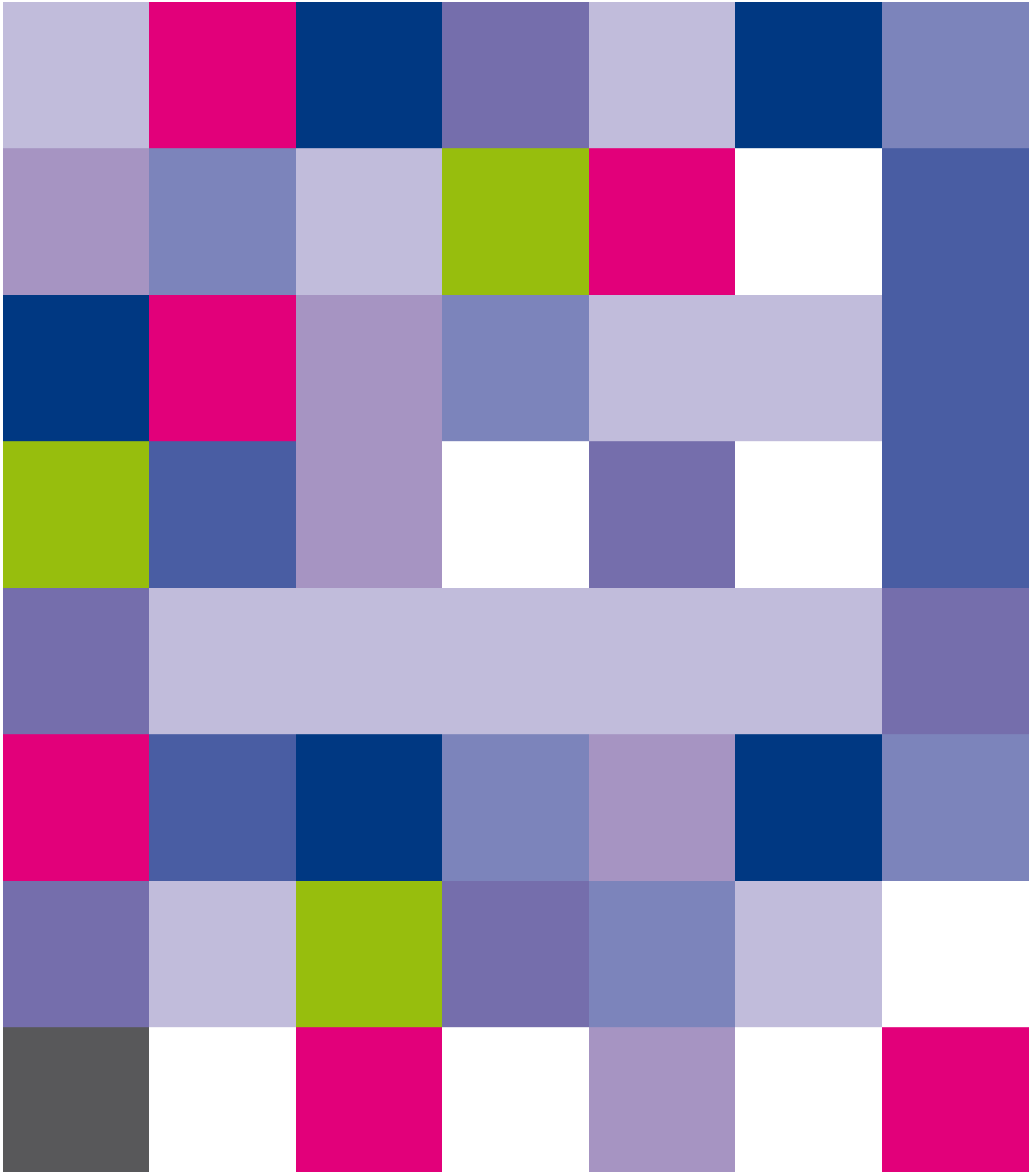


# UK - IPO CORPORATE PLAN 2008





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## INTRODUCTION FROM BARONESS MORGAN OF DREFELIN, MINISTER FOR INTELLECTUAL PROPERTY AND QUALITY

As Minister for Intellectual Property and Quality, I am delighted to introduce the UK Intellectual Property Office's (UK-IPO) Corporate Plan 2008.

Intellectual Property (IP) is an essential component in ensuring the UK's future economic prosperity. Successful translation of creativity, ideas, insights and reputations into value is one of the critical determinants of our prosperity. The IP system enables businesses to capture value from innovation.

It is the Government's ambition to make the UK the leading place where innovative businesses, public services and third sector organisations can thrive through creating more effective products, services, processes and organisations. In its recently published White Paper "Innovation Nation" the Government highlighted the changing nature of innovation as new technologies emerge and users become increasingly innovative. It also reported the important role IP has to play in enabling the UK to compete in a global economy.

This Plan sets a very clear and dynamic programme of activity for the next three years. It commits the UK-IPO to creating the conditions in which IP can be used effectively and appropriately within the innovation ecosystem. I fully endorse the approach taken and support the UK-IPO as it embarks on its journey with pace, commitment and a clear expectation to succeed.

