

COVER SHEET FOR RESPONSES

Contact details of respondent	
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Please indicate below which issues are covered by your response. Not all issues will be relevant to all respondents – please feel free to skip questions that are not relevant to you.

General Questions covered:	
How IP is awarded	f
How IP is used	a, d, f
How IP is licensed and exchanged	a, g, k
How IP is challenged and enforced	b, g

Specific Issues covered:	
Current term of protection on sound recordings and performers' rights	a, e
Copyright exceptions – fair use and fair dealing	d, f, g
Copyright – digital rights management	a
Copyright – orphan works	
Copyright – licensing of public performances	
Copyright – designated archive status	
Patents – utility patents	
Pharmaceutical Supplementary Protection Certificates (SPCs)	
Trade Marks – international issues	
Designs – registered designs and unregistered design rights	
Legal sanctions on IP infringement	
Parallel Imports / International Exhaustion	
Coherence between competition policy and IP policy	

Have you raised any other issues in your response?

(Y) N

Details of accompanying documents (Please continue on additional sheet if necessary)

Please **TICK BOX** if you **DO NOT** want your response posted on the Gowers Review website.

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Dear Sir or Madam,

Gower Review of 'Intellectual Property'

I am pleased to provide you with my response to the above document, obtained from the HM Treasury website. May I first outline my interests and background.

I fulfill two roles in relation to computing and software, first as a secondary school teacher of Computing Studies and secondly as the director and owner of a small software firm (carrying out web-design and programming) based 100% on principles of Free Software.

My primary concern in responding to the Gower Review document is to highlight the importance of the freedoms of the private citizen or consumer. The freedoms I refer to are the central freedom to share concepts and technological skills and co-operate with other humans to further our social and technological developments through the future.

I have responded to the questions asked in the Gower Review document and have indicated the section title or question number just prior to each response paragraph. I have taken the liberty of commenting on the Introduction in your document as I found many useful stimuli there. The General and Specific question responses follow on from that. Predominantly my responses are made in my capacity as Director of Ascent Software Ltd, however in some cases I have reflected on my experiences in teaching and indicated this in the text.

I will be delighted to communicate further and would be pleased to hear from you or your representatives.

Yours sincerely,

Chris McGinlay
Director,
Ascent Software Ltd.

'Introduction' section, paragraph 2:

“Finally it must ensure that Intellectual Property owners can enforce their rights through both technical and legal means”

I query the use of the term 'Intellectual Property' as a confusing mixture of multiple disparate concepts of copyright, patent and trademark. These are separate pieces of legislation and I find it unhelpful to lump them together in this way.

Furthermore, at an ethical level I am concerned that intellectual concepts can be the property of an individual or corporate entity to the diminution of the rights of 'other citizens'. I hold that current and future technological developments such as Fast Fourier Transform algorithms and the ability to power tiny computing devices from human movement are as central to society's future development as the concept of decimal numbers and the development of the wheel. Ethically I feel very strongly that patent and copyright law should protect the individual's right and the right of **all** corporate entities to access new developments. This should form more of a central theme in the purpose of patent and copyright law: **to protect the right of humans to share and co-operate in developing our future society.**

'Introduction' section, paragraph 15:

“...with the increasing pace of technological change, in particular the spread of digital technology and growing use of the Internet, the review will seek to provide a solid foundation for the Government's long term strategic vision for IP policy, based on sound economic principles.”

I agree wholeheartedly with the above goal. I would add that **sound economic principles** are not the only issue at stake, due to the increasing pace of technological change that the Gower Review acknowledges.

As a teacher, I struggle to get pupils to grasp the 3000-fold increase in personal computer power in the 20 years since my own adolescence. All predictions are for this trend to continue. This being the case, certainly within a 50 – 60 year timescale personal computer power will begin to rival the human brain in certain areas. Also the recent reports in the media from March 2006 on the integration of Mammalian neurons with silicon based processing units (see link below) and the report on the University of Texas' alcohol 'breathing' synthetic muscle fibres with 100 times the strength of human muscle fibre point to new interoperations of computing devices and people not seen before. Therefore as technological reaches further into all aspects of human life it is essential that legislation protects and frames the **essential right of citizens to full access and control over these technologies.**

Brain neuron and PCB integration at Max Planck Institute:

<http://istresults.cordis.europa.eu.int/index.cfm/section/news/tpl/article/BrowsingType/Features/ID/81180>

BBC Bionic Muscle development in Texas:

<http://news.bbc.co.uk/2/hi/health/4817848.stm>

Therefore the review needs to consider legal protections for citizens access and control based on sound ethical principles of freedom, openness and co-operation in addition to economic principles.

