



INTELLECTUAL
PROPERTY OFFICE

The UK's International Strategy for Intellectual Property



Executive Summary

Intellectual Property (IP) and innovation are crucial for the UK's knowledge-intensive economy. IP exports totalled £113 billion in 2009 in the UK; global patents and creative industry licences alone are estimated to be worth £600 billion, or 5% of world trade. Innovation is a major driver of growth for the UK: the National Endowment for Science and the Arts (NESTA) estimates that half of UK productivity growth is due to innovation. IP is an important focus of business investment: in 2008 UK business spent £141 billion on intangible investment and IP compared to £104 billion on tangible investment.

Getting the international IP system right is essential for innovative businesses, especially SMEs. The international IP system faces significant challenges in responding to new digital technologies and the new business models they are creating. In addition, growing levels of innovation around the world, particularly in the emerging economies, are putting increasing strain on the system, creating, for example, growing "patent backlogs" which delay patent processing.

"*Digital Opportunity: A Review of Intellectual Property and Growth*", published on 18 May 2011 by Professor Ian Hargreaves, was commissioned by the Prime Minister to assess how the UK can adapt to changing IP realities.

The Review recognises that getting the IP framework in the best possible shape to support innovation and growth in the UK requires strong and consistent action at the international level. Prof. Hargreaves recommends that "The UK should resolutely pursue its international interests in IP, particularly with respect to emerging economies such as China and India, based upon positions grounded in economic evidence. It should attach the highest immediate priority to achieving a unified EU patent court and EU patent system, which promises significant economic benefits to UK business, and work to make the Patent Cooperation Treaty a more effective vehicle for international processing of patent applications."

The Review also calls for action on EU copyright, in areas such as cross-border licensing, and further use and widening of EU copyright flexibilities. On patents, it recommends further "work-sharing" with international patent offices to cut backlogs and increased efforts internationally on designs.

The Government is taking these recommendations seriously. This strategy sets out our overall approach to IP issues internationally.

Our overarching aim is:

An efficient, respected international intellectual property system that encourages innovation and creativity while enabling the economy and society to benefit from knowledge and ideas.

Three Key Goals

1. A Well-Functioning International Framework

Reform of the international IP system – including work on improving uptake of the Patent Co-operation Treaty to tackle *patent backlogs* that cost the global economy up to £7.6 billion per year of additional pendency, and reform at the *World Intellectual Property Organisation*, where finances and governance have historically proven difficult.

Influence in Europe, the source of much of the IP framework governing UK business, and often negotiating on behalf of the UK government – pushing for a unitary *EU patent and patent court* with real benefits for business; working to secure *EU copyright reforms* that will lead to increased growth and economic benefits, such as cross-border licensing; and work to ensure IP elements of *Free Trade Agreements* are in line with UK priorities.

2. Good National Regimes

Pushing for more effective and consistent enforcement of IP laws within national regimes – by *strengthening relationships with key economies* like China, India, Brazil, and the US, and establishing a *network of IP Attachés*.

Providing practical support to business operating overseas – the Intellectual Property Office will work with UKTI, supported by the FCO, and the IP Attaché network, to provide this.

3. Economic and Technological Development

Striking the right balance between industrial and development priorities, to help stimulate economic growth and tackle critical global challenges – *tailoring IP policy to the level of development of countries*, pushing for further *TRIPS flexibilities for Least Developed Countries*, and supporting *diffusion of medicines and climate change technology*.

The strategy also describes how we will start to measure the impact of our strategy. Implementation will be led from the Intellectual Property Office, and you can get in touch with the team at internationalapproach@ipo.gsi.gov.uk

The UK's International Strategy for Intellectual Property

Aim, Goals, and Deliverables

AIM

An efficient, respected, international intellectual property system that encourages innovation and creativity while enabling the economy and society to benefit from knowledge and ideas.

Good National Regimes

Non-discriminatory and transparent application of IP rules within national regimes enabling level playing fields for protection and enforcement of IP.

A Well-Functioning Framework

An international IP framework that supports the growth of knowledge-intensive UK business and promotes wider access to knowledge.

Economic and Technological Development

An international IP framework that strikes the right balance between industrial and development priorities, in order to help stimulate economic growth and tackle critical global challenges.

In Overseas Markets

IPO will work with UKTI, supported by the FCO, to **support UK business to develop and exploit their IP** practically. Establish a network of **IP Attachés** to promote UK business interests, policy interests and provide a focal point for supporting UK businesses with IP related issues. Develop specific packages and **country-specific plans** for key markets, e.g. **China, India and Brazil**. Work with partners to push for **more effective and consistent IP enforcement**, where not detrimental to societal needs such as public health. Produce **targeted effective support** such as helpdesks, business guides, or enforcement advice. Provide **targeted technical assistance** in support of priorities where not duplicating other support. Target support to **IP-intensive SMEs** to try to ensure that those who receive support are those who need it most.

Internationally, the UK will:

Champion **patent reform** around the world, working to improve take-up of the Patent Cooperation Treaty improving arrangements between offices and collaborating widely on worksharing. Push for **international copyright** rules that protect broadcasters' rights to be updated, and reach consensus on how to improve access to copyright materials for the print disabled. Work to secure increased membership to existing **trade mark** registration systems, and a **World Intellectual Property Organisation (WIPO)** treaty on **designs**, while ensuring concerns of **brand owners** are heard in the debate over the future of the Internet. Prioritise efforts within and support existing efforts to reform the WIPO. Raise IP in multilateral economic fora and continue to influence both **bilaterally** and **plurilaterally**.

In the EU, the UK will:

Push hard for agreement on a unitary **EU patent** and patent court which delivers real benefits for business. Support **EU copyright** reforms that will lead to increased growth and economic benefits, including progress on cross-border licensing, orphan works, common standards for collecting societies and further flexibilities in the EU copyright framework that enable greater adaptability to new technologies. Participate in efforts to improve **practical enforcement in the EU**. Influence the **European Patent Office (EPO)** to ensure it is an effective, sustainable, institution. Work to ensure EU bilateral Free Trade Agreements are in line with UK priorities. Push for reform of the **EU Trademark System** to deliver real benefits for business. Bolster **R+D collaboration** particularly between the public and private sectors. Improve influencing at key **European institutions**.