BARONESS MORGAN OF DREFELIN



## FOREWORD FROM THE CHIEF EXECUTIVE

I am very pleased to introduce my first Corporate Plan as Chief Executive of the UK Intellectual Property Office.

It is a great privilege and responsibility to lead the Office at a time when IP is more important than it has ever been. It is widely recognised that in today's globalised world that companies have a great deal of choice about where to locate their activities. Production costs are much lower in many other countries, and the UK increasingly relies on the ability to compete on knowledge and creativity for its prosperity.

IP is central to the translation of knowledge and creativity into value through innovation. The importance of IP is reflected in the Government's decision to appoint a Minister for Intellectual Property. It is more vital than it has ever been that UK businesses should have an IP system that is as well-designed and as smoothly operating as it possibly can be. We must continue to maintain the delivery of high quality and timely statutory services to our customers.

This presents a huge and exciting challenge to everybody who works in the UK-IPO. It means that in our rights granting and tribunal work we must combine our traditionally high standards of judgement and efficiency with the ability to meet the rising expectations of customers, as they seek to compete in the global economy. It means that more than ever it is essential that in our policy work we contribute to creating the right legal framework. It also obliges us to recognize that as well as providing first class services and getting the legal framework right, we must redouble our efforts to ensure we understand how far UK firms and institutions are making the best decisions to turn IP into value, and that

we are providing the support they need to help them do that.

Of course, many of the changes that are affecting our customers are also affecting us directly as an organisation. We are an information business, and information technology presents us with a great opportunity to improve the way we work and provide services in the years ahead.

These are diverse challenges. I am convinced we can meet them, and we will do so by recognising that actually there is a single common theme to all of them: making sure that all the activities of the Office ultimately support businesses competing in a global economy.

IAN FLETCHER  
CHIEF EXECUTIVE &  
COMPTROLLER GENERAL  
UK INTELLECTUAL PROPERTY OFFICE



# 1

## INTRODUCTION

### 1.1

The UK-IPO (formerly the Patent Office) is responsible for the UK's IP framework, for the delivery of patents, trade marks and registered designs to individual applicants, for the UK engagement on IP issues with the European Patent Office (EPO), the World Intellectual Property Organisation (WIPO) and (within the European Union (EU) framework) the Office for Harmonization in the Internal Market (OHIM), which is responsible for the community trade mark and design.

### 1.2

The Office was an Executive Agency of the Department of Trade and Industry throughout 2006/07. Following machinery of government changes announced on 28 June 2007 the Office became an Executive Agency of the Department for Innovation, Universities and Skills (DIUS). The Office's core objectives contribute to the achievement of the DIUS objectives in the following areas:

**DSO1:** Accelerating the commercial exploitation of creativity and knowledge, through innovation and research, to create wealth, grow the economy, build successful businesses and improve quality of life.

**DSO4:** Pursue global excellence in research and knowledge, promote the benefits of science and society, and deliver science, technology, engineering and mathematics skills in line with employer demand.

**DSO6:** Encourage the better use of science in Government, foster public service innovation, and support other Government objectives which depend on DIUS expertise and remit.

### 1.3

This is our corporate plan. It covers the 2008/9 financial year, but also looks ahead to 2010/11.

### 1.4

The plan is in a different form to previous years, reflecting the development of the Government's thinking on IP over the past two years as well as a different approach to planning our activities. To achieve the destination we have outlined in the Plan, key targets in the form of a Balanced Scorecard set out our immediate priorities, in addition to 1 and 2 year goals that have been identified.

### 1.5

In December 2006 the Government published the Gowers Review<sup>1</sup> of the IP Framework. The publication of this report was the culmination of a year-long review of the UK's IP framework and the associated institutional arrangements. The report concluded that the framework and institutional arrangements were broadly right. The report did, however, make a number of detailed recommendations which the Government has said it will take forward. Many of these are in the process of implementation.

<sup>1</sup> [http://www.hm-treasury.gov.uk/independent\\_reviews/gowers\\_review\\_intellectual\\_property/gowersreview\\_index.cfm](http://www.hm-treasury.gov.uk/independent_reviews/gowers_review_intellectual_property/gowersreview_index.cfm)

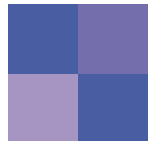
### 1.6

Subsequently, in October 2007 the Government published Lord Sainsbury's review "The Race to the Top"<sup>2</sup> which looked at science and innovation policy in the UK. The Sainsbury review also made a number of points about IP and the role of the UK-IPO building on the Gowers Review.<sup>1</sup>

<sup>2</sup> [http://www.hm-treasury.gov.uk/independent\\_reviews/sainsbury\\_review/sainsbury\\_index.cfm](http://www.hm-treasury.gov.uk/independent_reviews/sainsbury_review/sainsbury_index.cfm)

### 1.7

In February 2008, the Government launched its strategy for the creative industries "Creative Britain: New Talents for the New Economy"<sup>3</sup> (a joint Strategy between DIUS, the Department for Business, Enterprise and Regulatory Reform (BERR) and the Department of



Culture, Media and Sport (DCMS)). The Strategy recognises the importance of IP, in particular copyright, to the success of the creative industries and identifies areas where further action may be needed – focusing on enforcement activity and education and awareness.