An excellent definition of these essential freedoms is provided in the General Public Licence as published by the Free Software Foundation at:

http://www.fsf.org/licensing/licenses/index_html

General Question 1(f)

My company Ascent Software Ltd, is entirely dependant on the principles of the 'open innovation model'. However the term 'open' does not adequately reflect the actual principle in use which is really a 'Free innovation model' where the participating parties are free to redistribute and modify the generated resources and technologies and apply them to new opportunities as they see fit.

This differs from a merely 'open innovation' approach, in that here, the copyright holder is allowing the technical details to be seen but is **not necessarily conferring any right to use modify or redistribute** the innovation concerned.

Through the use of a **Free Innovation Model** and GNU General Public Licence my company seeks to build the trust of its customers and its market competitors. This has led to a lot of exchanged expertise, goodwill and business between my company and its competitors, as well as others working in related areas.

General Question 2 (a)

To be specific here, my company uses copyright to ensure that **all** resources developed and released can be freely modified redistributed to other persons or companies. The type of resources released are of a varied nature including educational materials and archaeological databases as well as some software libraries. These are licensed under either the GNU General Public License or the GNU Free Documentation License as appropriate. The terms of these licenses allow users to modify or redistribute the materials, provided that they acknowledge the original source and also provided that they extend these same License freedoms to all other recipients of the work.

Informally, these licenses provisions in combination with copyright law are termed 'copyleft' by authors using them. I and many of my colleagues in the Free Software community would find it beneficial if *copyleft* could be defined in law in a manner which protects users' rights to modify and redistribute in the manner and spirit of the GNU licenses.

General Question 2 (d)

Copyright in combination with GNU licenses form the entire backbone of my business. As an end user I benefit from the work of others and as an author of resources I make a contribution back to the community. Income is generated from web services, some programming work and computer system maintenance work. The materials which are produced and published by the company bring value in the sense of reputation which in turn encourages customers to come to the company or continue to use our services. The customer base is predominantly business to business at present. Problems in this area include the lack of a legally defined 'copyleft' concept. Copyright is well known, however most publishers use it to restrict the rights of individuals and other corporate entities. Copyleft as a distinctive legal concept would greatly simplify the educational task my company has in explaining how our published materials try to protect the rights of individuals to re-use published works. Copyleft would be a great improvement.

General Question 2 (f)

I think there are good and bad points evident here. Writing now (in this question only) in my role as a school teacher, I have been dismayed in two main ways by restrictive licensing terms in how most publishers release educational materials.

1. I have been trying to promote the use of a school website to organise and distribute teaching materials, including parents at home in the educational process. The goal is also to gather educational materials that anyone can use and contribute back to, anywhere in the world. Although we have made some progress, we are frequently limited by copyright and licenses: Most of the teaching materials that we would wish to post up as homework or revision

cannot be so posted without breaking the law. The solution so far has been to re-invent the wheel, or to pay vast sums of money, neither of which are particularly constructive.

2. Science courses. I taught science (physics) for nine years prior to taking on the computing curriculum. In this time I have seen three science courses come and go, each being purchased at great expense. Vast quantities of time from literally dozens of teachers have been invested in fleshing out each course by creating timetables and gathering apparatus, generating additional projects and homeworks. All of these courses have had strengths and weaknesses, however the restrictive licensing of the materials means that none of the good resources can really be included in the next new thing, since they cannot be modified and redistributed – we are throwing out the baby with the bath water every time. What could help here would be if educational licenses could have the spirit of the GNU co-operation and sharing in them.

General Question 3(a)

Principal difficulties in this area are ethical questions of whether software patents should give individuals or corporations a patent on concepts and ideas at all. From my business perspective I think that granting patents on concepts (equivalent to granting software patents) is a bad idea and does not protect the rights of the individual or corporations to develop, share and redistribute software. A prime example is the Blackberry computing and communications device which fell foul of a patent dispute in the US.

General Question 3(g)

Yes, my company achieves this, again through the use of the copyright mechanism in combination with GNU General Public License. The software and resources so accessed include several entire operating systems, office application suites, superior multimedia formats, editing and playback software as well as highly varied and productive desktop environments. Since we use the GNU General Public License, we therefore cross-license with many thousands of developers and companies around the globe.

General Question 3(k)

To improve the “licence of right” it would be most useful to protect the access of Free Software developers to access technologies, hardware and new software platforms and for the importance of this to be recognised in law. By 'Free Software' I mean software licenced under a GNU General Public License, or license deemed legally compatible with the GNU GPL (of which there are several).

General Question 4(b)

As mentioned in my response to 2(d), the lack of legal basis of “copyleft” has cost a lot of time in trying or needing to educate people as to the nature of Free Software and the ethics of sharing and co-operating therein.

General Question 4(g)

Risk of litigation has so far been minimal, however patent laws as they stand are a source of worry for the future of developing Free Software solutions to all the new technologies that appear. The leading role played by Free Software in many areas, especially the innovations in the desktop and in security could be threatened by denying individuals and corporations the right to share and co-operate Freely.

