



## **Role of Government in Protecting and promoting Intellectual Property**

The All-Party Intellectual Property Group announced on 14 March 2012 that it was to conduct an inquiry into the role of Government in protecting and promoting intellectual property. The Group decided to look at this issue because responsibility for development and enforcement of IP policy sits across many Government departments and agencies. There have been numerous reviews into IP policy in the last ten years but the decision-making framework within which policy is developed and agreed had not been sufficiently examined.

The IP Federation responded with Policy Paper No. 9/12, pointing out we had contributed to the numerous reviews into IP policy and agreeing that the decision-making framework within which policy is developed and agreed has not been sufficiently examined. In summary, the IP Federation indicated it is in favour of action in the following three key areas:

- recognition of the policy expertise of the IPO and making full use of this;
- better coordination of IP policy across Government; and
- making the UK IP policy voice heard, especially in Europe.

Certain aspects of the current system work well, but there is much scope for improvement.

### ***Objectives of IP policy***

In our opinion, the objective of UK IP policy should be to promote innovation and creativity and thereby promote economic growth and consumer welfare in the UK, EU and elsewhere. Key to ensuring achievement of this objective is the grant of high quality patents and other intellectual property rights which can be enforced in fair, balanced judgments. It should promote this both in the UK and abroad. Furthermore, the contribution of IP to economic well-being, jobs and growth should be recognised and encouraged; it should both promote and reward innovation. The Government should not be frightened actively to defend and promote the role of robust IP protection as ultimately benefiting the consumer and society as a whole.

The Government should be careful to ensure IP policy serves all sectors of the economy. Sometimes it appears that the profile of digital media and the creative industries (the 'creative sector') drive the thinking in this area. Whilst these are very important sectors, we must not push the technological industries (the 'innovative sector') into a position where they are considered secondary. Significantly in the ICT (information and communications technology) and digital technology arena the two sectors are converging, which brings this different policy prioritisation into sharper focus. To support the technology industries, Government policy should facilitate the generation and exploitation of IP by provision of efficient legal and administrative frameworks to ensure high quality robust patents, and other intellectual property rights should be granted and enforced in sound judgments here and abroad.

### ***Development of IP policy across Government***

The development of IP policy across Government is not sufficiently well co-ordinated. By way of example, pharmaceutical issues can be split between the Intellectual Property Office (IPO), BIS, DFID and the Department for Environment, Food and Rural Affairs,

The IP Federation is the operating name of the Trade Marks, Patents and Designs Federation  
Registered Office 5th floor, 63-66 Hatton Garden, London EC1N 8LE

Email: [admin@ipfederation.com](mailto:admin@ipfederation.com) | Tel: 020 72423923 | Fax: 020 72423924 | Web: [www.ipfederation.com](http://www.ipfederation.com)

Limited by guarantee Registered company no: 166772

whereas in information and communications technology there is a similar split between the IPO, BIS and the Department for Culture Media and Sport. There is a lack of consistency across Government departments and frequent changes of personnel, leading to a lack of expertise and continuity in policy making.

How Government departments deal with IP in their own transactions should support general Government IP policy, i.e. recognise that it is for the benefit of the general economy and competition for private industry to develop and exploit IP including that generated in supplying products and services to Government. Often Government contracts seek to gather together ownership of such IP to, in effect, compete with those suppliers and freely transfer the IP generated to competitors. In such circumstances the long term objectives of encouraging an IP generating culture amongst private industry is overlooked for a short term instant gain for an individual department. Where light has been shed on this, the results have not always been what we would have hoped. Thus, in the Open Standards Procurement Policy, the Cabinet Office took a unilateral initiative evidently with little or no input from the IPO, which employs Government policy experts. Initially this went ahead without a deep understanding of the business implications and potential unintended consequences for industry.

It would help deliver better IP policy outcomes if the IPO was recognised in Government as generally having the policy lead on IP matters, or at least if the IPO was consulted and fully engaged in all IP-related policy issues.

