is automatic requiring no set of registration procedure in South Africa (Act No. 98, 1978; Copeling, 1978). There is a clear distinction between industrial property categories of IP being well regulated and managed, while copyright is seen as 'the poor cousin' (CIPC, 2018; Copeling, 1978). If industrial property is seen as a money maker and copyright as an instrument for mere ownership, how are the South African policymakers and regulators dealing with the dilemma of balancing this? The dilemma of two distinct yet interacting phenomena of economic and cultural development tied more other values that Creative and Cultural Industries create.

Startups as a paradigm shift, facilitate recognising visual artists' exploitation of IP as concerned with realising income transfer, fairness, aggregating welfare and distributional justice for the benefit of those who create (Breyer, 1982: 19–20; Ogus, 1994: 4, 46–56; 2004: 35; Evans, 2018; Harris, 2018; Durban, 2018; Goitseone, 2018). There is a need to overcome the collective action problem of individual visual artists and to protect their service provision interests making the South African Copyright Act (1978) part of their let downs. Researchers have paid much attention to economic regulation in the debate on the regulatory state (Majone 1994, 1996; Jordana & Levi-Faur, 2005; Lodge, 2008). One can be forgiven to take the South

African Copyright Act (1978) as protecting the interests of clients, those who commission work and the Mining, Energy and Commerce more than visual artists.

It is not enough to have a Copyright Act (1978), revised or not, without a regulation framework that captures the needs of visual artists part of which are contained in this research. Regulation has a role in constituting markets (Shearing 1993). While the processes of litigation may be clear across all categories of IP, it takes a visual artist to enter a favourable copyright agreement and be considered under contract law over the Copyright Act No. 98 (1978; Fox, 2011). According to the principal–agent framework, political actors save transaction costs by appointing an agent who disposes of the expertise and resources required to implement certain policy goals (Aghion & Tirole 1997). In the context of South Africa, IP exploitation by those who create mirrors international law yet there seem to be a disconnection when one tries to follow how it is implemented and works for the average visual artist without capital to enlist legal experts. This calls for considerations beyond political logic concerned with the interests of the Energy, Mining and Commercial sectors that are currently part of the large contributors to the South African economy (Mbeki, 2008; Stats SA, 2018). Reflecting on start-ups as a paradigm, saves as an invitation to all the stakeholders mentioned at the beginning of this chapter to engage with fiduciary logic where the primary goal is to secure credible commitment that will usher in a local approach to IP considerations for the individual visual artist (Majone, 2001; Towse, 2006, MacMillan, 2002; Smiers, 2002).

The research findings and discussion points show that local visual artists are in a way playing a regulatory role at individual level. As noted earlier based on Daguerre's invention that ushered photography into the public domain, the State seems to step in when it is convenient (Benjamin, 1972; Whitmire, 2018). This is not only exclusive to the arts but the history of gold discovery in Johannesburg, in the then Transvaal under president Kruger, itself has the State only stepping into regulating the gold rush when there was money to be made (SA History, 2017; Mining for Schools, 2018). This can be said to be existence where a great photography and art direction deal shifts from Copyright Act (1978) regulation to fall under contract law (Fox, 2011). There is therefore need to invest in effective regulation and management of all categories of IP with the weight and attention they

deserve in order to tap deeply into projected Creative Economy earnings (UNESCO, 2010; Eckert 2010).

The scope of this research was to explore in order to find out what is on the ground regarding intellectual property exploited by visual artists based in Johannesburg. This is but a mere first step towards filling the knowledge gap on this subject in the context of Global South Creative and Cultural Industries. There is much work to be done. The following Chapter 5 is the overall research conclusion.

Chapter 5 | Conclusion of the exploration

This report is a result of an exploration journey guided by a desire to discover intellectual property exploited by visual artists based in Johannesburg. The research captured a wide range of phenomena through the central questions as guided by the research aim. It has been revealed that visual artists, based in Johannesburg exploit aesthetic design, copyright and trademark categories of intellectual property. Visual artists' tracking and managing of their IP mostly depends on digital technologies and internet connectivity. The combination of IP tracking and management processes by visual artists based in Johannesburg culminate into self-policing at individual level. When it comes to negotiating copyright agreements with potential clients, each visual artist draws up a standard contract which is event specific. In reality, there is no standard to the standard contract as it changes based on a number of factors, such as, a client's budget and artistic work end use. The research has fulfilled its aim of exploring IP in practice, an existing phenomenon in the Johannesburg CCIs which has not been fully understood. This report contributes towards knowledge generation aimed at wealth for those who create, filling the local literature gap and reveals how IP works for visual artists based in Johannesburg.

