

THE TEN RECOMMENDATIONS FROM THE HARGREAVES IP REVIEW

Recommendations

- 1. Evidence.** Government should ensure that development of the IP System is driven as far as possible by objective evidence. Policy should balance measurable economic objectives against social goals and potential benefits for rights holders against impacts on consumers and other interests. These concerns will be of particular importance in assessing future claims to extend rights or in determining desirable limits to rights.
- 2. International priorities.** The UK should resolutely pursue its international interests in IP, particularly with respect to emerging economies such as China and India, based upon positions grounded in economic evidence. It should attach the highest immediate priority to achieving a unified EU patent court and EU patent system, which promises significant economic benefits to UK business. The UK should work to make the Patent Cooperation Treaty a more effective vehicle for international processing of patent applications.

3. Copyright licensing.

- In order to boost UK firms' access to transparent, contestable and global digital markets, the UK should establish a cross sectoral Digital Copyright Exchange. Government should appoint a senior figure to oversee its design and implementation by the end of 2012. A range of incentives and disincentives will be needed to encourage rights holders and others to take part. Governance should reflect the interests of participants, working to an agreed code of practice.
- The UK should support moves by the European Commission to establish a framework for cross border copyright licensing, with clear benefits to the UK as a major exporter of copyright works. Collecting societies should be required by law to adopt codes of practice, approved by the IPO and the UK competition authorities, to ensure that they operate in a way that is consistent with the further development of efficient, open markets.

4. Orphan works. The Government should legislate to enable licensing of orphan works. This should establish extended collective licensing for mass licensing of orphan works, and a clearance procedure for use of individual works. In both cases, a work should only be treated as an orphan if it cannot be found by search of the databases involved in the proposed Digital Copyright Exchange.

5. Limits to copyright. Government should firmly resist over-regulation of activities which do not prejudice the central objective of copyright, namely the provision of incentives to creators. Government should deliver copyright exceptions at national level to realise all the opportunities within the EU framework, including format shifting, parody, non-commercial research, and library archiving. The UK should also promote at EU level an exception to support text and data analytics. The UK should give a lead at EU level to develop a further copyright exception designed to build into the EU framework adaptability to new technologies. This would be designed to allow uses enabled by technology of works in ways which do not directly trade on the underlying creative and expressive purpose of the work. The Government should also legislate to ensure that these and other copyright exceptions are protected from override by contract.

6. Patent thickets and other obstructions to innovation. In order to limit the effects of these barriers to innovation, the Government should:

- take a leading role in promoting international efforts to cut backlogs and manage the boom in patent applications by further extending "work sharing" with patent offices in other countries;
- work to ensure patents are not extended into sectors, such as non-technical computer programs and business methods, which they do not currently cover, without clear evidence of benefit;
- investigate ways of limiting adverse consequences of patent thickets, including by working with international partners to establish a patent fee structure set by reference to innovation and growth goals rather than solely by reference to patent office running costs. The structure of patent

renewal fees might be adjusted to encourage patentees to assess more carefully the value of maintaining lower value patents, so reducing the density of patent thickets.

7. The design industry. The role of IP in supporting this important branch of the creative economy has been neglected. In the next 12 months, the IPO should conduct an evidence based assessment of the relationship between design rights and innovation, with a view to establishing a firmer basis for evaluating policy at the UK and European level. The assessment should include exploration with design interests of whether access to the proposed Digital Copyright Exchange would help creators protect and market their designs and help users better achieve legally compliant access to designs.

8. Enforcement of IP rights. The Government should pursue an integrated approach based upon enforcement, education and, crucially, measures to strengthen and grow legitimate markets in copyright and other IP protected fields. When the enforcement regime set out in the DEA becomes operational next year its impact should be carefully monitored and compared with experience in other countries, in order to provide the insight needed to adjust enforcement mechanisms as market conditions evolve. This is urgent and Ofcom should not wait until then to establish its benchmarks and begin building data on trends. In order to support rights holders in enforcing their rights the Government should introduce a small claims track for low monetary value IP claims in the Patents County Court.

9. Small firm access to IP advice. The IPO should draw up plans to improve accessibility of the IP system to smaller companies who will benefit from it. This should involve access to lower cost providers of integrated IP legal and commercial advice.

10. An IP system responsive to change. The IPO should be given the necessary powers and mandate in law to ensure that it focuses on its central task of ensuring that the UK's IP system promotes innovation and growth through efficient, contestable markets. It should be empowered to issue statutory opinions where these will help clarify copyright law. As an element of improved transparency and adaptability, Government should ensure that by the end of 2013, the IPO publishes an assessment of the impact of those measures advocated in this review which have been accepted by Government.