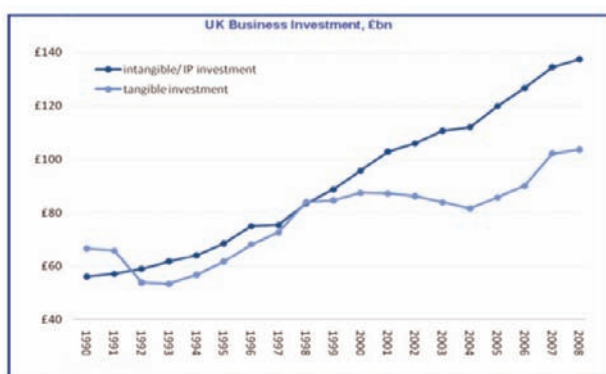
The UK will:

Advocate a **tailored approach** to IP policies and their implementation, depending on the level of development of individual countries. In some cases, this could mean advocating stronger enforcement – for instance in China, India and Brazil. Identify how the **International IP Framework** can be harnessed to address **development concerns**, particularly public health. Call for an **extension to the TRIPS transition period** by when all LDCs should have made their national IP laws TRIPS compliant. Provide **technical assistance where appropriate and within available resources**, prioritising support to those countries which will benefit from improved IP laws, or on how to make the best of their and others' IP. Support a balanced IP system as a pre-requisite to **private sector development of climate change technology and other technology transfer**.

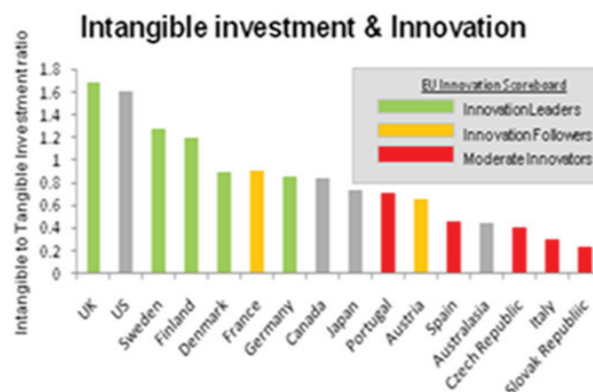
1. Introduction

Intellectual Property (IP) is a key driver of innovation and economic growth. The intellectual property system is designed to promote innovation and economic growth by enabling creators, users and consumers to obtain value from knowledge and ideas. IP helps businesses and individuals to commercialise their ideas and innovations by providing incentives for the creation and dissemination of knowledge, culture and products that meet consumer needs. There is evidence that intellectual property rights (IPRs) play an important role in encouraging “knowledge investment” in intangible assets to create economic value, and in encouraging follow-on innovation and creativity. But we need to understand better the relationship between IPRs and economic value.

IP is crucial for UK growth. Innovation, creativity and the knowledge economy are at the heart of the UK's future economic prosperity. The UK is one of the most knowledge-intensive nations in the world. It has been estimated that over half of UK productivity growth is due to measured and unmeasured innovation. The OECD Innovation Strategy suggests that the UK is among the most “intangible intensive” economies in the world. In 2008 UK business spent £141 billion on intangible assets and IP, compared to £104 billion on tangible investment. The following graphs illustrate this.



Source: Nesta Innovation Index 2011



Source OECD Innovation Strategy (March 2009:12)

IP is a key UK export. International trade in intellectual property is increasingly important worldwide. Global patents and creative industry licences alone are estimated to be worth £600 billion, or 5% of world trade. This is particularly true for the UK. For example, creative industries (led by our software, computer games and electronic publishing sectors) generated £16.6bn of export services in 2007, behind only the US and Germany. The market share of British pharmaceutical companies is greater than all EU competitors combined. IP exports totalled £113 billion in 2009. UK businesses therefore need to have confidence in the international IP framework and the IP systems of other countries, so that they are able to operate, trade and invest abroad. It is therefore strongly in the UK's interests that the international IP system works well, providing both the framework and system to manage intellectual property rights and effective and appropriate enforcement mechanisms to protect those rights, so UK entrepreneurs and IP intensive businesses can exploit their IP internationally.

What should a well-functioning IP system do?

- Create a flexible and informed set of mechanisms to manage the legal IP framework
- Ensure that these mechanisms can allow creators to effectively own and exploit their knowledge and innovation in order to realise value from them
- Ensure that this is balanced against ensuring sufficient wider public access to IP and the wider diffusion of key technologies

The international IP system is only part of a wider “innovation system” and is just one way for creators to protect their innovations and ideas. Others include trade secrets and complex design. An effective international IP system needs to be used appropriately; and it needs to be able to adapt to different models of innovation, as the pace of technological development increases. The UK's Intellectual Property Office (IPO) is leading the world in developing creative solutions to new issues – for instance the “Green Channel” patent examination acceleration initiative pioneered by the IPO has paved the way for other large patent offices to adopt similar schemes.

An effective international IP system is also important to ensure fair access to technology and ideas, which are increasingly cross-border in nature. International debate on IP has become increasingly polarised around this issue. Developed countries (including the UK) argue that the IP system can help stimulate economic growth and incentivise private sector investment in innovation. But many developing and emerging economies, and NGOs, argue that IPRs do little to stimulate innovation in developing countries where the prerequisite human and technical capacity is absent. They argue the IP system prevents developing countries from getting access to the essential medicines, technologies, educational materials and agricultural products that they need, at prices they can afford, creating additional barriers to economic development. These debates have spilled over into global discussions on topics as diverse as public health, climate change and food security. One of the difficulties in these debates is the lack of clear evidence around the relationship between IP and economic development, although there is evidence to show that the role of IP does change as countries develop. The IPO is already engaged in a work programme to understand this relationship, collaborating with other IP offices. The Government accepts the emphasis placed by

Digital Opportunity on better evidence in policy-making on intellectual property, and will promote this view at EU level, and internationally.

IP and Economic Development – What the evidence tells us

High-income countries

In general, strengthening IPRs appears to have increased growth at least partly due to increased innovation and technology diffusion. But certain countries considered it beneficial to retain weak IP protection even after they had reached the high income bracket (e.g. US, Japan, Korea).

