



THE INTELLECTUAL PROPERTY INSTITUTE

Response to

The Gowers Review of Intellectual Property

April 2006

Foreword

The Intellectual Property Institute welcomes the move by government to conduct an independent review of the UK's intellectual property framework. The Institute is an independent body, supported by industry, the legal profession, government and charitable donations. The Institute conducts research and disseminates information and expertise in all fields of IP law and practice, with a particular emphasis on understanding the law's economic and social effects. Our research agenda is developed using the advice available to us from our Board and Council, which are comprised of senior figures from diverse backgrounds (Annex 1).

Because we are not representative of any particular interest group we have chosen not to address each of the questions laid out in the call for evidence (it is more appropriate that we allow our member individuals and organisations to do that independently). Instead, we wish to submit this brief, general statement to emphasise some important points that will impact across the whole review, and in any resulting initiatives.

Summary of Main Points

The review's terms of reference seem to be rather UK-centric in an area that must be examined globally. Few users of IP do so on a purely national basis. To have any impact the review must take into account developments at the EU and international levels.

We welcome the opening *caveat* that, although the review is necessary and desirable, it should be noted that the IP system generally works well. We agree, and would like to have seen more emphasis on the positive effects of IP within the scope of the review, rather than simply identifying where the problems lie. This is useful, of course, but the review should also offer an opportunity to examine, and better understand, the relevance of IP law to our social and economic welfare.

We were very grateful for the invitation to attend the seminar held at the DTI on 2^d March this year, as part of the review process. During the presentations and the questions that followed, there was a clear and constant call for greater knowledge and understanding of how the IP system was actually working, based on sound, impartial, empirical evidence. **We have relied for too long upon the rhetorical arguments of interested groups in areas of law and regulation that are of crucial importance to our future welfare.** It is this point that we wish to stress most highly, and below we offer some examples (one copyright, one patents, one trade marks) of where such research would be of benefit in addressing the specific issues raised in the review.

Current Term of Protection on Sound Recordings and Performers' Rights. The review poses a number of questions on copyright term and its impact on industry and consumers. The questions are good ones, but the answers will depend upon independent, well-found research. This is an area where new technology and changing business models complicate the assessment of the impact of the law itself, so any research will have to be interdisciplinary. The same can be said for the issues raised under *Copyright Exceptions – Fair Use / Fair Dealing*.

Pharmaceutical Supplementary Protection Certificates. The Institute has already sought to instigate research to elucidate the current, and probable future, situation regarding SPCs. The pharmaceutical industry, because of its vitally important role, elicits strong interest from pressure groups and the media rightly concerned about human health. This issue needs to be addressed through authoritative research so that any need (and there may well be a need) for a change to the current system can be seen to be justified.

Parallel Imports / International Exhaustion. This issue demonstrates perfectly the acute need for research into how the IP system affects society and economies. So ignorant are we of the likely effects of either allowing or disallowing international exhaustion on a global basis, that the TRIPs Agreement (Article 6) specifically states that it will not address it! This is an unacceptable state affairs, in our view, and more must be done to bring together experts in economics, business, competition and IP law so that we have a regime that balances fairly the needs of producer and consumer. Indeed, the whole area of IP and competition law and their seemingly contradictory starting points should be more rigorously investigated in the policy arena.

The IP Institute believes that this review is of great significance. We firmly believe that the future economic health and prosperity of the UK depends upon an effective, equitable system of global IP rights and enforcement measures. The UK is, arguably, one of the most (perhaps *the* most) IP-dependent *and* IP-rich countries in the world. We also benefit from having some of the world's leading economic and legal scholars. It is our view that the UK should take a leading role, on a global stage, to develop and influence IP systems in an informed and authoritative manner. We see this review as an important first step.

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Annex 1

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