

Universities UK response to the Gowers Review of Intellectual Property

Universities UK welcome the opportunity to provide input to the Gowers Review of Intellectual property, particularly given the emphasis on innovation in the 2006 budget and the science and innovation framework. The questions within the review are in cases very specific, and this response therefore addresses only those questions that can be answered on behalf of the HE sector as a whole.

How IP is awarded

Are there barriers to obtaining IP rights due to system complexity?

1. The complexity involved in obtaining IP rights can act as a barrier to HEIs. The various time limits, deadlines and formalities that need to be completed make this a difficult system. The framework relating to copyright, designs, and patents means that a thorough understanding of a complex legal area is needed to navigate it. The timing of examination is unpredictable within the process of getting a patent. The process would benefit from simplification – a predictable, accessible and more condensed form of application. Currently the system is accessible to those with the resource and know-how to satisfy the requirements, but acts as a barrier to others. A process for patent application within which patents were recognised across Europe (if not the world) would also simplify things and reduce costs. Removal of these barriers would encourage investment in university research and start-up companies, and stimulate economic growth.

How easy is it to find out about obtaining IP rights?

2. The sector is aware of the need for IP protection, although there is scope for training and a raising of awareness on the value of IPR, and the importance of international protection. The Government website, www.intellectual-property.gov.uk is helpful for business and investors, and the UK Patent Office provides a wide range of useful advice. However it would be beneficial to raise awareness to business of the importance of IP, and of the information and advice available. Companies commercial advantage depends on their proper protection of their goods and services, and effective IP management is therefore a key factor in a successful knowledge economy.
3. Global IP protection is more important now than ever before, especially for small companies which can more easily access markets worldwide by electronic means. IP systems are well established in Europe, USA, Japan and a number of other key markets; however India and China are significant growth economies that still have to develop their IP systems and procedures. The more UK Government can put pressure on these countries to improve their approach in this field the less likely we are to lose control of IP important to the UK economy.

Are there barriers to obtaining IP rights on the grounds of cost?

4. The cost of getting (and potentially enforcing) a patent can be problematic for universities. Universities would be likely to protect a greater proportion of their outputs if overall patent costs were reduced, although it is notable that it is the fees charged by patent/trade mark agents (rather than Patent Office official fees), which are significant. Costs are also prohibitive at the international phase with translation costs, and the need to file divisional applications or continuations adds to this burden. Cost is also the main barrier to patenting and litigation for small businesses and individuals. If the UK PLC is to become more competitive, these costs must be significantly reduced. Incentives within the fees structure are needed for those who have limited expertise and resource available to them in this area in order to encourage application.

Are there specific barriers to obtaining IP rights in your sector?

5. The major specific barrier to obtaining IP rights for the higher education sector is long-term cost. It is also a factor that the significant costs are not evenly split over the life of a patent (20 years), most being due in the early stages, whilst any financial returns to the institution are likely to come towards the end of this period. These costs may act as a barrier to successful commercialisation, for the HE sector and for business, particularly SMEs.

How IP is used

Types of IP used by HEIs

6. The higher education sector encompasses a range of diverse institutions which use IP in different ways. Patents, copyrights and registered designs are used in licence agreements and company formation, trademarks are used to protect each university name and reputation, copyright material is used in teaching and in research etc. In respect of e-learning copyright is of key importance. Each institution will have different focuses and will utilise IP in ways that support their diverse mission.

How well does the UK IP system promote innovation?

7. The UK IP system does not directly promote innovation but rather seeks to protect ideas once they have emerged. The university sector does however make good use of Government schemes which encourage innovation such as the Higher Education Innovation Fund (HEIF) and Knowledge Transfer Partnerships (KTPs). The sector also benefits from schemes encouraging business to engage, such as R&D tax credits and support to businesses investing in new and emerging technologies (through the DTI Technology Strategy Board). Government could do more to incentivise business (particularly SMEs) to engage in university R & D.

IP data and measuring innovation

8. Outputs such as numbers of patents, licences and spin-out companies are now used as metrics for the allocation of third stream funding, and it is important that there is recognition of the constraints to this type of activity in institutions, and the limitations to this type of data. Universities UK is currently working with an expert group to

develop data that are both robust and transparent, effectively to measure knowledge transfer activity in institutions. We would be happy to provide further details of this work to this review.

How IP is licensed and exchanged

Exchange of IP

9. Some institutions use others' IP for research purposes and some do not but many institutions retain clauses in agreements allowing them use of IP for teaching and research purposes, although it would depend on the terms offered. Access to existing IP is often addressed in collaboration or consortium agreements where background IP can be used for project purposes. Licences are usually only developed when one party wishes to use the others IP commercially. In EU-funded research all background IP is allowed for project purposes (in a collaborative project) unless otherwise stated.

10. The recent introduction of full economic costing (FEC) allows universities to assess the true cost of carrying out research in the academic environment. Where industrial sponsors do not pay FEC, the default position should be that the university should own the IP.

Barriers to licensing and exchange of IP

11. A barrier to HEIs in licensing through patents, copyright and trademarks is that industry requires increasingly more mature IP developments, which requires the HEI to assume greater risk in terms of the patent and development costs before securing a financial return. Internationally the main barrier to the exchange of IP is the need for institutions to minimise costs and this may mean excluding some countries from patent protection.

How IP is challenged and enforced

12. The problem for institutions in enforcing IP rights under the current system, are both the ability/experience and resource needed to prove rights/enforce patents/licences, and the very high cost. The cost of litigation in the UK is prohibitive and enforcement would often simply not be viable. IP litigation insurance can be used but it is expensive and it is unlikely that an institution would take this route. Legal costs and translation fees are even more of a constraint to institutions on an international basis. Universities would tend to try to resolve any issues through negotiation.