

Issue

This is a submission on behalf of the Intellectual Property Office (IPO) (an executive agency of BIS) in response to the Cabinet Office consultations on Open Data and a Public Data Corporation. The IPO supports the principle of open access to public data. With policy responsibility for UK copyright law and as providers of public information on patents, trade marks and registered designs, we would like to comment on specific policy and operational issues that are integral to both consultations. We hope that Cabinet Office will consider these comments when taking forward any policy proposals.

Summary of comments

- Making open data real: any measures must reflect copyright law. IPO stand ready to advise on this as you develop your proposals.
- Making open data real: IPO is currently preparing a consultation on changes to UK copyright law, an aspect of which may assist in public record reporting.
- PDC design should take account of issues that may arise where data is already made available for commercial licensing.
- PDC proposals should fit with Data Protection law and recognise that data clean up may incur additional operating costs.

Comments - Making Open Data Real

- Copyright policy and open data

The IPO has responsibility for Government policy on copyright. The interaction between public data and copyright law will be important as policy proposals are formulated following this consultation. We have witnessed a number of good ideas for sharing public information get held up or abandoned due to unforeseen problems with copyright or related rights. IPO has significant expertise in this area and is happy to provide assistance to ensure any proposals are compatible with copyright policy and legislation.

- Plans for modernisation of the Copyright Act – public records

The IPO is currently preparing a consultation on changes to UK copyright law, which aim to modernise the copyright system and make it fit for the digital age. One aspect we will be consulting on is whether we should update the current exception to copyright that relates to reporting by public bodies. This currently permits public bodies to make and issue copies of third-party materials, without infringing copyright in them, but does not allow them to be shared online. If a public body wishes to publish records online (due to FOI, another statutory duty, or simply to be more open) it can publish its own documents (likely to be Crown copyright) but cannot do the same with third-party documents, without asking permission in each case.

An example of the problems this can cause was faced by the IPO when developing IPSUM - an online patent file inspection service. Patent files, containing correspondence between patent examiners and patent applicants, have long been open to public inspection. But until recently, people had to write to the IPO to request documents, or visit the IPO to inspect paper files. The new system enables the public to view any patent file online. When developing the system we realised the publication of third-party documents would not be possible, as it would infringe copyright. Specific legislation was passed to make this possible. The IPSUM service was launched in October, and has proven highly popular.

A second example, which is likely to be relevant to many public bodies, was provided by the Ministry of Defence in its contribution to the Hargreaves Review of Intellectual Property.¹ The MOD received regular, repeat FOI requests for information on UFO sightings. Much of this information took the form of third-party reports. The MOD wished to be proactive and put this information on its website in order to be open with the public and reduce its administration costs, but found that copyright law prevented it putting the third-party reports online. Without these reports, however, any records would not reflect the whole picture and could be misinterpreted. The IPO plans to consult on amending the current copyright exceptions relating to public bodies, so that any relevant third-party documents can be published online in order to fulfil reporting functions. The amendment would be similar to the one passed to implement IPSUM, but would apply to any public body. We would like to draw your attention to this aspect of our forthcoming consultation paper (which will be published before the end of 2011), and will update you on its progress.

- IPO currently makes significant amounts of its data available.

IPO data policy is driven by its statutory obligations which mean a large proportion of the data concerning the filing of patents, designs and trade marks is already made publicly available. In addition to annual reports and accounts, and as a reflection of commitment to increased transparency, IPO also publishes information on payments (e.g. large procurements of equipment or consultancy) and senior civil servant salaries.

Comments – a Public Data Corporation

Much IPO data is already published free of charge in statutory registers and official journals which are freely available on the IPO website. The IPO has a statutory requirement to make this data available as outlined above.

We support the principle of open access to public data. One of the principles of the patent system, for example, is to disseminate knowledge through the publication of patent applications. This in turn is intended to promote further innovation and ultimately growth. However, there are some issues that need to be considered in establishing the detail of policy proposals on the issue of access to public data. IPO will share examples from its own experience which may resonate with other organisations.

- PDC design should take account of issues that may arise where data is already made available

¹ <http://www.ipo.gov.uk/ipreview-c4e-sub-mod.pdf>

As an example, IPO makes data available through licensing raw data to third party commercial organisations, who add value to this data to provide a commercial service to others. If IPO data is included in a PDC the provision of such commercial services already in existence will need to be taken into account when establishing the detail of any proposals.

- Policy (on open data and PDC) should also take account of potential additional resource implications arising from requirements to make more data available

The IPO makes names and addresses of patent applicants publicly available as part of its statutory requirements. Data protection law requires that such personal information is only made available where it is necessary and appropriate to do so. Should IPO be required to make more information publicly available it will need to consider whether it is necessary and appropriate to release this information under the Data Protection Act. In addition, consideration will need to be given to potential operational costs associated with cleanup of personal data (e.g. to remove unnecessary personal information), particularly in cases of data mining.

Conclusions

IPO supports a move to more open access to data but notes the following:

- The interaction with copyright law and policy needs to be fully considered.
- Potential operational impacts on public and private sector organisations such as those we have outlined should be taken into account when developing policy on access to public data.

Background and context

We note that the Making Open Data Real Consultation aims to explore a suitable approach to achieving increased public sector transparency through making data collected by public sector organisations more freely available to maximise growth opportunities, increase accountability and efficiency.

We also note the Consultation on Data Policy for a Public Data Corporation aims to explore options for bringing together data rich organisations to provide a more consistent approach to data access, standards and opportunities to attract private investment.

IPO Policy on data sharing sets out the legislative and regulatory environment and a high level policy. The information held at IPO is subject to legislation which governs what can be shared and when. The following UK legislation applies to the information held:

- The Patents Act 1977 as amended by the Copyright, Designs and Patents Act 1988, the Patents Act 2004 and the Regulatory Reform (Patents) Order 2004.
- The Trade Marks Act 1994.
- The Registered Designs Act 1949 as amended by the Copyright, Designs and Patents Act 1988.
- Data Protection Act (DPA) 1998.
- Freedom of Information Act (FoI) 2000.

The IPO will share information whenever possible provided that:

- We do not breach any statutory or legal obligations.

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- Commercially sensitive or protectively marked information is only shared under contract, as a result of a formal agreement or in response to a valid Fol request.
- The risks associated with sharing the information are understood and managed.
- Requests for information that is not routinely published are handled in accordance with the Fol act.
- Requests to transfer information are processed and transferred in accordance with the Information Asset Transfer Policy.