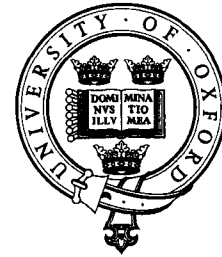


# University of Oxford

University Offices, Wellington Square, Oxford OX1 2JD

*From the Director of Research Services*



Gowers Review of Intellectual Property  
Zone 4/E1  
HM Treasury  
1, Horse Guards Road  
London  
SW1A 2HQ

Ref. IPC/1/1

21 April 2006

Dear Sir or Madam,

## **The Gowers Review of Intellectual Property: call for evidence**

The University of Oxford welcomes the opportunity to provide input to the Gowers Review of Intellectual Property through its Intellectual Property Advisory Group (IPAG), which is the University's principal forum for the development of policy around the management and exploitation of intellectual property. A separate response on behalf of the Oxford University Libraries Service (OULS) is also enclosed as an annex to this letter. First, a few general points:

Innovation is critical to the UK economy, and universities are critical to UK innovation, not least through their collaborative links with business. Universities often partner with industry to carry out research, and are encouraged by government to do so. However, the law does not appear to encourage this phenomenon. For example, joint university/industry research is allowed under the patent law under the experiment exemption, whilst under the copyright law only research "for non-commercial purposes" is permitted. Research crosses copyright/patent lines, so IP policy is incoherent here. We understand that this problem might be caused partly by a EU directive, but if this is the case it appears to be a misguided directive, and the UK should be working towards eliminating this. The point has been often recognised, not least by a Royal Society report in 2003<sup>1</sup>.

More generally, IP laws should be included in a single clear and simple code, the driving purpose of which would be to encourage innovation, creativity and diffusion throughout the economy. In our view this is currently not the position. The relevant laws are unclear, difficult to understand, and often work at cross-purposes (as the "non-commercial" research example above illustrates). It should be a key element of IP reform to produce a single integrated IP technology code, encompassing all areas of IP, that would match the UK policy drive

<sup>1</sup> Keeping science open: the effects of intellectual property policy on the conduct of science, 14 Apr 2003  
<http://www.royalsoc.ac.uk/displaypagedoc.asp?id=11403>

towards encouraging and harnessing greater innovation and economy throughout the nation.

In this letter, we offer a mix of comments and a few pertinent examples of supporting evidence which we hope will be of help.

In broad terms, we support the views that:

1. *The legislative framework for intellectual property rights should enable, and not restrict, research and teaching within universities.*
2. *Synergy with the needs of larger industrial organisations could be expected if the problems posed to technology transfer companies and SMEs, through high costs involved in protecting IP, were addressed.*

The cost of getting a patent is an ongoing problem for universities. Most are unlikely to have a substantial budget for IP protection, but are a potential source of innovations. Consequently, a fast track, cheaper, and perhaps more condensed form of application for rights registration, could be helpful to facilitate the operation of the above principles, particularly if the nature of the right(s) sought took account of the issues faced during the earlier stages of R&D. This would encourage investment in university-led research and start-up companies, provide clear and measurable benefits to industrial investors, and stimulate economic growth.

3. *IP law should be rationalized.*

An example might serve to illustrate this point: if someone commissions someone else to produce a design, the design right is automatically the property of the person who commissioned it, whereas if someone commissions someone else to create a copyright work, it is theirs, unless otherwise agreed. Similar anomalies exist in relation to the treatment of the law on trade secrets and confidential information. It is also confusing to have four kinds of design right (two UK and two European).

4. *Other obstacles faced in obtaining IP rights*

A few further thoughts on barriers to the protection of IP: first, the timing of examination unpredictable in the process for obtaining a patent. Second, the position with regard to joint intellectual property is complicated by the different treatment of joint copyright and joint patents. Likewise, the situation with regard to the transitional arrangements under the three Copyright Acts is arcane, and it is often difficult to work out whether something is still in copyright, and how you trace the copyright owner. There is a case for simplification here, and it would be helpful to streamline the law in this regard. Finally, is it worth considering the US solution to the problem of orphan works?

5. *Compulsory licensing of patents*

Whilst simplification of the law governing who owns rights, and how to obtain them, is to be welcomed, a system for the compulsory licensing of patents could

also usefully be developed so as to make it more difficult for patent owners to lock up the technology (although the removal of commercial research from the fair dealing exception is acknowledged). Negotiations continue between the university sector and the Copyright Licensing Agency to try and cover some of the downside here through licensing arrangements, but a statutory definition of the research exemption that helped address the problems would be most welcome. It would also be useful if the definition of 'Public Authority' that is in the public procurement legislation were to apply to universities for Freedom of Information purposes, owing to the cost/benefit profile we are experiencing with respect to the FoI Act.

We hope that the brief comments submitted above will be of assistance to the Review Team.

Yours faithfully,

A handwritten signature in black ink, appearing to read "Catherine Quinn". The signature is fluid and cursive, with a long horizontal flourish at the end.

Catherine Quinn

CWQ/CLP1