

The Institutional Environment and the Policy Affecting the Creative Industry – the Advertising Agencies in the Specific Conditions of the Slovak Republic and the Selected Region

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Abstract

The paper focused on the approach of the selected results of research activities carried out in relation to the general activating events in the creative economy at the national and regional level. The creative industry has been chosen as the subject of the research, where the advertising agencies do operate in the Slovak Republic and the region of Žilina. In comparison to other business subjects in the market advertising agencies get into a special situation when addressing creative role at the request of the customer who needs to ensure effective marketing communications with its customers and successful sale of its product. Legislative environment where these creative companies operate has a great influence on the development of the sector, because it involves both opportunities and threats to their subject of business. The paper, in general terms, analyses the institutional environment and the legislative background of the creative industry and critically evaluates the state of protection of the results of the creative process of advertising agencies. It also presents some results of research in the field of supportive environment that advertising agencies currently surrounds. In relation to the results of the research activities the authors of the paper deal with the proposals and recommendations for national, regional and local policy, which would represent improving conditions to support the development of creative industry and thus the economic development of the region.

Key words: Creative economy, creative industries, creative company, regional development, advertising agencies, protection of intellectual property

JEL Classification: L82, O31, Z1

1 Introduction

The emergence of a new way of looking at the economy through the concept of the creative economy is the result of economic, technological, social, political and cultural changes around the world. Narrower definition of the creative economy gives priority to the creative sector consisting of creative industries, which have gradually evolved from the so-called cultural industries and closely related to the artistic and cultural creativity. (Rehák, Šuranová, et.al. 2007) In this context, the creative industries are seen as a new key sector of the economy which is a source of employment growth and profits. However, this approach can be applied only in those countries, or regions whose economy is oriented in this direction. (Hudec, 2011) Wider definition of the creative economy sees creativity as a key factor in economic and social development. The creativity is not limited only to its artistic and cultural form, but also includes other forms of creativity, such as scientific, technological and business creativity, since all the named forms of

creativity are preconditions for innovation, which has positive economic impacts. As a supporting argument for a broader understanding of the creative economy we could give a survey devoted to the most creative companies in the world, where the companies such as Sanofi, Toyota Motor Corporation, Grant Thornton, Qualcomm, FedEx Corporation and Apple ranked at the first places, while none of these companies their focus does not fall within the creative industries included in the narrower definition of the creative economy. (Goudreau, 2013) One of the industries that fall within the group of creative industries are also **advertising agencies** that compared to other businesses in the market get into a specific situation when addressing creative role at the request of the customer who needs to ensure effective marketing communications with its customers and the successful sale of its product. These companies are surrounded by institutional environment and their action is influenced by policy of the state, region and cities in which they are established and operate. Thus, considering the analysis of current situation we have just focused our attention on legislation and funding sources and institutional environment in which these companies operate.

2 Literature Review

The DCMS mapping of the UK creative industries played a critical formative role in establishing an international policy discourse for what the relative industries are, how to define them, and what their wider significance constitutes. (DCMS 1998) In Michel Foucault's (1991) classic account of discourse analysis, a discourse can be identified in terms of its: Criteria of Formation, Criteria of Transformation. Criteria of Correlation. Policy discourse constitutes a core element of what refers to as policy cultures, or the relationship within a policy domain between shared and stated values (equity, efficiency, fairness, etc.). (Hajer, Laws, 2006)

In very general terms, we can identify the following five models, whose features will be expanded upon: (Cunningham, 2007, 2009, Flew, 2005, 2012)

- A European model, which emphasizes the cultural mission of these industries and strategies for social inclusion for common cultural benefit, and where terms such as cultural industries or cultural and creative industries are generally preferred.
- A United States model, where on the one hand, there is a substantive divide in thinking and calculation towards arts and culture and on the other hand, the entertainment/copyright industries, and where the bulk of policy initiatives are highly localised and sub-national in their focus, as seen with the raise of the creative cities movement. (Siwek 2006, Florida, 2002)
- A diverse range of Asian approaches, which strongly emphasise the role of national socio-cultural and political circumstances, but still identify opportunities for export growth and successful branding of global city-regions. (Kong, Gibson et.al., 2005) In Asia, city-states such as Singapore and Hong Kong, with their historic affinities with British culture and ideas, developed policies along the lines of UK DCMS model whereas countries such as China, Taiwan and South Korea developed policy along very different paths. (Hui 2006, Keane, 2007)
- Developing country models in South America, South Africa, the Caribbean and where, questions of cultural heritage maintenance, poverty alleviation and provision of basic

infrastructure have precluded overly technocratic conceptions of creative industries being promoted uncritically as the inevitable fruits of the information society. (Flew, 2012)