Middle-income countries

Domestic innovation, technology diffusion, and imitation can all contribute to economic growth. Stronger IPR systems support domestic innovation and technology diffusion through foreign patenting, licensing, and international trade but not through imitation. The beneficial effects of stronger IPR protection act as a substitute to an extent for the growth countries gained from imitation, when they were low income.

Low-income countries

Evidence suggests that stronger IP protection (at the levels mandated by the TRIPS agreement) appears to have no effect on growth and may hinder it in some cases.

For businesses, individuals and wider society the international IP system needs to be flexible enough to promote opportunities for innovation and economic growth in the UK and Europe, while also helping to serve the development needs of developing countries and the innovation required to tackle key global challenges.

This paper sets out our 5 year approach to achieving an efficient, respected international intellectual property system that encourages innovation and creativity and enables the economy and society to benefit from knowledge and ideas.

The UK will also be taking forward policies developed following the publication of “Digital Opportunity: A Review of Intellectual Property and Growth” as indicated in the Government Response.

We have identified three key outcomes for our international strategy for IP:

▶ **A Well-Functioning International Framework**

An international IP framework and system that supports the growth of knowledge-intensive UK business and promotes wider access to knowledge.

▶ **Good National Regimes**

Non-discriminatory and transparent application of IP rules within national regimes enabling level playing fields for protection and enforcement of IP.

▶ **Economic and Technological Development**

An international IP framework that strikes the right balance between industrial and development priorities, to help stimulate economic growth and tackle critical global challenges.

- *Good National Regimes*, including how we can influence key developed and emerging economy partners, especially China, India and Brazil, to improve their IP systems; and how to provide support to British business.
- *Economic and Technological Development*. IP can have a major impact on the diffusion of technologies and growth in developing countries.

These outcomes are consistent with the recommendations produced by Professor Hargreaves on EU and international matters in “Digital Opportunity: A Review of IP and Growth”, and accepted by the Government.

2. A Well-functioning International Framework

The IP system operates in a global context: rapid development of high-technology industries and the erosion of global trade barriers mean that many more businesses and innovators operate internationally. The IP framework is having to adapt to rapid technological change. In places it is beginning to face serious difficulties. IP rights are defined at both national and international level. Much of the formal international framework of IP rights is already set within international law. The table below sets out the broad framework of rights that help protect Intellectual Property.

The rest of this paper considers how we can achieve these outcomes. It addresses:

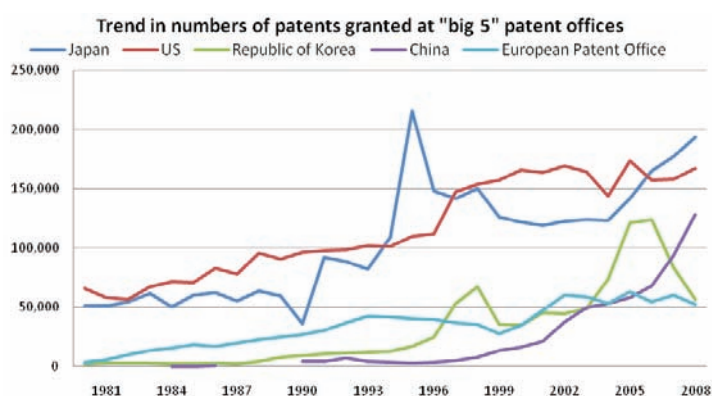
- *Well-functioning framework*: This looks at reform of the international IP system and how we can influence it. An effective international IP system is essential for innovative business to maximise the value of their IP, but the system is struggling to cope with growing demand and technological change. It also covers *Europe*, as the EU provides much of the framework which applies to UK business and has a key role in negotiating for us with the rest of the world.

Intellectual Property Legal Framework: National and International Rights

Right	International	National (UK/EU)	National (US)
<p>PATENTS An exclusive right that allows the patent holder to limit use of specific inventions by others. Available for at up to 20 years on payment of renewal fees. Longer term protection also possible, e.g. for pharmaceuticals.</p>	<p>WTO TRIPS agreement sets a minimum 20 year potential lifetime for patents (applicable to all WTO members).</p> <p>No 'global' patent. Patent Co-operation Treaty (at WIPO) provides a single international search and preliminary examination. But patent must still be granted for individual states or regions by respective offices.</p>	<p>Patents can only have legal effect in the individual territories for which they have been granted. Grant is via national offices or intergovernmental European Patent Office. National law in Europe is aligned with European Patent Convention, though some differences remain. National systems for processing also differ.</p>	<p>Differences in grant by offices and enforcement in courts between Europe and US. e.g. on biotech, software and business models.</p> <p>US system is currently "first to invent". However US are likely to change soon to the "first to file" system common in most of the rest of the world.</p>
<p>COPYRIGHT Copyright is an automatic right covering a wide range of works including literary, artistic, dramatic and musical works, sound recordings, films and broadcasts. No registration needed.</p>	<p>Most copyright policy applicable to the UK governed at EU level. Terms of protection also harmonised at EU level.</p> <p>The Berne Convention is the international copyright treaty providing minimum legal protection for authors of copyright works. All EU Members are signatories.</p>	<p>Differences in what is protected by copyright between countries. Also differences in what use is permitted without payment of remuneration and whether countries compensate owners for permitted use of copyright material e.g. levies.</p>	<p>US permits use of copyright material without consent by the rights holder, provided it is considered "fair use". In the EU we have a list of specific exceptions.</p>
<p>TRADE MARKS A monopoly right. Protects symbols (logos and brand names) that distinguish goods and services.</p>	<p>At EU level, trade marks are granted by OHIM (the EU trade mark and designs office). This grants a mark valid in all 27 Member States.</p> <p>The Madrid Protocol is an international registration system for trade marks (administered by WIPO).</p>	<p>Can be granted in each country through the national IP office. No restriction on the length of a trade mark right, provided a mark is used.</p> <p>In the UK, trade marks can also be protected through common law – 'passing off'.</p>	<p>US has requirement for use before registration. Specifications are therefore more explicit and often longer than UK counterparts.</p> <p>'Passing off' is known as 'palming off' in the US. There are differences in the legal definitions.</p>
<p>DESIGN RIGHTS Protect the overall visual appearance of a product. Can be a monopoly or non-monopoly right.</p>	<p>EU-level Registered Community Designs (RCD) are granted by OHIM, which protects for 25 years. There are also Community Unregistered Design Rights lasting 3 years.</p> <p>The Hague Agreement provides a mechanism for registering a design in several countries by means of a single application (administered at WIPO). UK is a member through the EU.</p>	<p>UK has registered and unregistered design rights. Former is a monopoly right, granted by the IPO. Latter is not a monopoly right, but is automatic (i.e. not subject to any formal examination or registration process).</p>	<p>In the US, a design patent is a patent granted on the ornamental design of a functional item. Design patents are a type of industrial design right.</p>

