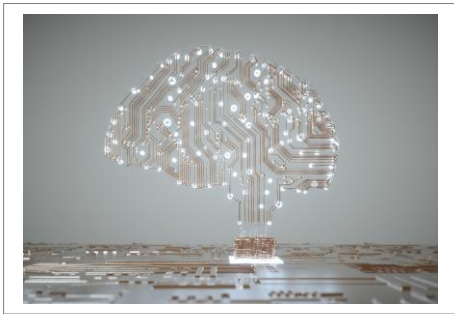# Intellectual Property Understandings
in
Immersive Innovation

A StoryFutures Investigation

Aislinn O'Connell, May 2022

About the Project

Intellectual Property Rights are a valuable asset of many creative teams. The ability to control the reproduction and distribution of one's creative material, granted by s16 of the Copyright, Designs and Patents Act 1988, is the cornerstone of many creative industries' and companies' financial assets. However, immersive technology, as a new and emerging area which crosses boundaries and creates unique experiences, outputs, and assets. Bringing together experts from a variety of backgrounds, immersive storytelling suffers from a lack of established precedents for managing intellectual property, leading to uncertainty in exploiting and monetising IP assets.

This project investigates the intellectual property understandings of parties connected with StoryFutures, in order to gain a rich understanding of the knowledge, experience, concerns and expectations in the immersive storytelling space. Using a literature review combined with ten semi-structured interviews with parties who had been involved in StoryFutures project – a variety of small and large projects around immersive storytelling, which created a range of software and hardware outputs – the project aimed to gain a rich qualitative understanding of intellectual property in immersive

storytelling from a variety of perspectives as well as a potential road map for how the industry needs to develop in order to thrive.

The project outcomes are clear – immersive storytelling and virtual and extended reality are a new landscape which bring together practitioners from a variety of backgrounds – theatre, television, hardware, etc. Because of this, they bring with them a variety of approaches to intellectual property management and understandings of intellectual property. This leads to a brave new world of intellectual property creation, management, assignment and licensing.

This presents a huge opportunity for AR and VR creatives – without an established 'model' of intellectual property rights management, there is scope for innovative and new ways of assigning, managing, licensing, and sharing intellectual property rights.

In practice, however, as this project shows, this is not the case in this rapidly growing industry. Each project presents its own individual challenges, meaning that licensing is de facto negotiated on a case-by-case basis. This increases time and costs, and

plays in to inequalities of bargaining power between content producers and large content distributors. This project concludes overall that while many parties involved in AR and VR have some, or a working, knowledge of intellectual property rights, there are clear disparities between practitioners from different backgrounds (with hardware being the most comfortable area for IP rights) and rights and asset management is often developed on a rolling basis.

There is a need for developing and advocating for an IP rights management strategy which is flexible, adaptable, and most importantly predictable, thus ensuring a transparent and mutually beneficial approach to intellectual property in immersive storytelling, and increasing the value of immersive technology to the UK economy. As a world leader in the development of immersive technology, this new area of creativity deserves the same level of support and development from the government to allow it to grow as a thriving part of our growing economy.

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Interviewees and Methodology
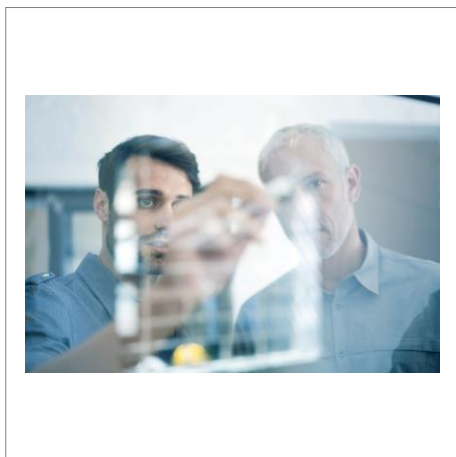
Ten interviewees were selected for the project, covering a range of StoryFutures roles. This included project leads, StoryFutures staff and StoryFutures consultants. The project leads came from large and small enterprises from a variety of creative backgrounds including theatre, television, and gaming, ensuring a diverse pool of expertise to draw on in developing these insights into immersive technology and the intellectual property concerns therein.

The research project conducted a series of semi-structured interviews which focused on the intellectual property concerns that arose as part of the StoryFutures experience, and as actors in the immersive technology space more generally. The interviews were transcribed and anonymised, then coded in NVivo to draw out themes which arose from the work. The coding took an inductive semantic approach, adopting a simplified method of reflexive thematic analysis (Braun & Clarke, 2006; 2019). The interview responses were coded according to key terms and then grouped to identify themes. This report draws on the initial key terms and themes which arose from the interview transcripts. There is scope to conduct further analysis of the data to draw out further insights into the data, which will be conducted in 2022/23.