<sup>3</sup> <http://www.culture.gov.uk/NR/rdonlyres/096CB847-5E32-4435-9C52-C4D293CDECFD/0/CEPFeb2008.pdf>

## 1.8

In March 2008, the Government launched its White Paper “Innovation Nation<sup>4</sup>” which aims to make Britain the best country in the world to run innovative businesses and public services. The paper recognises that achievement is gained by investing in people and knowledge, unlocking talent at all levels, by investing in research and in the exploitation of knowledge and by using regulation, public procurement and public services to shape the market for innovation solutions.

<sup>4</sup> <http://www.dius.gov.uk/publications/ScienceInnovation.pdf>

## 1.9

The launch of this plan also coincides with the launch of the Strategic Advisory Board for Intellectual Property Policy (SABIP)<sup>5</sup>, a recommendation from the Gowers Review<sup>1</sup> of the IP Framework. SABIP has been set up as an advisory non-departmental public body chaired by Joly Dixon CMG who heads up a team of 6 members with extensive experience in a number of areas including copyright, healthcare, competition, finance, and innovation. SABIP’s role is to give strategic advice to Ministers on IP in general and on emerging issues in particular. It has a research budget which it will use to commission the empirical research that must underpin its thinking. SABIP will be formally established on 2nd June 2008.

<sup>5</sup> <http://www.ipo.gov.uk/sabip-background.htm>

## 1.10

This is the first corporate plan for the UK-IPO since the publication of the Gowers review<sup>1</sup>, the Sainsbury Review, the Creative Economy Strategy<sup>3</sup> and the Science and Innovation White Paper<sup>4</sup>. It follows a review of the strategy conducted by the Office’s Executive Board and its Steering Board. The first section of the plan reviews the role of IP in the UK’s economic and social life. Against that brief background, it looks at the IP framework and the role of the Office itself in meeting the Government’s

objectives for IP. We have identified a number of significant strategic themes, which will form a focus of the Office’s activities over the next few years or so. These are set out in the second section of the Plan in terms which show our 3 year goals, as well as more immediate objectives. We have revised our ten year goal, so that by 2018, we will:

“Play a central role in the support that Government provides business. We will be offering cost effective and timely access to Intellectual Property Rights (IPRs) in the UK and internationally. We will support that role with good advice to our immediate customers, and the wider business community. This will be complemented by excellent support to Ministers, and strong advocacy of the UK interests in IP in Europe and around the world.”

## 1.11

Our intention is to update this plan on an annual basis, to ensure that it continues to be relevant.



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## 2

### INTELLECTUAL PROPERTY IN THE UK – THE CASE FOR BETTER EVIDENCE

#### 2.1

As the Gowers Review<sup>1</sup> made clear, the development and exploitation of ideas is essential to the UK's increasingly knowledge-based economy.

#### 2.2

Innovation and the ability to maximise the use of ideas in the productive process is at the heart of the competitiveness of the UK economy and its ability to create jobs and growth. Although not all knowledge based activity is a direct reflection of the operation of the formal IPR, it is demonstrably the case that in an open, services-based economy, the ability to develop innovative ideas and to commercialise those ideas is central to economic success and to the UK's ability to respond to the challenges of globalisation.

#### 2.3

For the UK to be making best use of all its IP, a number of things need to be true. There must be effective systems and frameworks for formal IPR, ie patents, trade marks, designs and copyrights. Different rights are more or less important in different contexts. For example, for industries dependent on scientific research, and on technology generally, the protection offered by the patenting system, which allows innovators an exclusive right to protection in return for the publication of their ideas so that others might build on them, is crucial to many business models.

#### 2.4

The formal IPR system is an important part of the United Kingdom's economic infrastructure, but there is a significant role too for less formal kinds of protection of IP– trade secrets, know-how, forms of tacit knowledge and organisational culture and 'memory' all form intellectual "property" or assets of an informal or intangible sort, which add value to individual companies, and provide the foundation for continued economic growth.

#### 2.5

Frameworks, in themselves, are not sufficient to deliver success. It is also necessary for organisations to know how to recognise and develop IP assets, and to understand and utilize the formal and informal protection and exploitation possibilities. To help the economy reach its full potential, the UK-IPO must understand how IP is effectively used within the economy and how the IPR framework affects economic activity and consumer welfare.

#### 2.6

One of the early, and consistent conclusions that the UK-IPO has drawn from its own review of its strategy has been that we do not yet have enough understanding of the economic connection between the formal and informal IP systems and the value which firms and individuals in the economy derive from their intellectual assets or their IP. We do not have the evidence we need in order to draw robust conclusions about how near the UK is to making best use of its IP nor, as a result, about the most effective measures to help bring this about and in particular, in the copyright area, we really do not understand the changes in user behaviour in relation to digital content.