- Both Australia and New Zealand took up the creative industries policy agenda soon after it was put forward in the United Kingdom, although they did so in significantly different ways. In Australia, the cultural policy agenda that was developed under Labour was largely shelved, in New Zealand, creative industries were promoted through the Growth and Innovation Framework announced in 2002. (NZ MED, 2003)

3 Analysis of the Current State of the Issue Solved in the Slovak Republic (SR)

Legislation which regulates business conditions and the development of creativity in advertising agencies in Slovakia has a great influence on the development of the sector, because it involves both opportunities and threats to their subject of business. The area of the protection of intellectual property was also the area of legislation we analysed. Advertising agencies create, but also use a variety of products that fall within the subjects of intellectual property, i.e. solutions, which can be protected under:

- Copyright Act - literary works, computer programmes, musical works, works of fine art, audiovisual works, photographic works, databases;
- industrial property rights - trademarks, designs and so on.

In the work of advertising agencies, it is therefore necessary to respect apart from the other things, in particular, the following legislation:

- Act no. 444/2002 Coll. – **Act on Designs** (CA, 2014) (*design* means the appearance of a product or its part consisting in the features of, in particular, the lines, contours, colours, shape, texture or materials of the product itself or its ornamentation; the *registered design* hiding design registered in the register of designs; the term *product* means any industrial or hand-crafted tangible thing, including packaging, adjustment, graphic symbols, typographic characters or parts intended to compile a composite product with the exception of computer programmes and *composite product* is a product which is composed of multiple components which can be replaced and allow disassembly and re-assembly of the product.

- In the case of the design there must be considered a link to the Act No. 618/2003 on Copyright and Rights Related to Copyright (**Copyright Act**) as amended by the Act No. 289/2013 Coll. (CA, 2014) because the part of the design may include the author's work, for example, in the field of visual arts. *Know – how* can be defined as a set of knowledge and information of business, production or technical character, which are the result of creative activity and experience of businessman, are not adapted by separate regulation and are *classified* – a businessman provides this classification accordingly; *has actual or at least potential value and* are so-called *adequately addressed*, knowledge and information, which are described in a sufficiently comprehensive manner in order to verify compliance with the condition of secrecy and substantiality. However, they are not personal qualities, skills and experience that are inherent to creative individuals. Know-how is protected under the Commercial Code as a trade secret and thus the breach of secrecy is assessed as unfair competition and breach of trade secret. Trade secret, however, is a broader concept than know - how, because know – how of the company often represents the different databases, directives, standards, procedures implementing various internal processes.