Key Themes

Distinct needs were evident in different areas of immersive technology development, meaning that there are specific developmental goals for different areas of immersive technology. However, several cross-cutting themes arose from the interviews which gave insight into the needs of a growing and vibrant industry. Education and training are necessary in order to help this industry to grow, and there is a need for an organised approach to the industry which will create a consistent understanding of intellectual property rights in immersive technology, including rights which arise automatically and those which need to be specifically registered with the IPO.

In considering intellectual property rights in these projects, there were two discrete elements of rights negotiation.
The first was negotiation with the research institution in determining how rights would be exploited between the company and the research institution. For the most part, this included elements like audience testing data and the right to public academic commentary on the research projects.
The second was protection and further exploitation of the rights in the projects after the conclusion of the StoryFutures projects. The difficulty which arose here was identifying what rights exist in the project material, and how best to exploit them. While IP rights are one of the greatest assets of interactive entertainment companies, identifying and valuing those rights can present some serious difficulties.

About StoryFutures

We're all about placing innovative storytelling at the heart of next generation immersive technologies and experiences, to fuel the growth of the sector and ensure the UK is leading the way.
Both projects are closely linked: StoryFutures is focussed on R&D projects with businesses to the west of London, while StoryFutures Academy is focussed on delivering cutting edge training for the national screen industries.
StoryFutures is led by Royal Holloway, University of London and is part of the Arts and Humanities Research Council's unprecedented Creative Industries Clusters Programme. Funded by the government's industrial strategy challenge fund and based in the 'Gateway Cluster' immediately to the west of London, it is focused on delivering game changing R&D projects.
StoryFutures Academy is the UK's National Centre for Immersive Storytelling led by the National Film and Television School and Royal Holloway, University of London. Funded by the government's industrial strategy challenge fund and part of UK Research and Innovation's Audience of the Future Challenge. The Academy will develop creative training and research programmes in immersive storytelling to ensure the UK creative workforce is the most skilled in the world in the use of VR, AR and MR.

UK Research and Innovation

Creative Industries ✕ Clusters Programme

Existing IP Management Mechanisms: The Lambert Toolkit

The Lambert Toolkit is a set of resources published by the Lambert working group for universities and research institutions collaborating with industrial partners and undertaking joint research projects. It has several objectives:

- facilitate negotiations between potential partners
- reduce the time, money and effort required to secure agreement
- provide examples of best practice

It provides a variety of resources which together make up the toolkit:

- a decision guide
- seven model research collaboration (one to one) agreements (1-6)
- four consortium (multi-party) agreements (A-D)
- heads of terms and variation agreements for both collaboration and consortium agreements
- guidance notes

The agreements are not mandatory and are designed to offer a starting point for negotiations between parties. In practice, the lack of sector specificity of the agreements means that they cannot consider the specific needs of interactive entertainment, and thus provide a general starting point but fail to appreciate the nuance of the mix of registered and unregistered rights IE produces as standard.

While the Lambert Agreements are helpful as a starting point for negotiating rights arrangements between universities and commercial entities, several issues arose where there were third parties involved outside of the creative company and the university. These provided a variety of scenarios where clarity was lacking:

[SF9] *"there was ambiguity in the collaboration agreement that we had in place, to be honest."*

[SF10] *there's a lot of these small details on if you're selling your software while using some third party software, how [does it work]? What are the caveats?*

[SF4] *"So there is still a grey area with like... buying other people's [rights] based on existing... kind of [rights] that is still kind of big grey area."*

[SF6] *there's a really big grey area around digital rights[...] it's complex and I don't know that the law has necessarily properly caught up. I'm talking to the [rightsholders], I think... I don't- I don't know that they fully understand it either.*

Developing business and rights models in immersive entertainment

Immersive entertainment is unique in the creative industries, as it draws together creative and technical minds from a range of backgrounds. Gaming, television, theatre, digital art, hardware and software development professionals have moved into digital and immersive technology, and this range of backgrounds can present difficulties in terms of the range of approaches they bring to management of IP rights. While mature industries have developed 'default' approaches to rights management, the variety inherent in immersive entertainment, both in terms of the backgrounds of companies and developers, and in the range of products and services available, means that there is no default position available, leading to increased need for negotiation to manage rights and a great deal of uncertainty in moving projects forward.

While there were several developed models which had been imported from other industries (most notably television), from the interviews, no single model of rights management had emerged as the dominant model, leading to an abundance of flexibility in options.

[SF1] *[TV is] quite a different model [...] when I look at this new world of VR technology, I find it very difficult because this [TV licensing] has been worked out for decades – since the nineties.*

This report recommends that a series of template contracts be developed by an industry body which outline different models for rights management, allowing for reduced negotiating costs between parties as well as greater clarity around what rights models are available. This could be developed on the model of the Lambert Toolkit. Although the interviews showed a tendency towards the television model, this is not necessarily the most appropriate model for immersive technology, because of its distinct approach to creation – television licensing models are developed for a specific mode of delivery which does not always translate perfectly to immersive content and can create unforeseen difficulties where the model is selected without appropriate consideration.