#### 2.7

None of this is in isolation. Increasing globalisation and the rapid growth of emerging economies, such as China and India, present extraordinary challenges and opportunities for UK businesses and for the IP system. To meet these challenges and help to equip the UK economy for the future, we must develop an IPR framework and services based on sound economic evidence. For us this represents a significant shift in our strategic approach to planning and delivery. Like many other IP offices we have assumed that IPRs directly promote economic development and have never sought to prove this assumption.



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## 2.8

We must question this assumption if we are to meet the challenges of increasing globalisation and help UK businesses compete. As a government agency our policy advice and our framework for making decisions has a significant economic impact and must be informed by economic evidence.

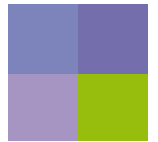
## 2.9

We must be able to use our increased understanding to inform policy making and improve our ability to evaluate policy options in setting the IP framework nationally and internationally. All our activities will be influenced by the economic evidence, not just the IPR framework but also the services we provide and our innovation support activities.

## 2.10

We must also look to SABIP's work here. It has a research budget of £500,000 which it will use to thoroughly debate and underpin its thinking on IP issues across the economy. Its outputs will provide a further avenue for us to develop our thinking on the economics of IP.





## 3

### THE UK INTELLECTUAL PROPERTY SYSTEM

#### CLASSIFICATION OF IP RIGHTS

##### 3.1

It is possible to look at the UK IP systems falling into two broad components: registered rights, and unregistered rights. The latter comprise principally copyright and design right, but also include data-base rights and semi-conductor topographies.

##### 3.2

Registered rights include patents, trade marks and registered designs. The systems for granting and maintaining these rights are long-established and involve careful, accurate handling of many thousands of cases.

The next section reviews the scope of current activity in support of these rights. The following sections then look at the issues facing the UK in relation to existing rights.

#### DELIVERY OF THE IP FRAMEWORK – REGISTERED RIGHTS

##### 3.3

The patent and trade mark systems are very strong areas of performance for this Office. The challenges facing the UK-IPO are set out in this strategy, but in planning for the future we should not lose sight of the strength of our achievements in delivering high quality services to our existing customers. **In our 2007 Customer Satisfaction Survey over 97% of our customers have indicated they are satisfied with the performance of the UK-IPO.**

##### 3.4

In volume terms, trade marks are our biggest business. In 2007, the number of domestic trade mark applications that we received increased by 4.1% over 2006, this is 16.3% higher than demand in 2005. Cumulatively, trade mark demand continues to rise with 2007 seeing the highest number of applications since the worldwide trade mark “boom” in 2000.

##### 3.5

2007 saw the revision of Section 5 of the Trade Marks Act 1994. This legislative change was very significant and required a huge amount of careful planning and training of staff all around the Office. Despite the added burden of workshops and training courses, our trade mark examiners maintained their usual output and high standard of work and continued to exceed their agency target. The effort paid off and the transition period ran smoothly.

##### 3.6

The changes to design registration following the modernisation programme of October 2006 have now firmly bedded in. Making the system quicker and easier, and introducing a multiple application process has had a positive impact on the number of designs filed.

##### 3.7

In 2007, 4683 designs were filed, an increase of 51% on the 3086 received in 2006. 26% of all design applications received in the period were multiple applications, with an overall average of 4.4 designs per multiple application. Of the 4683 designs filed, 60% were applied for in a multiple application. Designs staff rose to the challenge by examining more applications whilst adapting to the changes in laws and practice. They also provided valuable help and advice to clients on both the new



## DELIVERY OF THE IP FRAMEWORK – UNREGISTERED RIGHTS

### COPYRIGHT

#### 3.11

Intellectual property remains the life blood of the UK's creative industries which are increasingly vital to the UK economy. Two million people are employed in creative jobs and the sectors contribute £60 billion a year – 7.3% to UK economy. Over the past decade the creative sector has grown at twice the rate of the economy as a whole and is well placed for continued growth as demand for content grows around the world.

#### 3.12

The UK's copyright framework is influenced heavily by Europe – with considerable harmonisation across member states. In addition to developing UK copyright policy within this overall framework we also contribute to the development of a strong EU system – through compliance with EU rules and our participation in the development of EU policy in this area.

### ENFORCEMENT

#### 3.13

Since the creation of the UK IP Crime Strategy in 2004, there has been a greater focus and prioritisation to combat IP crime, leading to a significant increase in successful prosecutions climbing from 600 to over 1000 a year. This is reflected in the IP Crime Report launched by Lord Triesman, the then Parliamentary Under Secretary of State for Intellectual Property and Quality, in December 2007. Outlining the effectiveness of legislation, and the productive collaboration between government enforcement agencies and industry, this report also looks at what needs to be done to meet the challenges of the forthcoming year.

