

## **GOWERS REVIEW OF INTELLECTUAL PROPERTY CALL FOR EVIDENCE**

### **GENERAL QUESTIONS**

#### **1. How IP is awarded**

(a) Are there barriers to obtaining IP rights due to system complexity? What could be done to improve this situation?

**Yes for small companies. See later suggestions regards non-disclosure filing; costs and time scales during protection of rights whilst 3 to five year development process are normal in brining new products and services to market.**

(b) How easy is it to find out about obtaining IP rights? What could be done to improve awareness for businesses and innovators? Is there sufficient awareness of the need to protect IP internationally?

**Patent office information has improved considerably in recent years. However a translation of IP information and how it relates to specific industry sectors would be desirable and beneficial to all.**

(c) Are there barriers to obtaining UK IP rights on grounds of cost? What drives these costs?

**Yes – see answers in next section**

(d) How do these costs compare internationally in your organisation's experience?

(e) Do you have any comments on the UK Patent Office fees structure for obtaining and renewing IP protection?

(f) Is lack of trust in the system a barrier? To what extent do you rely on other tools to bring innovation to the marketplace, such as being first to market, maintaining trade secrets, or using an open innovation model to generate value through reputation or network effects?

**Yes, see later answers regards non-disclosure issues and suggestion for a 'in progress' and non-disclosure agreement filing.**

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

**Several but mainly concerned with costs and IP arising**

(h) Are there specific barriers to obtaining IP rights for small businesses or individuals?

**Very much so – refer to answers to following questions**

(i) How well does the national system for awarding IP, administered by the Patent Office perform? How well do the international and European systems work?

#### **2. How IP is used**

(a) What types of IP does your organisation use and why?

BDI is a representative body comprising a collaborative innovation membership of designers, design firms, entrepreneurs, university innovation units, PhD's, Art & Design Faculties and their graduates.

Thereby its membership has a very wide range of IP use and various issues. In the response I am going to focus on two aspects of the design sector; Graphics & Branding and Product Design Development.

Graphics & Branding predominantly use Copyright and unregistered Design rights – their understanding of their rights is very weak and they are very vulnerable to copyright abuse by the buyers of design services. 54% of the commercial design sector employs less than 5 people; thereby even in cases where copyright abuse by a client organisation is very evident legal costs most often prevent a design firm from pursuing infringement beyond an emotional letter.

Product Designer firms are more concerned with Patents and licensing. Their understanding of IP rights is stronger than that of graphics firms – however it is still a legal minefield beyond the comprehension of again, many small firms.

The cost of Patent applications and in particular protection of patents causes product development agencies to shy away from filing Patents. Fees paid to design agencies do not allow for costs of patent applications and thereby most often that responsibility is handed back to the client organisation.

Larger manufacturers tend to claim IP and copyright within the document of engagement, even for work undertaken before contracts have been signed and the agency has been formerly appointed (this is due to deadlines for work required needing to begin before the contracts find their way through the legal department).

During the course of a contract project there is often new 'IP arising'; either this is passed to the original commissioning organisation or it lies dormant due to the cost of Patent applications. If that client organisation is a non-UK company (and at least 30% of them are) the UK agency and thereby UK plc loses the IP.

Many product development agencies have new product ideas of their own they wish to bring to market and broker with industry; yet again patent application costs are most often a barrier.

The UK commercial design sector comprises 4,500 design firms; 54% of which employ less than five people. Its annual turnover is £4.6bn. Through BDI research undertaken in November 2005 (attached) it was estimated that the sector loses £1.7bn per annum through a practice called 'free pitching' – through this practice widespread copyright abuse occurs.

Specific to BDI itself we have an issue with our business model being replicated and would like to see an IP category covering business models and unique methodology. This issue also affects design firms, particularly the new generation of service and proposition design.

Service and proposition design disciplines are relatively new to market and are concerned principally with the design of a service or design of a total business proposition. These disciplines currently appear to fall into a 'business model' category, which currently has totally inadequate IP protection.

(b) To what extent do you seek multiple overlapping forms of IP protection?