[SF2] *Immersive projects and rights holders tend to*

want to try and follow the television model. However, the television model doesn't give them all the rights they need for the uses they want.

The availability of a range of rights models, including template agreements and clear explanations of what each rights model grants and withholds, would empower immersive content creators to select the rights model which is most appropriate for them, encouraging innovation and distribution of immersive content in a way which minimises risks for all involved.

There is clear understanding from parties involved in immersive that this is a valuable and developing area, but this makes the need for clarity and support all the more urgent, because there is a lack of appropriate templates and guidance available for immersive innovation.

[SF3] [immersive development] isn't going to be your normal situation with IP, and that's where we start.

Suggested rights models include:

- 'book' rights model – following the example of television licensing
- 'character' rights model – following the example of merchandising
- Rights assignation
- 'Commissioning' agreements – where an access licence is granted

The licensing model agreements should be developed in tandem with a variety of immersive content creators, from a range of backgrounds, but should specifically take into account the needs of Small and Medium Enterprises (SMEs), as they are less likely to have funding to service legal advice, and as a developing industry, SMEs provide greatest capacity for growth.

Identifying IP assets

[SF8] *"Maybe there is something [IP rights] around the- the product …. and I don't actually know […] I would assume maybe there is. But that's as far as it goes as I understand it".*

Several participants did express some uncertainty around what IP products would be licensable from their work, as well as expressing that the StoryFutures projects had moved them into a new space, where they had to consider elements that they had not previously considered.

[SF7] *IP for a creative agency, is an interesting space, and it's frankly not one that we've ever had that much cause to worry too much about. It didn't feel like there was that much in the work that we were producing that A- we could protect, but B- we'd probably even want to try and protect because there wouldn't be much genuine, ongoing value in the sorts of work we're producing.*

One difficulty which can arise with immersive development is that there can be multiple sets of rights in the same content and defining and assigning those rights can be quite complex. Not only are there multiple content creators working together to create something new, without defined contracts in place, extricating the correct rightsholder to sign over those rights can be close to impossible.

[SF5] there's definitely intellectual property. There's a creative input […] that is quite specific in this. But yeah, hard to extricate. Who's done what?

There are also difficulties with how to protect immersive technology, as it does not fall explicitly into any one type of IP right.

[SF6] *It's not something that's really patentable or trademark law*

In several interviews, uncertainty was expressed about what the correct type of right for protecting the material would be – even with information provided by StoryFutures, it can be difficult to establish where new forms of technology would best fit within the existing spectrum of IP protections, leading to inertia in protection.

[SF9] *we haven't taken steps to legally protect beyond the sort of automatic copyright protection that is just as under sort of UK jurisdiction.*

[SF1] *even experts in rights clearance aren't necessarily going to know…*

[SF2] **you're starting from the basics sometimes, whereas others, others are very experienced or they come from TV production where they've- they've known about [rights management]…**

Experience in Licensing Rights

Immersive technology provides an opportunity for creation and licensing of IP products, but also frequently necessitates the licensing of existing rights in order to reproduce them, whether on video or in virtual or augmented reality.

However, this can present difficulties for immersive storytelling projects and participants for a number of reasons.

Due to the varying backgrounds of StoryFutures project partners, some, such as those who came from TV industries, are very familiar with rights management and licensing rights for reproduction or inclusion in creative media, but may face issues in determining how those rights would adapt to new forms of media such as AR or VR.

Other creative partners, such as those from a theatre background, may be facing these issues for the first time, and thus need to find new ways of working.

Others may be creating material in a way which has never been seen before, meaning that legal advice is based on analogous reasoning, creating risks for pioneering enterprises.

As SMEs, there is a need for a supportive environment to educate and collaborate on licensing content from other creators.

IP Audits and IP Resources

One element which was clear throughout the series of interviews was that because immersive entertainment is a relatively immature and developing industry, there is a need for a body of knowledge which will allow small and medium enterprises to refer to a body of authority with experience in the area to support and guide developing companies in the management and development of their intellectual property rights.

Two bodies which were mentioned in the interview process were the intellectual property office, and UK Interactive Entertainment.

The Intellectual Property Office offers a range of tools for small and medium enterprises to assist them with IP education, IP management, and IP development. The IP Health Check also provides a way for companies to assess what IP assets they have, and how best to protect them. These free and informative resources are general and designed for all industries, however, and do not focus on interactive entertainment specifically. Conducting a thorough IP audit also requires financial support, which can be a barrier for SMEs.

UKIE, the trade body for the UK games and interactive entertainment industry, can bridge that gap by providing a hub for B2B connections and IP information and advice which is tailored to this industry, allowing for knowledge sharing, but it does come with financial barriers to entry.

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