

# Strategic Advisory Board for Intellectual Property Policy: Achievements and Next Steps

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The Strategic Advisory Board for Intellectual Property Policy (SABIP) was established in June 2008 in response to a recommendation from the Gowers Review of Intellectual Property. SABIP's objective was to give Ministers and the Chief Executive of the Intellectual Property Office (IPO) independent policy advice based on solid evidence. Over the period since October 2009 the IPO has developed a complementary work programme to build economic evidence for IP policy.

In July 2010, SABIP was dissolved. The generation of evidence on intellectual property remains of crucial importance in development of policy. We have set out to integrate SABIP's work programme with the IPO's newly developed research programme, with continuing input from key stakeholders and experts in intellectual property. This note outlines SABIP's achievements, and how its work will be taken forward by the IPO. A summary of the IPO's work programme is appended at Annex A.

The work programmes of SABIP and the IPO represent a significant contribution to the development of evidence and policy in the UK, and in the wider world. Combined they will support UK policy development, and will influence international policy discussions.

## **SABIP Achievements**

In two years, SABIP delivered, as part of its core mandate, a number of research projects organised around 5 streams:

1. The social and economic role of copyright
2. Attitudes and behaviour in the digital age
3. The role and rationale of intellectual property
4. The role of intellectual property in university-industry knowledge flows
5. Enforcement of the UK's intellectual property system and SMEs

In addition SABIP identified three workstreams to pursue:

6. The role of IP and IPRs in innovation
7. Comparative study on international IP enforcement regimes
8. The relationship between IPRs and competition law.

Progress on SABIP workstreams, and future developments, are outlined below.

## **1. The social and economic role of copyright**

### **Achievements**

- SABIP appointed a Copyright Expert Panel (CEP) to assist its thinking on copyright policy. This resulted in a comprehensive and well received position paper "Strategic Priorities for Copyright" published in March 2009 setting out the key areas on copyright that SABIP aimed to explore.
- SABIP organised a number of events around copyright:
  - o A stakeholder workshop exploring the case for simplification of the copyright framework

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- A policy panel event exploring the issues surrounding the Google Books initiative and mass digitisation
- A stakeholder workshop exploring the relationship between copyright and contract law
- A policy panel event on international perspectives on moral rights.
- As part of its copyright workstream, SABIP has published:
  - Strategic Priorities for Copyright (March 2009)
  - Exploring the Case for Simplification of the Copyright Framework: Report of Proceedings (February 2010)
  - The Economics of Copyright and Digitisation: A Report on the Literature and the Need for Further Research (May 2010)
  - An academic review of The Relationship between Copyright and Contract Law (July 2010)
  - The Relationship between Copyright and Contract Law: Report of Proceedings (July 2010)
  - International Perspectives on Moral Rights: Report of Proceedings (August 2010)
  - Google Books and Mass Digitisation: A Policy Paper (July 2010).

## Next steps

- The IPO's new programme of research includes a number of research projects on copyright:
  - Research to fill the gap in UK evidence on investments in copyright material, and the income they generate, identifying and collating data on value within the copyright industries
  - A Review of levy systems on copying devices and media in other EU countries, and their effects compared to the UK's market-based system
  - Studying the impact of digitisation on the copyright "value chain", identifying and exploring new business models and whether these are being aided/hampered by the existing copyright system.
- SABIP's research programme on copyright will be taken forward in addition to this work, subject to funding constraints. Further work on issues such as moral rights or orphan works will be addressed in line with policy needs.

## **2. Attitudes and behaviour in the digital age**

### Achievements

- This workstream sought to establish attitudinal and behavioural characteristics among key consumer groups in their use of digital technology that are significant for medium- and long-term IP policy-making.
- SABIP published two reports into on-line and off-line consumer behaviour:
  - Copycats: Digital Consumers in an On-Line World (May 2009)
  - Changing Attitudes and Behaviours in the Non-Internet Digital World and their Implications for Intellectual Property (January 2010)SABIP also held two stakeholder workshops exploring outputs of the reports.
- SABIP commissioned additional work exploring how best to generate longitudinal data on consumer attitudes and behaviour, including through inserting questions into existing surveys such as DCMS's Taking Part survey. This was published August 2010.