**Potentially copyright; unregistered design rights and licensing. Within the graphic design sector it would be much clearer if originators automatically retained copyright and licensed work by agreed media application and territory. Copyright could be assigned by negotiation. This is the model operated by photographers and illustrators where they are paid a fee for the original assignment and the agreed usage of the image on for example a Poster campaign in the UK. They retain copyright automatically. Additional usage of that image outside of the terms of the original usage and remuneration agreed attract an extended usage fee.**

**Graphics firms however are paid a fee, for example to create a brand identity for the UK market. If that brand identity is used worldwide the graphics firm is not remunerated, regardless of whether they have retained copyright. It is a weakness within the design sector; arguably their own fault, but aided by lack of clarity regards copyright ownership or enforceable infringements due to legal cost barriers.**

(c) To what extent are these decisions influenced by sector-specific considerations?

(d) How does your company value its IP?

**As stated earlier, due to the inadequate IP protection of business models, we are unable to value our IP or protect it.**

Are there problems with raising finance against intangible assets based on IP? What improvements could be made in this area?

(e) To what extent does the term of IP rights at the margin affect investment decisions?

<sup>3</sup>Cross Cutting Review of the Knowledge Economy - Review of Government Information, July 2000:

[http://www.hm-treasury.gov.uk/spending\\_review/spending\\_review\\_2000/associated\\_documents/](http://www.hm-treasury.gov.uk/spending_review/spending_review_2000/associated_documents/)

<sup>4</sup>EU Directive 2003/98/EC on the Re-use of Public Sector Information, 17 November 2003:

[http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/l\\_345/l\\_34520031231en00900096.pdf](http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/l_345/l_34520031231en00900096.pdf)

<sup>5</sup>The Re-use of Public Sector Information Regulations 2005:

<http://www.opsi.gov.uk/si/si2005/20051515.htm>

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(f) How well does the UK IP system promote innovation?

**It promotes and encourages innovation very well. However three issues stand in the way of implementation**

- 1. Lack of in layman's terms how to assess whether your 'idea' has any IP**
- 2. If IP does exist, no 'official' means or methods of valuing that IP is available. Prof Alex Williams based at Salford University published an IP valuation model based on some logical formula which could be a basis for deeper development. In particular, an IP calculation based on the 'sector' or product type factoring in research and development time frames, cost to market, emergent (new to world) or new to market, market size, development cost, cost of finance etc**
- 3. Costs of protecting the IP throughout the development stages when time to market can be between 3 to 10 years – for SME's this is often non-viable.**

(g) To what extent does your organisation make use of other methods used by Government to encourage innovation, such as public funding?

**An interesting question. UK designers (and other creative sectors) are a key innovation spark plug due to their unique talent and understanding of consumer behaviour. They are an innovation translation partner possessing the ability to make sense of often complex Science, Engineering and Technology in a way that enables others to understand the potential market**

applications. However, the creative industries are not considered as 'industry' or academics and thereby qualify for no government funding to support their role in innovation.

HEIF funding enables academia to win substantial sums to develop innovation programmes to impact on industry. Technology led firms through the DTI Technology Collaboration fund enables industry to win substantial funds for R & D. The Research Councils enable academics to win research grants to study subjects that may or may not result in innovation (many fine and complex research results once published grow dusty on shelves which, with the creative translation skills of a designer could result in many tangible market applications to be brokered with industry).

The creative industries, where much thinking and tangible research takes place and who are far more commercially minded, and have greater links with and drive to deal make with industry are not eligible to apply for any innovation research grant assisted scheme.

The government and thereby UK plc could benefit significantly by providing a Creative Industries innovation fund which allows individuals and firms to bid for grants that support research into new creative methodologies and technologies and product development to be made available on license to industry. It could stipulate that the results were available on license to the SME element of industry to make innovation attractive and affordable. The focus on SME innovation schemes is vast and the role that design plays in innovation and business growth is a core government message. However, the two messages which should work hand in hand will remain largely incompatible when the focus is on physical design application rather than creative thinking.

There exists either a fear or lack of understanding of free fall creative thinking if its tangible application to industry is not pre-determined. If they are pre-determined or known at the outset that is not necessarily going to lead to 'true innovation'.

There are many examples of where research was deemed to have failed to arrive at the right pre-determined result. Those failures have led to success in other market sectors and applications.

(h) Are data on the use of patents and other forms of IP useful as a means of measuring innovation?

**Yes – see final comment above**

(i) Do you have any evidence as to the static or dynamic costs that IP rights (as statutory monopolies) impose on the economy?

(j) Have you encountered patents or other IP rights being used defensively, i.e. obtained

not to develop products, but only to prevent others from doing so? Under what circumstances do you consider this acceptable?