Patents

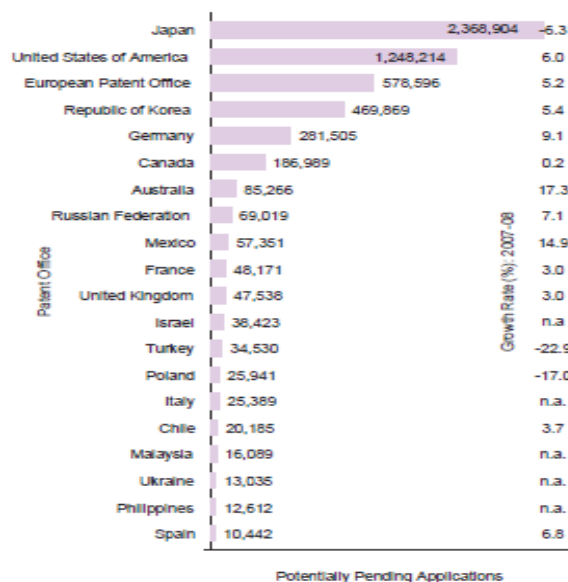
Patent offices have seen large increases in numbers of applications in the past few years. In 2007, 1.85 million new patent applications were filed across the world. This increase has been particularly marked in the big 'IP5' offices (US, Japan, China, Korea and the European Patent Office), who granted over 550,000 patents, or 58% of total patents, in 2008 as can be seen in the diagram below.



Source: WIPO Intellectual Property Indicators, 2010

As a result, major patent offices have built up significant backlogs of patents waiting to be processed. WIPO estimates the current global backlog stands at 4.2 million, several years of work. During this time, the technology disclosed in some patent applications in sectors with rapid technological development (e.g. telecommunications) may become obsolete. "Patent Backlogs and Mutual Recognition", a January 2010 IPO-funded study, showed that each year of additional delay in patent processing in US/ Japan/Europe results in an economic loss of £7.6bn. The diagram below shows numbers of pending patent applications, one indicator of backlog issues, although different criteria will apply in different offices. The UK is working with other offices to help reduce backlogs and delays.

Pending Patent Applications 2008



Source: WIPO Intellectual Property Indicators, 2010
 Note: Figures are not always directly comparable between offices because of differences in process

The number of players has also increased with the growth of innovative industries in emerging economies, which in turn seek protection for their own products. By 2012, more patents are predicted to be filed in China than anywhere else. We expect this growth to continue, driven by, amongst other things, improved living standards and increased consumer access sectors like communications, electronics and pharmaceuticals, which are heavily dependent on patents.

The international system has no single "global" patent; instead, patents are granted for individual countries or regions and the rights enforced in each country. This results in a raft of national patents rather than one single patent covering multiple countries, and creates complexity and uncertainty for applicants who want international patent protection. The international Patent Co-operation Treaty (PCT), administered by the World Intellectual Property Office (WIPO), which shortcuts the patent application process if an applicant is applying in multiple countries, simplifies this to an extent. But it does not function as effectively as it could, and applicants and national offices are often unwilling to rely on this alone.

Global patent reform should facilitate a system that:

- *supports innovation and growth but is not “one size fits all”* – patent systems need to be flexible enough to account for differences in economic development as well as for different types of users (e.g. SMEs or different sectors);
- *is accessible and affordable;*
- *provides greater certainty for applicants and third parties* – timely and reliable processing, predictability in the scope of what subject matter attracts patent protection, and litigation;
- *is based on laws and procedures that are easy to use;* and
- *recognises where patents are not useful* and signposts are provided to take account of alternative models (e.g. open innovation, trade secrets).

In achieving this, there are two key issues, **global backlogs** and **patent quality**, that need to be addressed. Delays caused by backlogs can be costly, contribute to delays in getting new products to the marketplace, and may encourage patent offices to lower the quality of their work. At the same time, different patent offices may have different patentability criteria. These issues can create uncertainty about the likelihood of obtaining a valid patent in a particular market.

- The UK is a leader on global patent reform. We have introduced a fast track system for green technologies, which has been adopted by a number of other offices, including the US, Japan and Korea. And we have been a vocal advocate globally for the importance of tackling backlogs. We are no longer a lone voice. Increasingly the “Big 5” patent offices recognise the problem. But progress is slow. Mutual recognition – when two countries accept patents granted in each others’ jurisdiction – could be an answer. But realistically, this is an unlikely goal in the next 5 years, even between countries with similar legal

systems. We should aim for much greater mutual exploitation of work between offices, to reduce duplication and hence backlogs, and improve consistency and quality. **We will:**

► **Continue to use our political influence to champion patent reform by:**

- Working to improve the Patent Cooperation Treaty, so it becomes a more effective mechanism in which businesses and IP offices have confidence.
- Improving/simplifying current bilateral agreements between IP offices to share work and improve consistency between IP offices including bringing them into wider plurilateral agreements, encompassing more offices.
- Developing further collaborative approaches with key trusted partners.

Copyright

The digital age has created substantial new opportunities for creative content, and substantial challenges to copyright law and practice. The UK is one of the largest exporters of creative content, and creative business relies heavily on the copyright framework to secure returns on investment, so copyright is a critical element of the international IP framework for UK business. The Government agrees with the view of *Digital Opportunity* that the UK needs to adapt to make the most of our strong position now or risk losing it through missed opportunities. The UK must work within international agreements and European law as well making the case with international partners for changes to meet the challenges of the future.