#### 3.14

A significant development demonstrating the firm commitment by government to tackle IP Crime, was the enactment of Section 107 and 198 A of the Copyright, Designs and Patents Act 1988 on the 6th April 2007, relating to copyright infringement. To assist in enforcing Section 107 and 198 A, there was initial

domestic system and community registration. Prior to 2003 we received 9,000 design applications per annum. In 2003 the levels of filings dropped significantly to around 3,600, due to the introduction of the Registered Community Design (RCD). In the calendar year 2007, 4,678 applications were filed. This increase in filings is partly due to the modernisation programme, that was introduced in October 2006 which, amongst other changes, allowed for multiple filings of designs. We therefore, anticipate that the number of design applications filed next year will be between 4,500 to 5,000.

#### 3.8

Patents require careful judgement-based scrutiny, in a process where quality and consistency are paramount, but speed is also important. Staff in the Patents Directorate have made outstanding efforts to achieve challenging targets for processing patent applications and have carried out approximately 9,300 searches, nearly 3,000 combined searches and examinations, 2,900 examinations and have granted over 4,300 patent applications for the year to date. This has been achieved at a time when resources are stretched. A major patent examiner recruitment exercise has been launched for 2008 to address this issue. There are currently in excess of 400,000 granted patents on the UK register.

#### 3.9

The Patents Electronic Case File System (PECS) implemented in 2006 is now well established and the majority of "live" patent applications are now in electronic form. It has provided a platform for new electronic services for the public launched over the last few months.

#### 3.10

Keeping our patents, trade marks and design systems up to date, to best meet the UK's economic needs, is a constant priority.



funding of £5 million pounds, for Trading Standards services, which rose to £7,922 million for this year. These additional powers were included in a national training programme delivered by the UK-IPO and industry bodies to Trading Standards, Police and industry.

### 3.15

The UK IP Crime Group was founded in 2004 to raise awareness, identify and disseminate best practice, and to co-ordinate enforcement initiatives.

The following sections look at the issues facing the UK's IP system. We start with IP rights and then look at the wider issues of innovation, outreach, enforcement and institutional reform.

## PATENTS

### I STRUCTURE

#### 3.16

Patents provide exclusive rights over a twenty year period. To be patentable, ideas must be novel, have an inventive step and be capable of being put into industrial application. The basic "bargain" for the patentee is that, in return for exclusive rights, the patentee agrees to the publication of details of invention, so that others might make use of the technological advances to further stimulate innovation.

#### 3.17

For the UK, patents may be granted by the UK-IPO or by the EPO. The EPO, based in Munich, operates under the European Patent Convention (EPC) which is an inter-governmental treaty separate from the EU treaties. Membership is different from the EU, and financial governance arrangements are distinct. The EPO grants what is in effect, a "bundle" of national patents from a single application. A European application may give rise to patents effective in every EPC country (common for pharmaceuticals) or in one or two key markets, like the UK, France and Germany.

#### 3.18

A granted European patent designating the UK appears on the UK's patents register and is maintained by the payment of renewal fees to the UK-IPO. About 80% of the patents in force in the UK each year are European patents; the remainder are ones granted by the UK-IPO.

#### 3.19

There is also a global framework for patent filing, through the Patent Co-operation Treaty (PCT) administered by WIPO (see below). This makes it possible for inventors to seek patent protection in many jurisdictions around the world on the basis of a common filing. It is also in the interests of all to have access to a litigation system which enables disputes such as alleged invalidity and patent infringements to be resolved, and claims over ownership of patents to be determined, at reasonable cost. If the owner of a patent discovers that someone is infringing their rights, they may take appropriate action against the infringer.

### II ISSUES

#### 3.20

The European and global patenting systems are under considerable strain. Many of the world's largest patent granting offices (including the EPO, the United States Patent and Trademark Office, the Japan Patent Office and the Chinese State Intellectual Property Office) are carrying backlogs of applications, with significant delays in the granting of patents. Other medium sized offices (like the UK-IPO) are also experiencing growing backlogs of work, but remain significantly more responsive than the larger offices in the time taken to grant patents, while offering at least comparable standards of quality and consistency of the work which underpins the patent search, examination and grant process.

#### 3.21

In parallel with this increase in backlogs, there has been a corresponding increase in the time taken to process applications (pendency). It should be noted that offices tend to record pendency in different ways and few record time from application to grant. Information suggests that over a ten year period to 2006, the time taken to first office action has increased by about 10%, 50% and 130% respectively for JPO, EPO and USPTO. In terms of time taken from application to grant, the UK-IPO has



## UK-IPO PERFORMANCE

In terms of patent productivity, a recent independent study which compared the efficiency of the patent granting procedure at the European Patent Office (EPO), the German Patent and Trademark Office (DPMA) and the UK-IPO found that the UK-IPO sets the benchmark ahead of the DPMA (+3%) and then the EPO (+49%). The study, which was carried out by auditing firm Ernst & Young, looked at all patent searching and examination work carried out by examiners at the three offices between September 2005 and August 2006, and conducted interviews with patent examiners at each office. No account was taken of the cost and quality of the work produced, or of the work done by staff other than those involved directly in the production of search and examination reports. While the underlying substantive patent law was found to be almost identical in all three offices, the study concluded that the UK-IPO was the most efficient in terms of the number of search and examination reports produced and in its written and oral communication with applicants.