In parallel the IPO should continue to engage proactively with IP stakeholders and experts inside Government and those stakeholders should provide their expertise when appropriate. There have been concerns expressed in many EU countries that this has not happened adequately in developing policy on the recent EU patent reform proposals. These proposals involve significant issues concerning litigation (an area which is not within the core expertise of patent offices including the IPO); unfortunately, as far as the UK is concerned, the Ministry of Justice which has this expertise appears reluctant to participate.

The minister and staff responsible for IP need to either have the relevant business background or access to advisers with such background. It appears that successive governments have failed to appreciate that IP is a very complicated portfolio, and anyone who is inexperienced in the field is potentially going to struggle with it without the necessary support.

In parallel the IPO should continue to engage proactively with IP stakeholders and experts outside Government and in this regard it is hoped that the minister responsible for IP will have more visibility and influence in future.

#### ***Updating the IP framework in the light of the digital environment***

The tendency for IP policy to concentrate on the "digital environment" is itself a potential flaw in seeking to assess how successful the Government is in updating the IP framework to deal with economic and societal developments. In many other areas, such as the issue of the experimental use exception affecting the pharmaceutical and biotech industries, proposals to update the IP framework are still awaited, despite the issue being raised in the Gowers Review nearly 6 years ago, and again in the Hargreaves Review.

Attempts to update the IP framework have, in the past, been too unfocused, with little real outcome. Although work is now taking place to implement the recommendations made by Professor Ian Hargreaves following his review of IP and growth, it is too early to say how successful these have been.

We appreciate that it is necessary to carry out follow-up consultations at the stage of introducing detailed amendments to the law and practice and we would not like to see this halted but care is needed to ensure that the impression left is not that of consultations followed by post-consultations and then further consultations, with very little action resulting from any of them.

The Government's use of consultation meetings has, in isolated examples, the appearance of being more about checking boxes, rather than a tool for helping inform and bring change

about when it is needed. What would be helpful is if the Government identified and published some identifiable target metrics for its proposals so after a period of time real measurements can be made of how successful its implementation of proposals have been.

***Effectiveness of the Intellectual Property Office***

The main priority of the IPO should be to grant high quality robust patents and other intellectual property rights in an efficient manner, and it is very effective at this.

Almost as importantly, however, its priority should be to influence IP policy, both nationally and internationally. In particular, it should carry users' concerns into the EU and European Patent Office and beyond.

Although there is a role for academics and economists to play in advising on changes in IP policy and practice, this role should not be overstated. Aiming to have a better theoretical evidence base for IP policy making is important but it must not mask the fact that IP has a significant impact on businesses in the real-world. The IPO is to be applauded for setting up research expert advisory committees for each of the four primary IP areas (patents, copyright, designs, and trade marks) where economic research is being commissioned by the IPO and for including IP practitioners and industry representatives on each of these committees.

John Alty, Chief Executive Officer and Comptroller General of the IPO, has been keen personally to reach out and engage with stakeholders, and is to be congratulated for this.

***UK IP policy and economic growth at an international level***

UK industry needs the UK Government to strongly represent the interests and concerns of UK stakeholders both on the EU stage and internationally. The EU Patent Reform proposals are an example where the UK Government has been obliged to participate in policy negotiations which seem to have been driven more by European political aspirations than genuine stakeholder advantage and, at least until recently, the UK's influence appears to have been less than would have been desirable.

The UK should actively seek an understanding by other member governments that the improvement in efficiency of the European IP institutions such as the European Patent Office (EPO) is essential to economic growth and that priority should be given to making these institutions work better for the European economy before attempting to introduce a complex pan-European litigation system to consider the infringement and validity of the rights.

***IP framework remote from IP policy development***

Consideration should be given to establishing an office within government to formulate and implement IP policy throughout Government departments. If this is not an extension of the role of the IPO, then this would ideally be a non-political post, so that a long-term apolitical view of IP can be taken. An alternative approach might be the nomination of an IP liaison role in each relevant Department to liaise both with other Departments and with the IPO on IP issues as they arose within the Department's area of competence.

David England, 6 December 2012