Specific Issue 1(a) – Sound Recordings

The current 50 year term is too long in my opinion and should be reduced. Increasing numbers of musicians are opting to sell their music under free or partly free licenses – for some examples see www.magnatune.com

Specific Issue 1(e) – Sound Recordings

As stated above I would prefer the term be reduced. However in any case of change I do not think it should be applied retrospectively. Publishers and consumers entered into bargains based on the law at the time and these should not be subject to spurious change.

Specific Issue 2(d) – Copyright – Fair Use

Current exceptions in the field of software and multimedia should be extended to allow private use by individuals, eg. for transferring purchased CDs to computer or to a Free format such as Ogg Vorbis or Flac, or even for that matter to non-free formats such as MP3.

Specific Issue 2(f) – Copyright – Fair Use

Again, I write here in 2(f) in my capacity as a schoolteacher. I have largely copied my response to *General Question 2(f)* from above.

New technologies I have been using mostly are linked to the distribution and organisation of teaching materials, but also to the modification of existing materials to suit my exact teaching purpose or the disparate needs of my pupils.

1. I have been trying to promote the use of a school website to organise and distribute teaching materials, including parents at home in the educational process. The goal is also to gather educational materials that anyone can use and contribute back to, anywhere in the world. Although we have made some progress, we are frequently limited by copyright and licenses: Most of the teaching materials that we would wish to post up as homework or revision cannot be so posted without breaking the law. The solution so far has been to re-invent the wheel, or to pay vast sums of money, neither of which are particularly constructive.
2. Science courses. I taught science (physics) for nine years prior to taking on the computing curriculum. In this time I have seen three science course come and go, each being purchased at great expense. Vast quantities of time from literally dozens of teachers have been invested in fleshing out each course by creating timetables and gathering apparatus, generating additional projects and homeworks. All of these courses have had strengths and weaknesses, however the restrictive licensing of the materials means that none of the good resources can really be included in the next new thing, since they cannot be modified and redistributed – we are throwing out the baby with the bath water every time. What could help here would be if educational licenses could have the spirit of the GNU co-operation and sharing in them.

For the most part, unless I can obtain materials which are covered by Free licenses such as the GNU Free Documentation License, I cannot use the teaching materials in ways which would best serve my pupils needs. Wherever possible, where time allows I then create the necessary resources myself from scratch. Of course I License and redistribute these under freely redistributable License terms.

Specific Issue 2(g) – Copyright – Fair Use

I would draw attention here to the excellent resource which Google have produced available via <http://books.google.com/>

As you may be aware this is a search-able archive of many tens of thousands of books and is a

staggering resource. It is currently limited only by publishers who refuse to have their published books archived in this way. I hold that this attitude is an affront to the development of a co-operative society and steps should be taken to restrict publishers ability to withhold published works from public access in this way.

Specific Issue 3(a) DRM

Digital Restrictions Management represents a real threat to the continued successes, technological innovations and promotion of positive co-operative ethics that the Free Software community has to offer our society. In my view it serves only to protect the profits of large corporations - at the expense of the rights of individuals and other corporate entities to use hardware or multimedia which they have purchased in the way they wish. More worrying still, the veil of inscrutability that DRM permits has already allowed for serious security exploits via the Sony BMG music CDs and the Windows rootkit debacle.

Even more of a concern is the possibility that through DRM, unscrupulous hardware manufacturers and unscrupulous software companies with market leverage on hardware producers will be able to use DRM to prevent Free operating systems like GNU/Linux, FreeBSD or Sun Solaris (Sun Microsystems) from being installable on future computing hardware.

Indeed Microsoft has already attempted this with the Xbox360. Previous versions of the xbox have been able to run GNU/Linux operating systems.

In the present and future world of accelerating technological development and influence on increasing personal aspects of everyone's lives it is essential that DRM should not be used to prevent anyone from inspecting a system mode of operation or modifying it to suit their own purpose in the light of further advances.

Most critically of all, DRM should not be permitted to prevent access for Free Software programs to hardware. The value of Free Software approaches probably needs protection in law from the dangers of DRM.

Finally, I can conceive of no legitimate use of DRM to advance the lot of the individual whose concern it is to contribute to the shared and co-operative development of new technologies. Historically, scientific and technological development in the UK and wider have always been able to build on the work of others. For example in 1843, Lady Ada Lovelace conceived of the notion of a computer program and indeed was the first programmer before even Babbage managed to build the first computer. It is a good job that Lady Ada didn't patent the concept of a program and use the patent to block others from writing programs, or that Babbage didn't implement a system of DRM on his Analytical engines, only allowing people "to work out the kind of sums he favoured".