

## **Gower Review of Intellectual Property**

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I speak not just as an academic but as a business adviser/counsellor and someone who works closely with early stage businesses especially, but not exclusively, those started by young people and university researchers. In my experience

1h There are specific barriers to obtaining IP rights for small businesses and individuals

2e IP rights do affect investment decisions

2f The UK IP system does not promote innovation

4a There are problems with enforcing the main forms of IP protection

4b Cost is a barrier to challenging infringement and enforcing IP

4d Litigation insurance is too expensive

4f There are barriers to challenging and enforcing IP rights for small businesses and individuals.

The specific barriers to obtaining IP rights for small businesses and individuals have to do with the costs involved and the complexity of the process. Often universities will have specialist IP units or a network of IP protection lawyers who will be able to advise, but the costs are frequently prohibitive, especially for students. They can be “put off” by the complexity and costs. Frequently my advice to them, therefore, is to ignore IP protection, and to move quickly both to bring the idea to market and to introduce the next new idea. I recommend this not just to bring the idea to fruition, but because not only is it difficult for the new venture and individual inventors to afford protection, but disclosure publicises the invention, and if the protection is infringed, the legal procedures are so complex, protracted and costly that prosecution is not possible without damaging the business. Hence, the taking out of “protection” is a waste of scarce resources – both time and money.

However, this causes a further problem, as without IP protection, investors, particularly Corporate Venture Capitalists, often will not invest in a new venture. They see it as a tangible asset.

The situation with respect to Patents and SMEs and individual inventors is well documented in the IPAC (Intellectual Property Advisory Committee) study by Haberman and Hill (2003) entitled “Patent Enforcement for SMEs and Lone Inventors-a System Failure”.

If there is a problem with Patenting, the problems with design rights, for example, are even more problematic. I have seen students having their designs “stolen” and am aware of a student whose design rights were infringed by a large successful company.

As she was studying the law, she knew her rights and approached the company about it. Also, as her university had an equity share in her business, she had access to the financial and legal resources of the university. While the university backed her initially, I understand that the subsequent legal advice has been to drop her case and move on to new ideas and new products.

Personally, I do not believe that the UK IP system promotes innovation at all. At best it is neutral. At worst it discourages as people believe their ideas will only be protected if they can afford to take out expensive IP protection, which they cannot afford. There is much ignorance about IP protection, which the Patent Office is addressing, but there needs to be a concerted effort to raise awareness.

Also, there is an urgent need for a much simpler and less costly solution. Possibly this may take the form of a Legal Aid-type system or low-cost insurance.

An alternative might be for large commercial organisations to work with UK SMEs and lone inventors to help bring new ideas to market. However, there is general mistrust of such arrangements, presumably resulting from the traditional adversarial relationships and predatory nature of large corporations. Recently, in partnership with a regional legal firm, I organised a one-day conference on Corporate venturing, targeted at SMEs in the South East of England. Only 9 firms expressed an interest.

At the end of the day, a system that was intended to bring inventions and new ideas into the public domain, cannot be an appropriate system for protecting ideas and inventions, and ensuring that the inventors are rewarded for their creativity and innovation. If we are to stimulate creativity and innovation and encourage ordinary people and small businesses to participate, we will need to ensure that the inventors are rewarded. To do this will mean, in all probability, a system of Intellectual Property Protection that is much more effective than the present system.