

COMMENT

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PraxisUnico summary and response to recent publications relating to the IP landscape

This month has seen the publication of the Government response to the Hargreaves review of Intellectual property (“Digital Opportunity: A review of intellectual property and growth”, May 2011) and the related publications from the Intellectual Property Office (IPO) on “the UK’s International Strategy for Intellectual property” and “UK IP Crime Strategy 2011”.

The Hargreaves review probes, in particular, the role of IPR in stimulating high growth companies and recommends clarity and the reduction of IP barriers to UK innovation where possible. With a strong focus on copyright, the review recognises that the current policy on protection of such rights is in need of an overhaul to reflect the needs of the creative and other industries. The Government accepts most of the recommendations and has published an ambitious action plan related to direct legislative action and the development of further, evidence-based, proposals which will result in a White Paper in the spring of 2012. Both the Government response and the IPO’s own international strategy paper recognise that whilst much can be done at a national level there is a role to be played influencing international policy and practice and, whilst the UK is well placed to do this, it is necessarily complex and time consuming. However there is a clear commitment by the IPO to move towards a unified European patent court and EU patent system in order to provide simplification, speed and hence economic benefits to UK business.

PraxisUnico endorses this innovative approach to simplification and would encourage the adoption of a Europe-wide patent. The costs of accessing the EU marketplace for a British company or university can be at least five times that incurred by a US company or university accessing its own market and the opportunity cost of engaging in multiple EU national processes are unacceptable. Yet PraxisUnico acknowledges the complexity of bringing together disparate IPR and standardising access approaches.

We also support the direction of travel in respect of securing greater flexibility at the EU level in respect of removing barriers to innovative technologies and support the IPO in its analysis that the UK needs to adopt, adapt and influence EU legislation in a way that is compatible with our desire to support and stimulate UK innovation.

There is also a proposal in the IPO plan, endorsed in the Government response to the Hargreaves Review, for the creation of IP attaches overseas to support UK business interests. *We welcome more information on the roles and goals of such a cadre.*

The Government endorses the view that IP’s contribution to the UK economy is both “substantial and vital”. UK business invests more in intangible assets than in tangible ones and nearly half of that investment (£65 bn in 2008) was in intellectual property. However the Government and the review point out ways in which IPR could be simplified and made clearer with the ultimate aims of bringing down barriers to use of IPR to stimulate innovation. The Government recognises the important role that the IPO has to play (and its international reputation) in both granting right and in advising and developing policy.

A brief summary of the Hargreaves review, Government actions and PraxisUnico response

Intellectual property is important to growth and as a tool it offers the creation of opportunities as well as enforcement of rights. SMEs should be enabled to use IP for their own innovation and growth strategies.

The UK University and PSRE community views IPR as a tool for stimulating innovation within companies and for engagement with industry at the small and large scale. The UK research base and its technology transfer offices are flexible in their approaches to access to IPR, creating licences that reflect commercial objectives. This ranges from commercial licences bearing terms that are success driven to free access to IPR where the benefits of investment in the technology by SMEs to drive innovation outweigh the need for traditional fee bearing licences.

It has been observed that there has been less evidence-based decision making and more through lobbying in respect of IP and that this must change. The Government's proposal for the next steps to be adopted involves the collation of data and evidence from users of IPR. The IPO will set out guidance in autumn 2011 on what constitutes open and transparent evidence.

Representing institutions engaged in fundamental research, PraxisUnico supports this direction and encourages the Government and the IPO to continue to draw on research and experts from within the academic community.

Hargreaves delivered his review within a short timeframe and hones in on some critical IP issues to be tackled. High on that list was copyright and the digital economy. It was proposed and accepted by Government that the IP framework needs to adapt to current business needs, particularly around copyright. The review notes the fast pace of change in digital copying and highlights the advent of 3D printing which may mean that copying of material objects will become as straightforward as that for traditional digital content. A creative solution to the complexity of accessing information on ownership of copyright and the securing of licenses has been accepted for further development through the creation of a Digital Copyright Exchange. Such a DCE would allow a unified accessible marketplace of information on ownership and licensing of copyright, which is currently highly fragmented. This will afford a prospective licensee the ability to find, assemble and pay for that necessary package of rights to drive forward their business. This is particularly useful within the creative sectors. The Government will commission the scoping out of a DCE, with a proposal to be delivered by the end of the year and a DCE to be up and running by the end of 2012.

We would be willing to share with the IPO, and/or the individuals identified to lead the development plan for the DCE, our experiences of making IP accessible through a range of collaborative efforts.

PraxisUnico welcomes the Government's response to Hargreaves recommendation that there should be exceptions to copyright in respect of text mining that leads to new research outcomes, for example in medical research. We look forward to seeing proposals due this autumn for a substantial opening up of the UK's copyright exceptions regime for non-commercial research.

The Government intends to have developed and published voluntary codes for copyright and licensing by early 2012. It will work with the European Commission to develop a cross-border licensing framework that is compatible with UK interests.

Both the IPO strategy and the Hargreaves' report highlight the extraordinary backlog in patent processing which is inhibiting innovation. There is a suggestion that global backlogs will be reduced through work-sharing with other offices. *We look forward to further information on this mechanism, sharing with the IPO the concern that quality and standards are maintained.*

We await with interest the IPO investigation of “patent thickets” which is due to report in November. This will assess whether such clustering of IP protection presents a particular problem to SMEs seeking to enter technology sectors.

The IPO will set out its plans to improve accessibility to the IP system to smaller companies, including access to low cost providers of IP legal and commercial advice. *As early stage business-facing IP providers whose main aim is to stimulate innovation of public sector research through engagement with industry and SMEs, we would welcome the opportunity to share our expertise and to be involved in the consultation.*

A report on behalf of the PraxisUnico committee

Documents can be found at:

<http://www.bis.gov.uk/assets/biscore/innovation/docs/g/11-1199-Government-response-to-Hargreaves-review>

<http://www.ipso.gov.uk/ipreview-finalreport.pdf>

<http://www.ipso.gov.uk/ipresponse-international.pdf>

<http://www.ipso.gov.uk/ipcrimestrategy2011.pdf>