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- A policy recommendations paper based on the findings of the two reports and additional work was published on 16th July 2010.

### Next steps

- The stakeholder workshops identified the need and support for an independent observatory for copyright-related data. The IPO's research team will work to develop this project further and identify options for an observatory. SABIP's report on "Changing Attitudes and Behaviours in the Non Internet Digital World and their Implications for Intellectual Property" proposed a framework for attitudes and behaviour based on insights from behavioural economics. IPO will work with partners to take this framework forward.

### **3. The role and rationale of intellectual property**

#### Achievements

- This work sought to undertake a fundamental review of the philosophy supporting the award of enforceable IPRs. In light of changing technological, economic and social conditions and pressures, the workstream explored the case for amendments to the present system in the short and longer term. The first phase of the work explored the role and rationale of patents. Work on the role and rationale of trade marks was scheduled to take place in 2010-11.
- Based on an initial meeting with experts, 10 papers were commissioned to highlight key challenges and developments in the world of patents.

#### Next steps

- Role and Rationale of Patents: the papers commissioned by SABIP will be published by the IPO in the autumn. These papers will form the basis of internal policy discussion and workshops.
- Role and Rationale of Trade Marks: the IPO has identified within its economics research programme a project on trademark incentives, aimed at assessing the role of trademarks in the innovation process, their value to firms, effect on growth and impact on households. This workstream will seek to develop two specific projects in the work programme:
  - o Costs of lookalikes to the UK economy;
  - o Exploring the Unfair Competition Directive.

### **4. The role of intellectual property in university-industry knowledge flows**

#### Achievements

- This workstream builds on the Wellings Report and other studies which have examined issues of IPR management and exploitation by universities and other publicly-owned bodies for economic and social benefit.
- Two literature reviews, one on hard IP and one on soft IP, were commissioned in August 2009. These helped build a conceptual framework for analysis of knowledge flows in the university-industry innovation system.
- SABIP commissioned Birkbeck College to develop and test this framework.

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## Next steps

- A report using the developed analytical framework will be published in autumn 2010. The IPO's research team will work with partners such as BIS to take this framework forward.

## **5. Enforcement of the UK's intellectual property system and SMEs**

### Achievements

- This project, commissioned from the Intellectual Property Institute, explores the behaviour of SMEs and the impact of enforcement costs upon their decisions to seek justice through the courts, to use Alternative Dispute Resolution mechanisms, and to license technologies and otherwise engage with (or disengage from) the IPR system.
- Running parallel to the enforcement project, SABIP assisted Lord Justice Jackson's Review of Civil Litigation Costs. A paper was submitted to the Review in July 2009 and Jackson requested that SABIP conduct an SME survey on patents, trade marks, and copyright / design rights. SABIP's findings were quoted in the Jackson Review final publication, in January 2010

### Next steps

- The SME enforcement report is due for publication in Autumn 2010.
- The IPO will explore implications for UK policy-makers.

## **6. The role of IP and IPRs in innovation**

### Achievements

- SABIP led a major international Forum on the Economic Value of IP, held on 10 June 2009. The Forum brought together top international experts on the economic value of IP, from academia and industry, to identify key areas in need of further research. On the basis of the Forum a research agenda to define how intellectual property underpins the UK's knowledge economy was formulated and published in November.
- Elements of this agenda were incorporated into the 2010/11 work programme, which identified the role of IP and IPRs in innovation as a priority area for research. This work sought to explore the landscape of IP use in different sectors to identify the role played by the IPR system in innovative performance and how this could be improved.