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- Act No. 506/2009 – **On Trade Marks** (CA, 2014) discusses, inter alia, that the marking eligible for registration as a trade mark must be distinctive character; may not be common, descriptive, generic; may not lie a consumers; may not contravene the good morals). Marking, which may constitute a trade mark is any marking that can be represented graphically and consists mainly of: *words* (including personal names), *letters, numerals, drawings, shape of product or its packaging*, or a combination thereof, and shall stand such labelling is capable of distinguishing products or services of one person from products or services of another person. The basic function of a trade mark is distinctive. Act No. 618/2003 On Copyright and Rights Related to Copyright (the Copyright Act), as amended by the Act No. 289/2013 Coll. (CA, 2014) discusses the often similar output of creative work of advertising agencies consisting in establishing an audiovisual work. Audiovisual work is a work that is perceived through the technical device as a series of related images, whether accompanied by sound or not, if it is intended to be presented to the public. In terms of individual rights in relation to the Copyright Act the author has the right to mark his/her work name or pseudonym and request that his/her name or pseudonym to be indicated on all copies of work properly every time used in the public, according to the method of use, not mark his/her work name or pseudonym, decide on the publication of his/her work, the inviolability of his/her work, especially to protect against any unauthorized modifications or other tampering with his/her work, as well as against any defamatory treatment of his/her work, which would result in the disruption of his/her honour and reputation. The author has the right to use his/her work. A work, without permission of the author, may be placed permanently in a public place to express the message of drawing, painting, graphics, relief image or relief model or recorded by a photo or film; thus expressed or recorded work without permission of the author may be placed permanently in public places to use its copies, its public propagation by sale or other form of transfer of ownership, or the public.
 - **Commercial Code** (CA, 2014), in relation to the work of advertising agencies, discusses on *unfair competition*. Abuse of participation in economic competition means unfair competitive conduct and forbidden restriction of economic competition which is in conflict with good competitive practices and which may cause harm to other competitors or consumers. Unfair competition is prohibited. Unfair competition means in particular the following:
 - misleading advertising,
 - misleading designation of goods and services,
 - conduct contributing to mistaken identity (Section 47) - e.g. "adiads, nake",
 - parasitic use of the good-will of another competitor's enterprise, products or services,
 - bribery - corruption (general internal threat),
 - disparagement – conduct whereby one competitor states or disseminates false information about the circumstances, products or services of another competitor, such false information being likely to be detrimental to such competitor,
 - violation of business secrets – conduct by which a person illegally informs or provides another person about a business secret.

Financial resources of advertising agencies in the Slovak Republic consists mainly of own resources (savings, profits from business) and external resources (e.g. loans, financial assistance to families, etc.).

Institutional environment of the industry in the region - associations, support institutions, cluster initiatives - almost does not exist. There can be recorded only the effects and activity of universities in the region that have subjects in a portfolio of some of their study programmes such as marketing management, marketing communication, creative technology, innovative management etc. and thereby raising graduates applicable to the labour market – in advertising agencies.

4 The Aim of the Paper

The aim of this paper is to present results of the research activities - primary research on a representative sample of respondents – advertising agencies operating whose contents were also issues relating to legislative and supportive environment in the creative industry. The contents of the paper also presents proposal of recommendation which support policy of the state in this area of business could come out from.

5 Methodology

The methodology used in the development of the study of creative industry consisted in carrying out research activity, within which research problem and several research objectives that have been defined by project content of KRENAR were defined. One of the research objectives was to map the institutional environment and policies. There were **212 subjects** in basic group in the Žilina region, which have business activity of advertising agency stated in the statistical database. The survey aimed to determine the current situation in the creative industry in the Žilina region was conducted in the months of July to October 2013. There were 24 advertising agencies involved. There was achieved the maximum range of errors around $\pm 9\%$ and the reliability of research results about 90%. Primarily, there were interviewed companies that are best visible in the region – their names are associated with major projects in the Žilina region; companies that responded positively to our initial address, explaining the purpose of the research activity and companies the University cooperated with in other projects and had a positive experience with cooperation. As an appropriate *method of research* there was identified method of conducting the inquiry form of *standardized interview*. Despite the scenario stated the interview had free course in all cases, which reflected the respondent's freedom to express his/her and in articulating his/her opinion on an issue.

6 The Results

The results of work describe the results of research in the field of supportive environment that advertising agencies currently surround, as well as the results of research in the field of financial resources for advertising agencies and the use rate of the existing support in the industry.

6.1 Legislation in the field of intellectual property rights

The use of the legislation introduced in the analysis of current state often causes problems and there are conflicting interpretations of these legal regulations. Thus, if the advertising agencies in

Slovakia as well as in the Žilina region provide communication with customers, there occurs **intellectual property of the advertising agency client** and within the framework of their activities they establish different products that are **subjects of the intellectual property of the advertising agency**. As an example we may mention that if a client enters the market with a new product / service and the agency has the task to promote this product, it is first necessary to devise an attractive name under which the product is going to be sold. This means that the result of creative thinking is a "**product mark**" which becomes a protected trade mark of client for the type of production in selected markets. In this case, the advertising agency to conduct a survey of the relevant market, which will focus on similar products and brand, must be designed so as to not cause confusion with another mark that is already on the market. Provided that it purposely creates (based on client requirements) a mark precipitating the possibility of confusion, the client consciously enters unfair competition. In the case of **creation of slogans** it is crucial that without the consent of the authors they do not use the lyrics, poems, and parts of the scenario. They would break the rights of authors, which could have negative legal and financial consequences for the client and the agency. The same applies to the use of works of art. If there is incorporated the work in campaign that is already available (i.e. duration of property rights already finished), it should be used so that the original work is not undermined.