[Ernst & Young: Benchmarking Project – productivity of the EPO, UK-IPO and DPMA (2007)]

been relatively consistent in decreasing its pendency over the years but this trend is not reflected in the other main offices with both the EPO and JPO increasing its time from filing to grant. The USPTO managed to reduce its pendency though it has shown a steady increase ever since. Latest figures show the time to grant as taking 30 months for both the UK-IPO and USPTO, 60 months for the EPO and 100 months for JPO.

### 3.22

In terms of issuing search reports, in 2007, the UK-IPO was issuing 93% of search reports within 5 months of request. This compares very favourably to other regimes such as the EPO, which issued only 50% of search reports within 6.6 months in 2006. Comparison may also be favourably drawn with the USPTO, where the average time to first action by examiner was 25.3 months for the fiscal year 2007. It should be noted however that this last figure is not a direct equivalent due to the procedural differences between the US and European systems.

### 3.23

Increasing backlogs are economically significant for the UK. It is in the UK's interest for innovative companies, UK universities, research institutions, and individual inventors to have access to an effective patenting system which provides legal certainty for all by granting patents with a high presumption of validity in a reasonably short period of time.

### 3.24

The EPO takes too long to grant patents, low productivity and rising demand means this will get worse unless significant reform is put in place. At the same time, the EPO has a significant and growing financial liability in respect of its pension and related obligations which could ultimately place significant burdens on the UK. However the EPO has a new President, Alison Brimelow, who has a clear mandate and agenda for reform.

### 3.25

The idea of mutual recognition of work, where one national patent office accepts the assessment of another as its own has not been progressed because of a lack of a global framework for ensuring the quality and consistency of work produced by each office. Mutual exploitation builds upon the concept of mutual recognition by allowing each national patent office to make its own assessment of an application based on work already carried out by other patent offices. This often requires formal arrangements to be made for sharing work between patent offices, as is the case with the Patent Prosecution Highway arrangement (an initiative which provides a means of significantly accelerating examination of a patent application if examination work has already been conducted at another intellectual property office) currently being trialled between the UKIPO, USPTO, the JPO and various other offices. The Utilisation Pilot Project is a further example of mutual exploitation where search reports from the UK, Germany, Austria, and Denmark are shared with the EPO.



Support for the EPO reform agenda to tackle productivity and backlogs is a major strategic issue for the UK-IPO. In order to support this reform agenda we will contribute to the improved efficiency and financial underpinning of the EPO and its Administrative Council. At the same time, the UK will need to consider with its partner in the EPO what steps should be taken should it not prove possible to tackle backlogs effectively, including through an appropriate arrangement for mutual recognition.

### 3.26

At the same time, there is a long-standing commitment to develop a Community Patent – a single patent which would apply across the EU. There are clear economic advantages to giving the option of going through one application process to obtain one patent giving unitary protection across the EU, rather than obtaining the same rights through separate national patents, and securing agreement to a Community Patent has been a continuing objective of the UK Government. However, difficulties over language and over the technical and legal details (which are themselves economically significant) have prevented agreement in the past. There is now a renewed momentum within the EU, presenting the UK with a real opportunity. Agreement on a Community Patent will remain a significant strategic objective for the UK. However, significant political, legal and procedural obstacles remain. One of the issues is the question of a single court structure to deal with disputes on Community Patents and on patents granted under the EPC.

## TRADE MARKS

### I STRUCTURE

#### 3.27

Trade marks are IPRs which protect logos, distinctive names and related representations, which are all important in defining and protecting brands and reputations.

#### 3.28

For many companies in the UK, trade marks are an important way of protecting a brand identity and reputation, especially where companies are only able to get to markets through the internet, and in sectors where

competition is fierce and corporate identities are the unique differentiator.

#### 3.29

In the UK, trade marks can be granted through either the UK-IPO (valid for the UK) or through the EU's Community Trade Mark (CTM) system, operated by the OHIM. Trade marks issued through OHIM are valid across the entire EU.

#### 3.30

It is also worth noting that the WIPO is responsible for the administration of the international system for the registration of trade marks, called the Madrid system. The general concerns which the UK has about WIPO's governance are also relevant here.

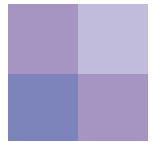
## II ISSUES

#### 3.31

Trade marks have been increasingly popular. Registration is rising both in the UK-IPO registry and in OHIM. In 2006 the UK registered 51,000 trade marks and in 2007 it registered 59,000. Economic evidence suggests that trade marks are positively correlated with innovative, competitive, behaviour by firms, especially in service sectors. This is an area where the Office will be undertaking further economic research as part of its wider project to improve the economic evidence base for policy, the services we provide and our innovation support activities in relation to trade marks.