**Anecdotally, it was rumoured that Hoover wanted to buy-out Cyclone Dyson technology in order to stop it coming to market. Recently a toy designer won a legal case against Fisher Price due to taking IP options over a new development; sitting on it for two years, cancelling the options and then using**

the IP to launch their own products once they had learned how. There are many anecdotal stories but for legal reasons rarely become public knowledge. I am sure it happens a lot more than is known.

In product design development quite often conceptual work is undertaken which is never implemented by the commissioning company who have made copyright assignment a condition of the contract and thereby block the product development firm from using the results through a company that does have the means and desire to implement.

Another one that puzzles me is patents filed that due to ownership block innovation. A recent example of this was surround sound – a demonstration of a new split screen television where the sound example was a thunder storm which bounced off the walls. A question raised was why isn't the sound, bounced off of the ceiling. The answer (rightly or wrongly) was given that Dolby Sound owned the patent and had not as yet chosen to license the IPR for that application.

### **3. How IP is licensed and exchanged**

(a) How easy is it to negotiate licences to use others' IP for commercial or non-profit purposes?

That solely depends on two things – perceived competition and money. If you are applying for a license to use in a way that does not threaten the IP owners own market or potential market extensions and thereby acquisition value and if the cost of the license is agreeable to them – no problem. Otherwise – no deal; commercial or not for profit alike.

(b) What mechanisms do you use for finding potential licensing partners?

In the instance of commercial design companies it is their knowledge of the brand owners customer base/target market and marketing strategy. Often they will know which brands would be most keen to licence particularly if the market sector is dominated by a handful of lead players. They play on brand status and competitive advantage.

(c) How easy is it to use others' IP for research purposes? Have you experienced difficulty around research exemptions?

(d) Are there specific barriers to licensing in the main forms of IP currently used: patents, copyright, trade marks, and designs?

As described earlier, there are no standard guidelines on the development and licensing of brand identities and corporate design work. There needs to be distinction/guidelines on what is reasonable and what might be considered as restrictive practice. For example, if a design firm creates a brand identity and product re-positioning for a brand owner for a new product on the basis of the re-positioning being focused on one market (home or export); which is subsequently rolled out world-wide; the design firm should reasonably expect new market usage fees (within reason). If however a brand owner commissions a design firm to refresh an existing identity to be applied to all existing marketing collateral and new collateral, it might be considered unreasonable to restrict that company from application to new marketing collateral; except in the instance where the same imagery is used in a way that is unrelated to its original intended application to the commercial benefit of the commissioning organisation.

For example; Frost French the fashion brand commissioned a small design firm to create an invitation for a small fashion show. The agency was paid a

very small fee for the work as it was only commissioned to produce a one-off invitation for the show. The graphic imagery produced by that design firm was subsequently applied to a French Frost product (a series of clutch bags) which were then cover mounted on Glamour magazines Christmas edition. French Frost 'under the strap line 'exclusively designed by French Frost for Glamour Magazine' benefited significantly from the PR; and Glamour Magazine from the sales increase. The design agency on taking exception to the commercial extended usage of their work was rebuffed by FF with 'we used the work as an influence' having paid £500 for the invitation design. That is unreasonable or is it?

(e) Are there barriers to licensing IP on grounds of cost? What drives these costs?

**As a trade association we have standard license agreements and an IPR helpline provided by Harbottle & Lewis LLP. The cost issue comes into play if the licensor is a substantially larger company than the licensee and wishes to over-ride the licensee's own agreement with its legal version which requires additional legal fee investment by the much smaller licensee (often an individual or very small company).**

(f) Are there specific barriers to licensing IP in your sector?

(g) Does your organisation use methods to facilitate exchange of IP - such as crosslicensing

or pooling IP rights with other firms or organisations?

(h) Are there specific barriers to licensing IP rights for small businesses or individuals – for example barriers to entry to patent pools?

(i) Are there barriers to trade and exchange of IP internationally?

(j) Does your organisation consider renewing patents using "licence of right" provisions in patent law (which entitle any person to a licence under your patent and reduce your

renewal fees by half)?

(k) What could be done to improve "licence of right" provisions and business awareness of them?

(l) Do you have any experience of the compulsory licence provisions within current patent law? Are they effective? How could they be improved?

**The answer to all of the above questions in relation to design firms are probably not – not because they don't apply but because awareness of the rights are very low and probably need to be interpreted with specific relevance and benefit to the design sector – the same need probably applies to many other sectors dominated by small companies with no retained and affordable consultant lawyer or legal department/specialist.**

#### **4. How IP is challenged and enforced**

(a) Are there specific problems with enforcing the main different forms of IP: patents, copyright, trade marks, and designs?