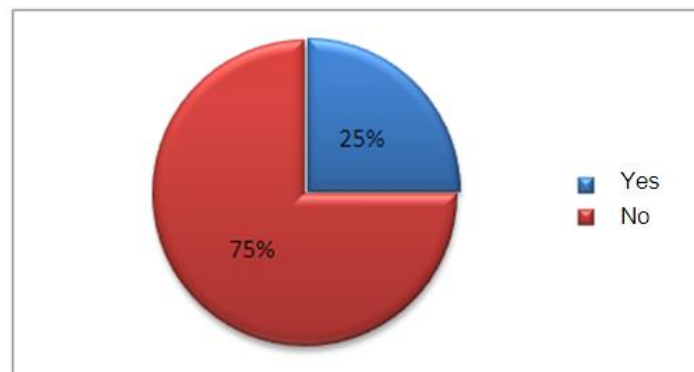


Fig. 1 The protection of the intellectual property

Source: Authors according to research conclusions

In the connection to the results of work of advertising agencies it is also necessary to consider the existence of **know – how**. In particular, it applies to campaigning, communication processes, and communication tools used. The portfolio may also include **database of clients and customers** and in case of marketing companies, for example, the method of "audit" made, implementation and evaluation of analysis, process control, proposing solutions and creating innovative incentives. Know - how of reputable agencies is directly involved in the quality of outcomes achieved and helps to build the reputation of their customers, i.e. **good-will**, which is also protected by intellectual property rights.

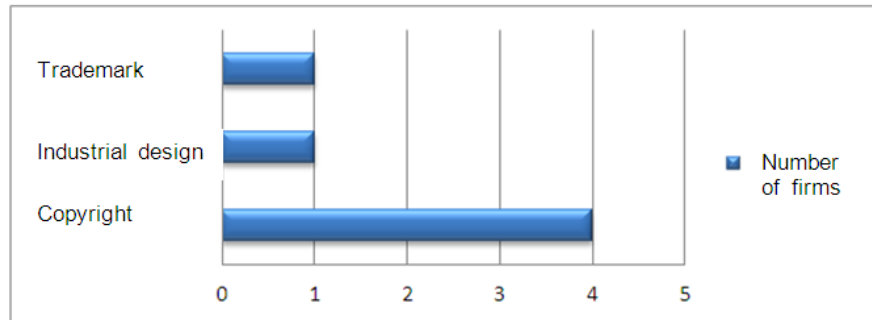


Fig. 2 The method of protection of the intellectual property

Source: Authors according to research conclusions

The research conducted within the framework of the project showed that 25% of respondents (see Figure 1) asserted the protection of the results of the creative process of advertising agencies within the industry in the Žilina region. These respondents indicated that they protect their proposals and projects using the protection of intellectual property - copyrights that automatically follow the law. One respondent uses the protection of proposals through the mark and two through industrial design. The remaining 75% of respondents does not use the protection of intellectual property - mostly they do not consider it necessary. (Figure 2) It is clear from the research results that the level of the use of intellectual property protection is very low considering the advertising agencies, but advertising agencies are aware that its use could achieve much better results of their activity and evaluation of their work.

6.2 Financial resources

The results of the research showed that advertising agencies use **financial resource** especially own resources - 14 respondents, loans - 5 respondents, support of family - 1 respondent, letters of credit - 1 respondent, profit - 12 respondents, private resources of an unspecified character - 1 respondent, leasing - 1 respondent, investor finance - 1 respondent, private activity - 1 respondent and resources from the previous business - 1 respondent.