An effective global copyright system should:

- Be more transparent and in places more harmonised;
- Deliver fairer remuneration for creators and rights holders, and fairer access for consumers and users of copyright material;

- Reduce the costs of access to and use of content and material across international boundaries, especially in Europe;
- Enable businesses to effectively distribute content internationally.

Making progress on copyright is difficult because of the range of interests and different perspectives that are involved. The EU holds competence for most copyright rules and regulations affecting the UK, so much of international focus on copyright is in Europe (see section on Europe below). But there are a number of objectives that Government can push for at an international level to promote our aims. **we will:**

- ▶ **Push for an appropriate Council of Europe Convention on Broadcasting Rights.** International rules for the protection of broadcasters' rights are out of date. In particular, piracy of internet broadcast is a cross-border issue requiring international action. A Council of Europe convention would cover many major broadcasting countries, and be a step towards a more global treaty.
- ▶ **Support work in the World Intellectual Property Organisation (WIPO), and take a lead within the EU, to reach an international consensus on improving access to copyright materials for visually impaired people and take forward work on other exceptions and limitations.** This could make a real difference to visually impaired people around the world and show how IP can help improve access to creative works.

Trade Marks and Designs

Trade marks are an important way for many businesses and other organisations to protect their brand identity and reputation. Establishing the UK as a primary location for brand creation and development is essential to maintaining UK competitiveness. An attractive and stable regulatory, fiscal and policy environment which encourages

entrepreneurs and does not excessively regulate those who succeed, is essential to attracting and retaining brands and maximising commercial opportunities.

The international trade mark and design systems are largely effective in providing clear and enforceable rights that encourage brand and design development across the EU. But there are still areas where current practice could be improved, in particular, as with patents, consistency in quality and standards, and reduction of waiting times. An effective global trade mark system should:

- *support innovation and brand development;*
- *be consistent in terms of quality and standards across borders;*
- *include all the major economic and emerging markets;*
- *be enforceable.*

Again, much of our effort is focussed on Europe (see below) and, in particular, OHIM (Office of Harmonisation for the Internal Market) the European Trade Mark and Designs office. At an international level, **we will:**

- ▶ **Lobby key countries, such as Brazil, to join the Madrid Protocol, an international registration system for trade marks;**
- ▶ **Continue to work at a technical level with China and Brazil in order to improve the overall climate for business.**

The design industry matters for the UK. The Design Council estimates that in 2009, the industry employed over 230,000 and was worth about £15 billion to the UK economy. An effective international design system should:

- be consistent in terms of quality and standards across borders;
- include all the major economies and emerging markets.

At an international level we are pushing for:

- ▶ **Increased harmonisation on designs through a WIPO-led treaty.**

We also need to be aware of and direct our attention to other areas of activity internationally which impact on brand and trade mark owners. The planned introduction by the Internet Corporation of an unlimited number of new generic top level domain names (gTLDs) into the domain name system has the potential to increase monitoring and registration costs to brand owners. Work to mitigate their concerns has had some success. **We will:**

- ▶ **Continue to engage with ICANN through the UK's representation on the Governmental Advisory Committee to ensure the concerns of brand owners are represented and taken into account with the expansion of domain names.**

Enforcement

One of the key problems for IP-intensive UK businesses operating overseas is enforcement. International IP enforcement is improving globally, but there are still significant risks, particularly in emerging economies, where enforcement can be weak, costly and complex, and counterfeiting and piracy are still common. Effective IP enforcement has advantages for countries which are sufficiently developed, as they tend to attract a larger scale of entry and technology transfer from foreign business. Our focus on IP enforcement has been on improving the UK's domestic framework. We have been actively involved in the Anti-Counterfeiting Trade Agreement negotiations (ACTA) which have been conducted amongst a group of 37 mainly developed countries and will set benchmark standards on enforcement. **We will:**

- ▶ **Review our approach on international enforcement including how to press for better enforcement standards in emerging economies.**

Influencing the International System

The international IP system is governed through several institutions and treaties. The two key international institutions are:

The World Intellectual Property Organisation (WIPO), the specialised UN agency responsible for administering key international treaties on IP (the Patent Cooperation Treaty (PCT) and the Madrid Protocol for trade marks). It is the only IP institution with global reach, and provides a forum to develop international rules on IP. UK businesses use many of WIPO's services. WIPO was beset by governance and management problems under its previous Director General. But Francis Gurry, its DG since 2008, is determinedly pursuing a reform agenda which is beginning to bear fruit.

The World Trade Organisation (WTO) which administers the international *Trade Related Aspects of Intellectual Property Rights (TRIPS)* agreement which sets minimum standards for national IP protection frameworks, and provides flexibilities which aim to ensure fair distribution of technology and other forms of IP. TRIPS is discussed further in the section on Economic and Technological Development.

There are also regional organisations, such as the **European Patent Office and OHIM** (see the Europe section). And IP is often discussed in other bodies, such as the UN Framework Committee for Climate Change, OECD, the World Health Organisation and the Convention on Bio-Diversity.

Entrenched differences between developed and developing countries have meant that significant change to global IP policy has been almost impossible to agree since TRIPS in 1996. The political divide between North and South continues to affect multilateral negotiations. It has spilled over into other international negotiations, including Doha and on climate change, although there is little linkage between the fora. This has increasingly led developed countries to seek agreements outside the multilateral fora, for example ACTA. Agreeing global

solutions to the global challenges facing IP, such as backlogs, has been virtually impossible. This has also had an impact on the quality of services WIPO provides, because it is very difficult to agree even minor technical reforms.

The UK is well placed to influence international negotiations on IP in WIPO and other fora. Unlike most countries, we combine technical and policy expertise in the Intellectual Property Office (most countries keep them separate), and we are very well respected for the quality of our technical work and advice. We co-chaired, with India, the Heiligendamm Innovation Group which brought together the G8 and emerging economies. But we have struggled at times to translate this influence into political impact. To play a stronger influencing role on IP internationally, **we will:**

- ▶ **Influence WIPO:**
 - **Actively support Francis Gurry's efforts to reform WIPO**
 - **Prioritise our efforts within WIPO, with a key focus on PCT improvement.** We will seek to identify trade-offs across dossiers, to persuade developing countries to agree to reform, and take a leadership role in the EU and developed countries groups to persuade them to accept greater flexibility to help achieve our wider objectives.
- ▶ **Influence internationally:**
 - **Continue to pursue IP objectives bilaterally, and in plurilateral groups, and build links between developed and emerging economies** as the international deadlock on IP is unlikely to be broken soon.
 - **Raise IP as part of wider international economic engagement, such as with the G20 and the OECD.** IP discussions can be very insular. It is important to engage economic officials in capitals as well as negotiators, who often taken an intransigent line.