**Absolutely! – but not necessarily with the law itself but with the affordability of enforcement. That said, often enforcement relies on nuance, precedence and technicality not logic or honesty. As all previous comments state – legal costs between an individual or small company against the infringer invariably involve a much larger company.**

**We held a discussion on this subject recently and concluded that an Ombudsman system, in the same way that enables individual consumers to**

resolve disputes with companies, might also be a welcome system for professional individuals and small companies, to resolve disputes more fairly and quickly without legal intervention. The very existence and denoted registration with such an 'official' body might deter the infringers that prey on vulnerability and use their size and status to abuse.

Our members had no objection to paying £25 per month for access to an ombudsman style facility, advisory line and action, as and when needed.

IP insurance is still subject to a minimum of £1000 advance/assessment legal costs and low risk criteria in favour of the insurers for individuals and small firms coupled with a premium cost of circa £600 per annum for minimum cover.

Money has been invested by public sector; e.g through London Development Agency and the Own It initiative managed by University of the Creative Arts which provides free or low cost events, and access to advice. However whilst that is useful and informative, it still does not overcome the costs of disputes and the vulnerability and thereby abuse of individuals and small companies by the larger companies infringing their rights. They may be better informed but not necessarily enabled to put that knowledge into affordable action.

(b) Are there barriers to challenging infringement and enforcing your IP rights on grounds of cost? What drives these costs?

**As (a) above**

(c) To what extent does your organisation make use of other methods than litigation to resolve IP infringement cases, for example the Patent Office opinion service, mediation services, Alternative Dispute Resolution, or the Copyright Tribunal?

**For members we have an IPR helpline provided by Harbottle & Lewis LLP where the first two hours of general or litigation option advice are free. We also, as a trade association send a letter to an infringer on behalf of the member to attempt mediation and settlement prior to any legal intervention.**

(d) To what extent do you use IP litigation insurance? How effective is it?  
**As previously stated IP insurance is a good if agencies make more public use of it as a potential deterrent by including details in all company communication. This could be improved by carrying the insurers' logo on corporate materials.  
The only draw back is as stated in the answer to question 4a, advanced costs and low risk criteria.**

(e) Are there barriers to using such methods to settle IP disputes without recourse to litigation? How might they be removed?  
**See answer to 4a – an ombudsman system for professional individuals and small companies**

(f) Are there specific barriers to challenging and enforcement of IP rights for small businesses or individuals?

## As previously stated

(g) To what extent is the risk of litigation a factor in your organisation's investment in innovation?

**None – neither we nor our members would knowingly infringe another's copyright.**

**That said, as commissioning companies do not ask for or factor in agencies research costs for patent searches unwittingly similar brand names, graphical or product design solutions can be arrived at which may give rise to claims of infringement once designs come to market.**

(h) What are the principal barriers to efficient and successful challenge and enforcement internationally?

**Identification of the breach, then pursuit of it, in terms of time ; cost and differing legal structures.**

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## SPECIFIC ISSUES

### **Current term of protection on sound recordings and performers' rights**

Background: The Review will fulfil the Government's commitment to examine whether

the current 50 year term of protection on sound recordings and performers' rights in sound recordings is appropriate, in the light of its extension to 95 years in a number of

other jurisdictions.

(a) What are your views on this issue?

(b) Is there evidence to show the impact that a change in term would have on investment, creativity, and consumer interests?

(c) Are you aware of the impact that different lengths of term have had on investment,

creativity, and consumer interests in other countries?

(d) Are there alternative arrangements that could accompany an extension of term (e.g.

licence of right for any extended term)?

(e) If term were to be extended, should it be extended retrospectively (for existing works) or solely for new creations?

### **Copyright exceptions - fair use / fair dealing**

Background: There are a number of exceptions to copyright that allow limited use of copyright works without the permission of the copyright holder.

(a) What are your views on the current exceptions in copyright law?

(b) Could more be done to clarify the various exceptions?

(c) Are there other areas where copyright exceptions should apply?

(d) Are the current exceptions adequate or in need of updating to reflect technological

change? For example copyright law in the UK does not currently have a private "fair use" exception. Such an exception might allow individuals to copy music CDs onto their PC and MP3 player for their personal use. Should UK law include a statutory exception for "fair use"?