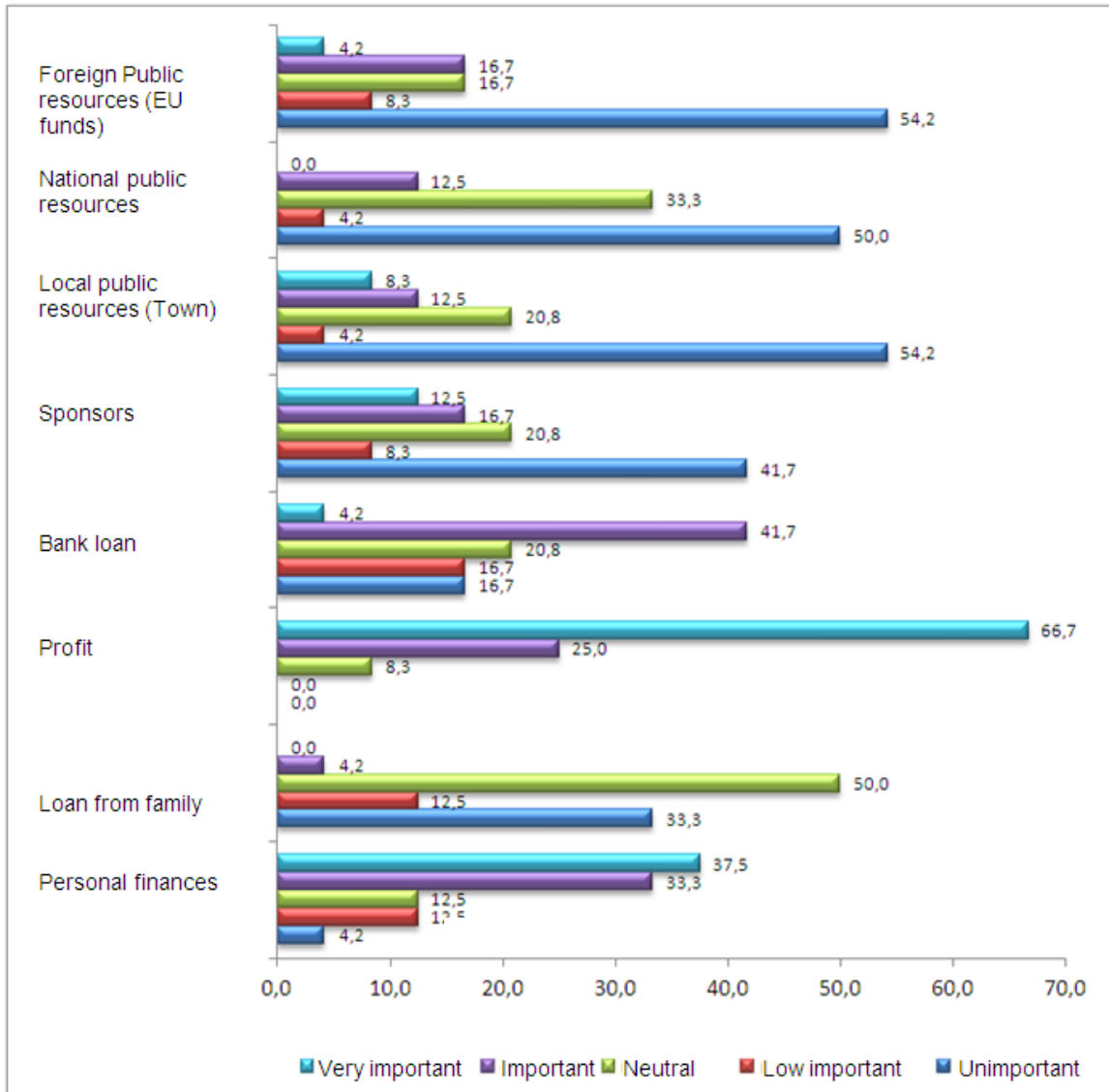


Fig. 3 The importance of the financial resources for companies [%]

Source: Authors according to research conclusions

Two respondents used (in their responses to the question of How they finance their business) verbal phrase "miracle" and "honestly", which seems to express the characteristics of its business strategy in the field of the financing of business activities. The research results in relation to the expression of the respondents to **the importance of financial resources for companies** are showed in Figure 3. Companies that participated in the research mostly did not use public domestic or foreign public resources to finance business (Figure 4).