The research findings in Chapter 2 provides for further knowledge generation in other future researches on similar subjects. However, there are ethical considerations, such as, not being dismissive and or silencing the experiences of participant visual artists. The discussion points covered in Chapter 3 take research findings as representing a valid and credible sample of the Johannesburg context. This sample was then, metaphorically, placed on the wider global platform through a discussion approach with a wide range of reputable scholars on IP, the Creative Economy and the boundaryless career approach. This was not only for validation purposes but part of analysing data towards credible conclusions that assist in answering the central research questions and meeting the aim. An attempt has been made to avoid offering recommendations. At this stage, the exploration has directed towards reflecting on research findings and discussion points as covered in Chapter 4. Yes, some of the reflections may read like recommendations by another name but may recommendations come out from each stakeholder towards a collective rethinking of current South African IP approaches. The researcher sums up the exploration in the following research argument:

The three categories of intellectual property exploited by visual artists based in Johannesburg, their commercialisation, policing, and negotiations for IP agreements reflect South African IP approaches that privilege the corporate over an individual who creates.

The notion validates the argument that intellectual property particularly copyright's effects are asymmetric and that it benefits the distributor, mostly big businesses, rather than the content creator, (MacMillan, 2002; Smiers, 2002; Bridgstock, 2005; Towse, 2006: 567). Yet IP is in theory intricately related to ownership, trade, competition, industrial growth and economic development (Throsby 2001; Towse, 2006). How South Africa chooses to create an environment of wealth for those who create instead of simply privileging big business is up to her diverse stakeholders' individual and collective drive.

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Appendix 1

1. Semi-structured interview guide questions.

- How long have you been practicing photography and or art direction professionally?
- Apart from Johannesburg, do you have a based and or studios elsewhere?
- Based on your practice, how do you define intellectual property?
- Are you familiar with any South African IP laws?
- Has someone used your work without permission? If yes, how did you handle it?
- What kind of mechanisms do you have in place to protect your work from being 'stolen'?
- How do you keep track and manage your work once it leaves your studio?
- How do you draw up contracts to protect your work and right?
- Kindly share with me the process of going over your contract with a potential client?
- What kind of registrations do you have that directly protect your work and business? If any, kindly talk me through how they work?
- Kindly share with if you have any event that comes to mind which shifted how you view IP and copyright awareness?

Appendix 2 | Summary of research findings from visual artists

	IP Categories Exploited	Professional Experience	Copyright Agreement	IP Negotiation	Tracking and managing
Akona	Copyright	Over 10 years	agent and Contracts law	Agent and Contract	Agent, online media and goodwill
April	Copyright	Over 4 years	Word of mouth and Contract law	Verbal and written agreements	Online media and Good will
Durban	Copyright and Trademark	Over 5 years	Contract law	Standard Contract	Online media and metadata
Evans	Copyright and Trademark	Over 10 years	Agent and Contract law	A range of client specific contracts	Online media and metadata

Goitseone	Copyright, aesthetic design and Trademark	Over 8 years	Contract law	A range of client specific contracts	Online media and metadata
Harris	Copyright and Trademark	Over 30 years	Use of agents and contract law	Agent driven and standard contract	Agent, online media and good will
Lekgetho	Copyright and Trademark	20 years	Use of agents and contract law	Agent, commissioned and standard contract	Agent, commissioner and online media

Figure 1.0

Appendix 3 | Summary of copyright agreement clauses from visual artists

Visual Artist	Rights	Times Frame	Future Earnings	Crediting
Akhona	Yes	Yes	Yes	Yes
April	Yes	No	No	Yes
Evans	Yes	Yes	No	Yes
Harris	Yes	Yes	No	Yes
Goitseone	Yes	Yes	Yes	Yes
Lekgetho	Yes	Yes	Yes	Yes
Durban	Yes	Yes	Yes	Yes

Figure 2.0

Desired Clauses for a standard agreement

- Clear clause on rights holders and where there are multiple holders to state share ownership.
- End us considerations cover both commercial and third party.
- Time frame considerations.
- Clause on what happens when commissioned work results in a greater economic value than foreseen at initial agreement.
- Resell percentage.
- Exclusive use and its impact on potential future earnings.
- If moral rights are being waived and compensated for.
- For commissioned work to clearly state that the commissioner takes all intellectual property rights and this has been provided for in the commissioning fee.
- Other details based on how each individual artist envision their artistic work being used and distributed among other considerations.