(e) How would you see content owners being compensated for such use?

(f) To what extent has technological change presented difficulties in use of copyrighted

material in the field of education?

(g) Are there issues concerning the archiving of material covered by copyright?

#### **Copyright – digital rights management**

Background: Increasingly digital media content is distributed with digital rights management (DRM) technologies that can enable rights-holders to track usage and prevent unlicensed copying by technological means. However concerns have been raised

about interoperability and that such technologies may impair the content consumer's legal rights. For example they may be unable to take into account exceptions to copyright, the ultimate expiry of copyright term, or the future evolution of technology. They may therefore undermine legitimate rights to access digital content, now and in the

future. (NB: We are aware of all formal submissions that have been made to the All Party Parliamentary Internet Group on this issue.)

(a) Do you have a view on how the use of digital rights management technologies should be regulated?

#### **Copyright – orphan works**

(a) Have you experienced any difficulties in identifying the owners of copyright content

when seeking permission to use that content?

(b) Do you have any suggestions on how this problem could be overcome?

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#### **Copyright - licensing of public performances**

(a) Have you encountered problems with the system of licensing and paying royalties to

collecting societies for public performance of music and/or sound recordings?

(b) Could the system be clarified or simplified, and if so how do you see this working?

#### **Patents – utility models**

Background: Some countries, notably Germany, have a “utility model” system offering

protection for simple inventions, usually subject to less examination and shorter terms

than standard patents.

(a) Do you have a view on some sort of second tier patent system?

**It sounds logical on the face of it. Has it been successful in Germany? My only immediate reservation would be if it enabled very simple ideas to block other applications along similar lines that were more intelligent and/or robust.**

**That said, a non-disclosure filing might be useful as an extra comfort factor. There exists a nervousness and sometimes renitence on behalf of industry to enter into a non-disclosure because in doing so they may reveal an idea already in development. The non-disclosure then presents a problem should they reveal they are already on to the idea themselves.**

**If a registration system for ideas in development were established; and a non-disclosure filing, it would provide a means to establish that a later idea disclosed had been genuinely filed in advance, rendering the later non-disclosure void but still acknowledged.**

(b) Has your organisation encountered problems in protecting its IP internationally where such systems exist?

Yes, in specific relation to BDI rather than its members, its model has been subject to many an imitation quite often blatant and omitted – but as described earlier no ‘business model’ protection exists.

In terms of member experiences, the lack of roll-out or extended usage agreements for work produced for one market and subsequently applied to additional markets, is a critical problem. This is a design industry problem not a governmental one; but could be assisted by guidelines regards reasonable or restrictive usage as described earlier

### **Pharmaceutical Supplementary Protection Certificates (SPCs)**

Background: SPCs are a “sui generis” IP right available in EU Member States for pharmaceutical products (as well as plant protection products). The standard patent term is 20 years. SPCs aim to compensate rights holders for the time required to obtain

regulatory approval for their products. Where regulatory approval is issued more than five years after a patent is granted, SPCs may be granted to extend the term of protection on the active ingredient in the patented product. SPCs last for a term corresponding to the period elapsed between the five-year point and the point at which

the product reaches market, up to a maximum term of 5 years.

(a) Does your organisation use SPCs?

(b) How fair and effective are they in delivering an incentive for investment?

(c) How could they be improved?

(d) Should the term of SPCs be more flexible - perhaps relating straightforwardly to the

period between patent award and regulatory approval?

### **Trade Marks – international issues**

(a) To what extent does your organisation register its trade marks at the European rather than national level?

**Interesting question, most design agencies leave such matters and responsibility to the commissioning organisation/brand owner. If agencies retained copyright and licensed brand identities etc (within the guidelines of the suggested reasonable and restrictive practice) it is likely to become the responsibility of the agency. Cost of such registration would then be an issue for the agency and reflect in contract prices to include such registration fees.**

(b) Could the UK trade mark system be improved to work better alongside the European system?

**Probably**

### **Designs – registered designs and unregistered design rights**

(a) To what extent does your organisation rely on registered designs? And on unregistered design rights?

**It is something that could be far better understood and utilised by the design community and should appear in all contracts. However even with better understanding, communication of such rights if disputes arise are still subject to the same enforcement issues due to legal costs.**

(b) To what extent does your organisation register its design at the European rather than national level?