### Next steps

- The IPO's economic research programme includes several projects on the role of IPRs in innovation:
  - o IPRs in the Knowledge Economy, which assesses the value of business investment in IPRs and their impact, building on the NESTA Innovation Index framework
  - o IP Rights Incentives for Technology Investment, which measures firm level returns on patents and their effects on innovation investment
  - o Alternatives to Patents, to assess alternative or informal methods firms use to protect and appropriate returns from innovation.

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## 7. Comparative study on international IP enforcement regimes

### Achievements

- In March 2009 SABIP published a literature review into “IP Enforcement in the UK and Beyond”.
- Based on this review and the outcomes of the UK-based project examining enforcement of the UK’s intellectual property system and SMEs (at 5. above), SABIP contacted ZEW Mannheim, a German research organisation, to engage in a multi-country study of the effects of national IPR litigation systems on local economies.

### Next steps

- The IPO research team has bid for a project with ZEW Mannheim and other researchers to develop the evidence base needed as identified by SABIP.

## 8. The relationship between IPRs and competition law

### Background

- IPRs function by granting a temporary monopoly, enabling a creator or innovator to recoup their investment. This has considerable implications for the structure of industries. Dynamic competition through product or process innovation may benefit from market dominance, but this may give rise to consumer detriment through higher prices and loss of competitive focus. This is reflected in the recent EC study of pharmaceuticals and in aspects of the recent debate on the proposed Google Books Settlement.
- In this workstream, SABIP sought to identify the types of issue with the potential to bring competition and IP laws into conflict, highlighting common themes and approaches and drawing attention to ways in which their respective policy objectives may be reconciled or traded-off.
- IPO will consider work in this area when designing its research programme for 2011/12.

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## Annex A: IPO Economics, Research & Evidence: Programme at August 2010

### Finalised projects, being Prepared for release

- a) The Role of IP in University-Industry Knowledge Flows    Publish Oct 2010  
Data based framework to analyse IP & IPRs in university - industry knowledge flows
- b) Enforcement of the UK's IP System and SMEs                      Publish Oct 2010  
To explore social and economic impact of the IPR enforcement system on UK SMEs

### Committed research projects:

- c) IPRs in the Knowledge Economy                                      Start Q2 2010, end Q1 2011  
To assess the role of IPRs in intangible investment and the knowledge economy
- d) Copyright Investment and Income                                      Start Q2 2010, end Q4 2010  
New data on investment in copyright to fill data gap in the national accounts
- e) Copyright Levy Systems    Start Q3 2010, end Q2 2011  
[part-funded by ESRC]  
To understand different EU copyright levy systems and their economic impacts on content and media markets
- f) Patent Incentives for Technology Investment                      Start Q2 2010, end Q1 2011  
To assess UK business returns from patents and effects on investment & innovation
- g) Alternatives to Patents    Start Q2 2010, end Q1 2011  
To understand which firms use alternatives to patents to protect innovation, and how their choices affect performance
- h) Trademark Incentives    Start Q2 2010, end Q1 2011  
To assess value of trademarks / branding to firms, and effects on growth and innovation
- i) Design Economics    To tender August 2100  
[part-funded by Design Council]  
To understand the use of registered design rights, and how firms protect designs
- j) Patent Markets    To tender August 2010  
To improve understanding of current and proposed US and EU markets for patents
- k) Changing Business Models in Creative Industries                Start Q3 2010, end Q2 2011  
[part-funded by ESRC / AHRC]  
To study impact of digitisation on copyright value chains and new business models

### Projects being specified

- l) Trade Marks and the Cost of Lookalikes                              Being specified with TMD  
To determine the impact of UK lookalike legislation on industry, consumers and innovation
- m) Comparative Study on IP Enforcement Regimes                Bid with ZEW, July 2010  
[part-funded by ZEW]  
To understand access to and use of enforcement systems in 5 EU jurisdictions
- n) Copyright related data observatory                                      Being assessed internally  
To develop a database of copyright-related transactional and attitudinal data