#### 3.32

Compared with patents, the process of registration for a trade mark is relatively straightforward, and the Office is taking steps further to simplify procedures and shorten timescales. We believe there is more to be done to ensure that applicants can get trade marks quickly, and to ensure that they can apply conveniently. We will be consulting on a number of changes to the Trade Mark Rules and we aim to introduce changes in October 2008. On 1 April 2008 we launched a new fast track trade marks service, which provides us with a decision on whether a trade mark is registable within 10 days.



### 3.33

OHIM is also taking steps to shorten the registration time for CTMs. Over the next couple of years, UK businesses are likely to benefit from a significant reduction in the administrative burden of registering a trade mark both at UK and EU levels. Policy in this regard is largely agreed, and the issue for both the UK and OHIM is very much one of implementation.

### 3.34

There are two areas where there are real policy challenges in respect of trade marks:

Firstly, the community trade mark arrangement is due for a review over the next year or so. At present, it is possible for companies to register a community trade mark when they only intend to do business in one Member State, or one or two Member States. That has the effect of blocking the relevant trade mark everywhere in the EU, and so, at least potentially, reduces the scope for other providers, not directly competing with the original rights holder, to use that trade mark elsewhere. This is not as efficient as it could be. It will be a UK objective for the review of the CTM to see if the structure of CTM, and its relationship to national trade marks, can be organised so as to provide an appropriate hierarchy of protection for companies. This should better reflect the geographical scope of any applicant's business ambitions, without unnecessarily calling in question the use of similar trade marks in other parts of the EU by other providers not competing with the original rights holder. Secondly, the UK plays a role on the OHIM Administrative Board. OHIM is currently charging fees which are structurally in excess of its costs, and this has resulted in a significant surplus being generated. Restructuring the OHIM budget to bring it into better long term balance, and dealing appropriately with this surplus will be an important task for the UK-IPO. OHIM's surplus reflects good faith payments by trade mark applicants and rights-holders, and the UK will want to proceed cautiously but positively to see how this might best be used to develop related innovation support activities across the EU.

### 3.35

In addition to these external challenges, the UK-IPO's own strategic review has identified a potentially significant gap in the services provided to UK companies, particularly Small and Medium Enterprises (SMEs), in developing, protecting and managing brands. Businesses are able to obtain trade mark protection, but there is insufficient economic evidence to demonstrate that those businesses are being supported in making best use of their trade marks and other intellectual assets, to build brand value and reputation. We believe there is a need for a systematic review of the trade mark registration process to ensure that it remains "fit for purpose".

In order to ensure our full range of services are being reached by both current and potential users, with a particular focus on SMEs, the Office will be gathering economic evidence to explore whether businesses are being supported in making best use of their trade marks and other intellectual assets. We will do this with other partners in the business support community, as part of our wider evidence gathering activities over the coming year.

## CHANGES TO THE UK TRADE MARK

### REGISTRATION SYSTEM

#### 3.36

During 2007, a central element of the trade mark registration process (under Section 5 of the Trade Marks Act 1994) was changed. The previous regime had worked well for many years when registration at the UK-IPO was the only way to protect a trade mark in the UK. However, the introduction of parallel systems of EU wide protection in 1996 resulted in an anomaly, whereby it was easier to gain protection throughout the whole of the European Union than it was in the UK alone. This was because, in situations where there were earlier conflicting marks, the rules which OHIM applied to CTMs were different from those which the law obliged the UK-IPO to apply to national applications. The consequence was that a trade mark which OHIM would register without fuss was liable to be refused outright by the UK-IPO.



### 3.37

After extensive consultation, we concluded that it was, on balance, better for UK industry to bring our examination procedures more closely into line with those of OHIM and most other national offices. Under the new law, the UK-IPO still searches for earlier marks, but it is up to the holder of an earlier conflicting mark to oppose an application if they wish. This change makes it easier for businesses wanting to launch new products and protect them with UK trade marks, and ensures that applications are only blocked where they affect others' trading interests.

## REGISTERED DESIGNS

### I STRUCTURE

#### 3.38

Registered designs are IPRs which protect the unique appearance of products.

#### 3.39

In the UK, companies can extend their level of market share by protecting not only their brand, but also the individual aesthetic characteristics of their different products. Consumers will choose products based on a combination including price, brand and aesthetics. In many markets the appearance of products accounts for a large share of their value. The production of new attractive designs can, therefore, be a key means of creating and protecting market share. By protecting those aesthetic qualities through design registration, companies can enforce the rights they hold in the designs and thereby reap any rewards generated by their creative efforts.

#### 3.40

In the UK, registered designs can be granted either through the UK-IPO (valid for the UK), or through the EU's Registered Community Design (RCD) arrangements, issued through the EU's OHIM. Registered designs issued through the OHIM are valid across the entire EU. Designs can also be registered via the WIPO and thereby extended internationally to those countries that have acceded to the Hague Agreement.