- (c) To what extent does your organisation rely on the European unregistered design right rather than the national UK unregistered design right?
- (d) Could the UK registered design be improved to work better alongside the European system?
- (e) Could the UK unregistered design right be simplified to work better alongside the European unregistered design right?
- (f) Do you see a useful role for the UK unregistered design right alongside the European design right?

**All of the above questions would benefit with a layman's' terms descriptive outlining the differences and benefits and how that applies to the commercial design sector. I am sure it is important given earlier comments about extended usage fees by territory.**

**I wonder if the Patent Office could select/commission industry sector specialist lawyers to interpret the IP laws and benefits in a way that highlights the key IP issues and relevance's to those sectors.**

#### **Legal sanctions on IP infringement**

- (a) Are you aware of any inconsistencies or inadequacies in the way the law applies legal sanctions to infringement of different forms of IP or to different circumstances?
- (b) For example, should criminal sanctions on online infringement be the same as those relating to physical infringement?

**I am not sure I understand this question. If you mean that by copying online structures, propositions and business models then yes, there should be some means to legally recompense infringement. That pre-supposes that business models will become subject to copyright protection. The internet since its inception has propagated an attitude of everything is free. Information; style structure is so open that it can be copied very easily. Some organisations rely on it for free download and distribution of software as they want to encourage reliance to benefit from charging for upgrades and features – that is at odds with other sectors who want to sell services and access to proprietary information. E.g. free downloads benefit the software developers but disadvantage the music industry.**

**It is a difficult one to legislate against when different sectors have different advantages to be gained from user take-up be that building acquisition value via number of registered site or software users versus genuine other business models which rely on paid consumer purchase.**

**The printed publishing industry has really suffered as a result of internet free information philosophy. Online directory owners have to charge the content providers not the users, when previously in print formats they charged both to appear in a publication and those who purchased it.**

**Data protection is then difficult when directory publishers needs to provide value for those paying for content inclusion by making information openly available to non-paying site users gaining access to such information; and thereby making data easy to copy.**

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**Coherence between competition policy and IP policy**

(a) Has your organisation experienced any activity linked to IP rights that you regarded as unfair competition?

**Yes. In terms of BDI itself public sector and private sector organisations helping themselves to our online business model, data and terminology to create their own duplicate product. In some respects the private sector ones are less of a problem as they have to use their own money to implement and compete. Public sector is far more of a problem as they have the advantage of substantial public sector funds, brand, communication and no reliance on the duplicate either being income generating or sustainable. So they can damage or destroy a legitimate and respected specialist business and cause job losses only to drop the service when it becomes too costly to maintain as they had no income generation or sustainability model themselves. Public sector organisations with government funding competing with (specifically replicating) private sector or not for profit organisations without government funding is extremely unfair competition.**

**In terms of our membership the tendering procedures operated by public sector for creative industries that demand conceptual ideas submitted with the tender and a clause stating that copyright over those free ideas belongs to the crown is immoral.**

**Public sector tendering of creative industries contracts needs to be separated from that of physical product, equipment and supplies.**

**In terms of the design and advertising sector this issue is a major one. See also the BDI Pitch Versus Productivity research results attached. We are in discussion with SBS public sector procurement policy unit on this issue. We could write a novel on the subject.**

(b) How did you deal with this problem?

(c) Was competition law effective at controlling this behaviour?

(d) Should competition law have a greater role to play in regulating IP?

(e) How would you see the system working?

**In relation to our own issues stated in point a) we can't publicly answer those questions. Suffice to say public sector appears to disregard the copyright, and anti-competitive rules it sets down for industry when applied to itself!**

### **Parallel Imports / International Exhaustion**

Background: European law does not allow firms to use trade mark or copyright law to prevent their goods sold in one EEA Member State from being imported and resold in another Member State – i.e. they are not able to segment the EU market. However European law does allow the use of trade mark and copyright law to restrict the imports

to EU Member States of goods sold outside the EEA. It also specifically inhibits EU Member States from legislating to remove such import restrictions at the national level –

so called “international exhaustion” of trade marks or copyright. There has been a good

deal of debate, both here in the UK and at EU level, about the costs and benefits of removing restrictions on parallel imports. There is a further issue of firms taking advantage of variations in prices on pharmaceutical products across the EU and

repackaging drugs bought cheaply elsewhere within the EEA to resell within the UK.

(a) Has your company been affected by parallel trade?

(b) What would be the impact on your organisation of a change in the current rules?

(c) What evidence is there of the costs and benefits, both for consumers and firms of the current rules?

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