3. A Well-functioning European Framework

Much of the IP legal framework that applies to the UK is governed at EU level. IP is increasingly important in Europe. It is central to two flagship Europe 2020 initiatives – the Digital Agenda and the Innovation Union. Internationally, the EU uses its economic weight to negotiate increasingly strong IPR provisions in international fora. To deliver the Government's positive EU agenda, it is vital that we actively engage on IP initiatives in Europe.

There have been many efforts to improve IP laws and systems in Europe. Market barriers to innovation and creativity are being removed, and Directives on trade marks, copyright and designs have widely harmonised legal frameworks. Despite more than 40 years of effort, little patent law has been harmonised through the EU, although 38 European states share common laws under the European Patent Convention (EPC). But a well-designed unitary EU patent and patent court could have significant economic benefits. The EU has also developed new rights to address specific sectoral needs, such as Geographical Indications (GIs). An EU Observatory for Counterfeiting and Piracy is another example of a proposal that could share best practice, gather accurate data and provide added value to enforcement proposals, as long as its remit and cost structure are transparent and controlled.

There are five key issues for better engagement with Europe on IP:

- Simplifying and strengthening the single market for innovation.
- Centralisation vs. de-centralisation of rights
- Copyright policy in Europe
- The EU and wider world
- How we influence in Europe

Simplifying and Strengthening the Single Market for Innovation

The Government is a strong supporter of regulatory simplification and removal of market barriers as a spur to sustainable economic growth. Simplifying IP rules would give businesses owning and using IP a clear and predictable framework throughout the single market and beyond. The traditional EU approach to IPRs has often been to harmonise laws via Directives. To a large degree, where this has taken place it has been successful. But harmonisation can also lead to a lot of new laws for businesses to adapt to, and legal uncertainty as the scope of these laws is clarified in the courts. Rights that are too inflexible, territorial in nature, wide in scope or long in duration can create powerful monopolies, restricting the freedom of competitors.

Unitary EU rights can help companies set up pan-European business models, making it easier to invest, manufacture and sell new products in different European markets. But EU harmonisation also limits the powers of EU states to act independently in the future. So it is important that non-regulatory and local solutions are fully considered before agreeing to harmonisation measures. In addition, where opportunities arise to modernise the existing framework, as with the current Commission-led Max Planck Institute review of the trade mark system in Europe, or the recently launched OHIM cooperation fund programme, we should seek to ensure that projects to reform, harmonise, or further integrate national systems at a pan-European level deliver simplification and the elimination of known deficiencies.

Another way in which European action has been used to simplify the IP system and promote access to IPRs is through the centralisation of rights-granting. The two main organisations which do this are OHIM, the EU trade marks and designs office; and the non-EU European Patent Office (EPO), which provides a centralised process of search and examination, but grants *national* patents, renewed and enforced in each state.

There are downsides to centralisation. EU-wide rights give greater powers to block markets and competitors than the individual rights obtained at national level. Stronger rights, at cheaper prices, may weaken the position of users, licensees and consumers. They also give great influence to large organisations. We should only support further centralisation of rights-granting and enforcement where there is evidence of benefits, and where it is consistent with the Coalition's policy on extension of EU powers, particularly proposals to extend criminal sanctions at an EU level.

Our priorities will include:

- ▶ **Pushing hard for agreement on a unitary EU patent and patent court which delivers real benefits for business, consumers and the economy.**
- ▶ **Bolstering research and innovation, by developing systems to enable the effective translation and use of IP particularly for public-private research collaboration, building on our domestic experience.**
- ▶ **Pushing for reform of the trade mark system in Europe which addresses the challenges and deficiencies of the current framework and delivers real benefits for business.**
- ▶ **Influencing the EPO to ensure it is an effective, sustainable institution.**
- ▶ **Participating in efforts to improve practical enforcement in the EU.**

Copyright

Large areas of copyright are harmonised across the EU, however, some differences remain. In addition, the territorial nature of copyright within the EU can cause problems, for example in cross-border use of creative content. The recent EU initiative on the Digital Agenda includes proposals on copyright where action at an EU level is required, in particular work to facilitate cross-border licensing. The Commission is also looking at the need for a common standard to improve collecting societies within Europe. The UK welcomes these initiatives to improve market functioning and transparency. Following the recommendations of *Digital Opportunity*, we also recognise that the EU copyright framework must not create undue barriers to innovation. Complementing domestic action **we will:**

- ▶ **Work with Member States and the Commission to develop proposals for a cross-border copyright licensing framework that is compatible with current effective licensing models in the diverse industries affected.**
- ▶ **Support EU copyright reforms that will lead to increased growth and economic benefits, including common standards for collecting societies and progress on orphan works.**
- ▶ **Aim to secure further flexibilities at EU level that enable greater adaptability to new technologies, maximising benefits for users and opportunities for innovation while maintaining incentives and rewards for creators.**

The EU and wider world

In many policy areas, including most IPR policy, the EU negotiates with third countries on behalf of the UK. In trade agreements it is the Commission that negotiates, in consultation with the Member States, which gives the EU influence. The IP elements of EU Free Trade Agreements (FTAs) can provide a useful vehicle to strengthen IP protection of UK and EU business in third countries and we should ensure that we make the most of these agreements. The most important trade agreements under negotiation

in this respect are the FTAs with India, Canada and the Partnership and Cooperation Agreement (PCA) with China. But there are risks, and it often takes concerted action from Member States to ensure EU trade negotiators do not insert inappropriate IP conditions. A particular risk is competence creep on criminal sanctions. It is also important that IP provisions of an FTA are tailored to the level of development of the country with which we are negotiating. We should argue for stronger provisions with developed or emerging economies, than with least developed countries, and we should take account of wider impacts, for example on public health.