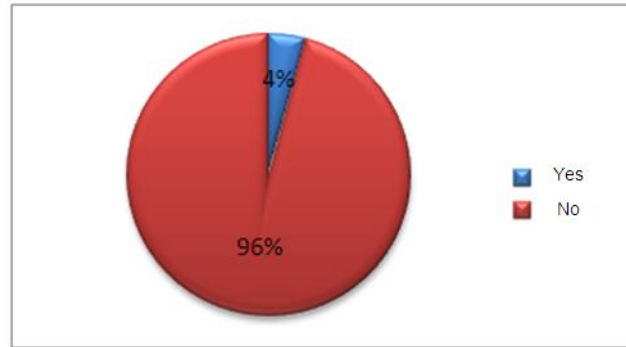


Fig. 4 Use of public support from advertising agencies

Source: Authors according to research conclusions

6.3 Institutional environment and support in the industry

The rate of use of existing support in the industry

Respondents generally indicated that they did not need any support in the early days, or in the development of their business. Only one respondent used the "urban grants" and one a state subsidy for the creation of employment.

Institutional environment of the industry in the region - associations, universities, networks, supporting institutions, cluster initiatives

The absolute majority of respondents who were contacted in this research is not associated in any association, supporting institutions or cluster initiatives. One respondent stated his/her membership in IPPAG Global Promotion, while this international institution provides a complete service and global solution for advertising products. Considering supporting institutions there occurred even two associations in responses: Young Entrepreneurs' Association of Slovakia and Science and Technology Park Žilina.

Most of the major advertising agencies operating in the Žilina region declares the need to create a full-service agency, which would associate experts from various areas of marketing focus (e.g. advertising studio GRYF Ltd. Žilina, ARTON Ltd. Žilina, Lajka Ltd. Strečno, ROSS Ltd. Rajec and others), i.e. would welcome the emergence and support for the creation of networks within the microenvironment of companies. The activity of universities in terms of their positive action on the business success of advertising agencies has not been reported by the respondents.

6.4 The results of solutions in the form of recommendation proposals for national, regional and local policy

In connection with the activities of advertising agencies **the State holds legislative function** in which these creative industries would help:

- improve conditions for business, for example, reducing the tax burden in the industry, positive influencing financing options for small businesses, specific financial subsidies, simplifying public procurement system;
- abandon the lowest price in tenders;
- encourage companies to quality (not to save at any cost);
- concrete support for the employment in creative industry in question;
- legislative stipulation of paperwork simplification through the use of on-line services, e-government;

- support the law enforcement in the field of intellectual property protection;
- assumption of state guarantees for loans requested by advertising agencies;
- funding for free on-line marketing courses for students and people who are interested in this issue – promoting the attractiveness of advertising agencies;
- support the image creation of these companies by raising awareness of the work of advertising agencies;
- make clear and intensive state support to create market and new jobs.

Recommendations for **regional policy** (HTU) affected in the answers of respondents in particularly:

- visibility of advertising agencies in the Žilina region;
- preference for local suppliers to ensure the products of advertising agencies in the Žilina region;
- support the influx of new companies to the region, which will result in new orders for the creative industry;
- improving the state of roads in the Žilina region, which are characterized by a catastrophic state (high intensity of mobility of advertising companies to achieve their business).

There were also suggestions in the replies of the respondents that support the abolition of higher territorial units, because their action is meaningless.

Recommendations for **local policy** - policy of towns and villages:

- reduction in fees and local taxes and support of the implementation of the Institute of tax breaks for advertising agencies;
- allocate higher financial amounts – spending villages / towns for their promotion and visibility given the favourable conditions for recreation, relaxation, sports and rich history in the region;
- not to pressure on price reduction for the products / services of advertising agencies at the expense of profits advertising agency can then invest in the development of its business.

7 Conclusions

In relation to the institutional environment and policy in advertising agencies can be concluded that the institutional support and supportive infrastructure, if worked well, would be perceived very positively as a part of the advertising agencies. However, the representatives of the creative industry in the Žilina region currently assign the greatest importance to their partnership with their customers the advertising agencies create and fill the ad space for. This partnership is the basis for the creation of creative works that will significantly support the customer's business and create good operating relations between customer and advertising agency.

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