We will:

- ▶ **Work to ensure EU bilateral trade agreements are in line with UK priorities.**

How we Influence in Europe

In Europe, many countries and citizens view IP through different prisms. There are often tensions between our primarily economic approach and those, often southern, Member States which emphasise the rights of the author and artist ("moral" rights). The European Parliament is also increasingly influential often as a co-legislator on IP issues. It gives voice to concerns that may be lost in other international organisations including citizens, consumers and open society advocates.

We will:

- ▶ **Focus on strengthening our relationships with like-minded member states.**
- ▶ **Aim to influence the Commission earlier in the policy development process, particularly making use of economic evidence.**
- ▶ **Improve our working with Parliament to influence on specific issues and inform them on the role IP plays in the economy.**

4. Achieving Good National Regimes in Developed and Emerging Markets

UK businesses need confidence in the IP systems of other countries if they are to exploit their IP in international markets. Outside the EU, the most pressing issues that confront business are:

- *Enforcement, regulatory and market access issues* including counterfeiting, piracy, and knowledge leakage.
- *The legal framework and judicial procedures in specific countries*, especially concerning lack of clarity in or conflicting approaches to the legal framework governing copyright content; IP registration, contracting or technology commercialisation and diffusion, and judicial procedures.
- *Delays in IP registration*, especially patent backlogs, which cause business uncertainty.
- *Asymmetric information about IP value, markets, legal framework differences or modes of transferring technology* which increase perceptions of risk and hinder deal-making between foreign and UK firms, increasing costs and stifling innovation.

Supporting UK business in international markets

Firms face many common risks operating in nations where IP protection is not robust, but support must also be tailored to the size and type of business concerned. SMEs often face the greatest challenges in exploiting their IP, both domestically and overseas. More established UK-based companies are able to develop strategies to tackle the risks to their IP of operating in international markets. But counterfeiting and piracy remain common. Building on our existing experience, **we will:**

- ▶ **Establish a network of IP Attachés to promote UK business interests, policy interests and provide a focal-point for supporting UK businesses with IP related issues.**
- ▶ **Work with UKTI, supported by the FCO, and through a range of delivery channels to provide practical support to help UK business develop and exploit their IP in key overseas markets. This will include:**
 - Targeted support to SME IP-users.
 - Development of specific packages for key markets, including China.
 - Raising the IP concerns of UK business with third country governments.
 - Identification of most effective means to provide support, such as helpdesks primers, enforcement guides.

Developed Economies

Our key developed country partner outside the EU is the USA. They are a close ally in tackling many of the problems confronting the international IP system. We have a very close relationship with the US Patent and Trademark Office, and are working closely with them on tackling global backlogs. The US's top international policy on IP is ensuring IP enforcement is robust. The US is not our only developed country partner outside the EU. We work closely with Japan, particularly on patent issues, and have a good IP relationship with Australia and Canada. UK businesses report that Canada's framework needs improvement; EU-Canada FTA talks will be key to ensuring this happens.

Emerging Economies

Amongst the emerging economies, **our key priorities are China, India and Brazil**, because of their size, rapid growth and influence. We also have a developing IP relationship with Korea, particularly on patent issues, as it is one of the "big five" offices. Vietnam is also a country to watch, because of its growth and commitment to update its IP system.

In **China, India and Brazil** there are tensions in attitudes and approaches to IP and towards the protection of IP rights. These countries are increasingly developing their own innovative and creative industries and want to create an environment in which these industries can flourish. Increasingly, there is recognition that this requires strong IP protection. But, at the same time, there are often strong political interests, particularly in Brazil and India, who argue that the IP system blocks

access to key technologies. China is less prominent in international debates on IP, but overseas businesses are concerned about domestic policies which they see could effectively force them to transfer IP to China if they want to do business there.

All three countries have worked to bring their IP systems up to global standards. But there are problems. The huge growth in demand for IP protection (both patents and trademarks) has led to growing backlogs and delays in processing applications. IP offices are struggling to keep up. Enforcement is inconsistent. China is the main concern for EU and UK business. **We will:**

- ▶ **Provide practical support to UK businesses operating or desiring to operate overseas in the priority emerging economies through**
 - Developing country-specific plans for China, India and Brazil.
 - Strengthening relations between IP authorities and offices to build confidence, and tackle common problems such as backlogs, and cross-border collaborative R&D.
 - Promoting the value and role of IP for innovation, technology diffusion and economic growth as part of our wider cross-government political and economic dialogue.
 - Working with partners, in particular the EU, to push for more effective and consistent IP enforcement, where not detrimental to societal needs such as public health.
 - Providing targeted technical assistance in support of these priorities and where it does not duplicate existing programmes (e.g. from the EU).

5. Economic and Technological Development

Available economic analysis suggests that for low-income countries with a weak scientific and technological infrastructure, stronger IP protection appears to have no effect on growth and may hinder it. Low-income and Least Developed Countries (LDCs) tend to have limited IP assets to protect, and the enforcement of IPRs may divert resources away from more pressing needs. Consumers in these countries may not be able to bear indirect costs of IP protection in the form of increased prices for patented goods. The ability of countries to absorb technology relies on much more than access to IP – access to infrastructure, finance and skills can be much more important. Indeed, insisting on inappropriate levels of IP protection and enforcement in LDCs can impede growth and development, contribute to perceptions that IP, far from stimulating innovation, is a barrier to growth, and reinforce the political divide between developed and developing countries on the role of IP.

IP is particularly relevant to development in a number of specific policy areas: climate change, access to medicines, genetic resources, traditional knowledge and traditional cultural expressions. Evidence suggests that the following are key issues in developing countries' use of IPRs:

- Some developing countries have chosen to protect some IPRs (such as trade marks) ahead of others (such as patents) where it is in their interest.
- Stronger IP laws and protection in LDCs when absorptive capacity is low and markets are weak do not result in benefits for foreign firms, and legal IP protection mechanisms are only one of many pre-requisites for successful technology transfer and diffusion.
- Different industrial sectors use the IP system in different ways and this can have varying effects on developing countries access to technologies.
- The positive impacts (for LDCs) of obtaining IP protection in export markets might be far greater than implementing IP laws domestically.

- How developing countries can use the existing intellectual property framework to protect and prevent misappropriation of their genetic resources, traditional knowledge and traditional cultural expressions and, should the existing framework not accommodate this protection, how this is best addressed.

Access to Medicines

25,000 people die each day from treatable diseases because they do not have access to the medicines they need. LDCs need access to essential medicines at affordable prices and the UK is committed to supporting this. We will seek to achieve a balance within the IP framework between providing sufficient incentives to pharmaceutical companies to research and develop new medicines and ensuring developing countries can use the flexibilities in existing international agreements to get affordable access to medicines to meet public health needs.

The existing international framework under TRIPS allows LDCs to exempt pharmaceutical products from patent protection until at least 2016. However, in the vast majority of African LDCs, patent protection is already available, but is not used as the pharmaceutical sector tends not to obtain or maintain patent protection in developing countries where there is small market demand and limited threat of imitation.

Most developing countries rely on importing pharmaceuticals from other countries, particularly generic medicines. However, the ability of these countries to import generic medicines to satisfy demand may be constrained by the implementation of TRIPS elsewhere, particularly India which is the major source of generic medicines for developing countries. But most of the current WHO List of Essential Medicines (which is, of course, regularly updated) would not be affected by this, as they are already out of patent.

One option could be for countries to use the compulsory licensing provisions in TRIPS: which allows a third party to make, use or sell a patented invention without the patent owner's consent. A few governments have used these provisions to try and lower prices. However, they have been subject to

significant political pressure from some developed countries who are seeking to protect their own IPRs, through channels such as bilateral trade agreements.

Climate change

IP has been a contentious issue in the climate change negotiations. Developing countries have called for measures to weaken IPRs, which they see as a barrier to technology transfer, including a large fund to pay for the compulsory purchase of IPRs. Developed countries, including the EU, have strongly defended IP as a pre-requisite to the development of the technologies required to tackle climate change in the private sector.

There is reason to believe that IPRs are less of a barrier to technology diffusion in the low carbon sector than in others, such as pharmaceuticals. In the low carbon sector, a wide range of technological solutions can be used to meet a specific need and the basic solutions in certain technologies have been long off-patent. This implies that IP should not have the same direct impact on price and access in this sector as exists in pharmaceuticals. However, given the level of technological change required to mitigate harmful climate change, it is important that the IP system successfully incentivises both innovation and rapid diffusion of new low carbon technology.

One key way of transferring technology is through licensing. The effective transfer of technology often also requires the transfer of tacit knowledge, which is not codified and will implicitly require the co-operation of the technology owners. Voluntary licensing arrangements are more likely to support this broader knowledge transfer than the use of compulsory licensing.

Many of the energy patents owners in key technologies are established multi-national industrial companies. Their perceptions of market conditions and level of IP protection in developing countries are likely to be decisive in the roll-out of the next generation of technologies, whether through foreign direct investment, licensing, or joint ventures. Weak enforcement of IPRs in emerging economies, such as China, reduces companies' willingness to transfer their most cutting edge technologies into those markets.

We have already pioneered fast track patenting for green technologies, which a number of other countries, including the US and Japan have adopted; and are developing approaches with Brazil and China for managing IP in cross-border R&D arrangements.

The UK already has a strong reputation with both developed and developing countries for bringing both IP and development expertise to bear on these questions. To achieve an international IP framework and system that strikes the right balance between industrial and development priorities to help stimulate economic growth and tackle critical global challenges, **we will:**

- ▶ **Advocate that IP policies and their implementation should be tailored to the level of economic development of individual countries. A one size fits all approach to IP policy is unlikely to be effective and could have negative impacts in least developed countries. Equally, we should advocate stronger enforcement in emerging economies, especially China, India and Brazil, which is likely to have benefits for both UK and indigenous business.**
- ▶ **Given that for some LDCs TRIPS compliance will have little economic benefit and may be damaging, we will consider advocating a change in approach, in the first instance by calling for an extension to the transition period by when all LDCs should have made their national IP laws TRIPS compliant, currently 2013.**
- ▶ **Identify how the international IP framework can be harnessed to address development concerns, particularly public health in developing countries.**
- ▶ **Support a robust and appropriate international IP framework which balances individual, company and societal benefits, as a pre-requisite to private sector development of technology to tackle climate change; and, continue to explore practical ways to further stimulate innovation and encourage**

technology transfer, such as encouraging other offices, including the EPO, to adopt fast track patenting for green technologies.

- ▶ **Provide technical assistance where appropriate and within available resources, prioritising support to those countries which will benefit from improved IP laws, or on how to make the best of their and others' IP.** The majority of this type of technical assistance is provided by DFID, but the IPO can provide expert support when appropriate. We will work with WIPO to ensure we do not duplicate their assistance.

6. Implementing the Approach

Much of the responsibility for taking the commitments in this strategy forward will lie with the Intellectual Property Office. But the IPO will work closely with a range of departments across government, including:

- **The FCO, BIS and the Cabinet Office** to make our case on IP bilaterally, within the EU, and multilaterally.
- **UKTI** to help provide support and advice to business.
- **DCMS** on the Digital Agenda, enforcement, and ICANN.
- **DECC, Department of Health and DFID** to take forward our policies on technology transfer, IP and climate change, and access to medicines, and provide appropriate assistance.

The Intellectual Property Office is leading on delivery. You can email the team at internationalapproach@ipo.gsi.gov.uk with any questions on the approach.

Measuring Success

We will develop a bundle of broader indicators to enable us to assess the impact of this international approach. The box below gives examples of the types of indicator we may use.

A Well-Functioning International Framework

- UK knowledge-based services, and high-tech manufacturing, grow – including exports and sector as a whole
- Number of knowledge-based or innovative businesses based in the UK rises

Good National Regimes

- Number of WTO IP disputes fall
- Global protection data/survey suggests improvement:
 - o E.g. Taylor Wessing
 - o E.g. Ginarte-Park Index

Economic and Technological Development

- Perception of IP as a barrier to technology transfer decreases
- Perception of IP as a barrier to access to medicines decreases
- IPO is a world-leader in using IP policy to incentivise spread of green technology

Influencing the International System

- Flow of licences in the UK and worldwide becomes more liquid and transparent
- Development/growth in international IP markets
- Number of firms taking up PCT fast-track grows
- Community Innovation Survey (CIS) in the EU shows increase in use of IP

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