### 3.41

The process of registering designs is relatively straightforward. The Office took steps to simplify the process through amendments to the Registered Designs Act 1949, and introduction of new Rules in October 2006. As a result, we now offer a simpler, faster, and cheaper system at a reduced cost to the applicant. This has reduced the administrative burden of registering designs in the UK and encouraged more businesses to protect their designs.

### II ISSUES

#### 3.42

On the international scene in the forthcoming year, the UK-IPO will be taking an active role in the revision of the structure of the Locarno Classification system which is administered by the WIPO. This system is used as a means of finding existing registered designs. Our objective is to improve the functioning of the classification system so as to make it easier and quicker for users to locate existing designs.

The Office will be working with partners in the business support community, and trade associations, to gather evidence on the economic importance of design registration.

## UNREGISTERED RIGHTS

### COPYRIGHT

#### I STRUCTURE

#### 3.43

Copyright is an unregistered right that subsists in and protects creative or artistic works when they are created. Copyright exists in literary works, musical recordings, film, photographs, software code (but not the algorithms), computer games and other elements of creative endeavour. There is also a related right, that exists only within the EU, in respect of information databases; and another related right is the artist re-sale right which applies in various jurisdictions worldwide. In the UK, the creative industries<sup>6</sup> are economically vital. Copyright underpins the business models which drive the creative sectors in the UK economy. The latest figures continue to



demonstrate that the creative industries are dynamic, and fast growing. The creative industries are a valuable part of the UK's economy – contributing around 8% of Gross Value Added (GVA).

<sup>6</sup> Advertising, music, computer and video games, publishing, software, film and video, design, designer fashion, Performing arts architecture, crafts, art and antiques markets, television and radio.

### 3.44

Copyright rules are broadly set at EU level, building on an underlying corpus of international conventions (particularly the Berne Convention) that date back to the middle of the 19th century, and further refined within the EU in recent years. Competition law is also increasingly relevant to the conduct of firms in the creative area where copyright is significant.

## I ISSUES

### 3.45

The digital age has brought about huge technological changes that have altered consumer behaviour and challenged the current copyright framework. Creators, rights-holders, businesses, users and consumers, and the legal framework itself are all in dynamic tension. This reflects the fact that rapid technological change means that the options available to creators, to businesses looking to derive value from creative effort, and to users, are continuing to evolve very rapidly, as is user behaviour in respect of any given technology.

**The consequence is that, whilst the fundamental principles of copyright remain sound, their application in the digital age means that in certain areas the legal framework may be out of step with the technology and behavioural changes.**

### 3.46

Where these changes are identified and result in significant shifts in the balance between the various stakeholder groups, it is important that policy- and law-makers assess whether action is needed to redress the balance – and that includes amending the law where necessary.

**In order to create the right copyright framework, which offers protection and incentives to creators and businesses without unduly restricting users or prejudging technological development we will work with colleagues across Government to identify key areas that need to be tackled. We will also begin work to understand the economic impact of the copyright framework, both in respect of the UK and in terms of the wider EU context.**

### 3.47

More immediately, the 2006 Gowers Review<sup>1</sup> made a number of recommendations for changes in copyright rules. Some of these like format shifting, educational exceptions and related issues, are subject to consultation now. Others will follow in the course of 2008 as the various Gowers<sup>1</sup> recommendations are implemented.

### 3.48

At the same time, Ministers have also concluded that it has been right for Government to consult on reframing sections 67 and 72 of the Copyright Designs and Patents Act 1988 which relate to not-for-profit organisations and some related matters. This consultation - not envisaged by Gowers<sup>1</sup> - will also take place in 2008.

The implementation of the Gowers recommendations on copyright will mark the start of a continued focus on the efficacy of the copyright regime. The Office will continue to work closely with colleagues in DCMS and BERR, and with the creative industries, to identify issues that need to be tackled. At the same time, the Office will work to ensure that there are sufficient research findings available to understand both the economic impact of the copyright framework, and the social and educational benefits that it also supports. It is our judgement that we do not yet have enough effective economic and social evidence for the policy making tasks we face.



## CONSULTATION ON COPYRIGHT EXCEPTIONS

In response to the Gowers Review<sup>1</sup>, the UK-IPO launched the Consultation on Amendments to Copyright Exceptions. Gowers said that whilst the IP system was broadly performing satisfactorily, there were a number of areas where adjustments could be made – one of which was copyright. Gowers recommended amending the exceptions relating to the use of copyright material for study, research, and education and also for the archiving and preservation of material by libraries. These changes are aimed at ensuring that copyright law remains relevant to today's technologies. Additionally, Gowers proposed introducing two new exceptions relating to the use of material for the purpose of parody and also to allow format shifting, for example to permit copying of CDs to MP3 players by private individuals.

The consultation (which closed on 8 April 2008) looks broadly at all the issues related to the proposed changes and suggests a number of alternative solutions for each of the recommendations. The UK-IPO will be analysing the written submissions made to the consultation and holding meetings with stakeholders to discuss the details of the proposals. The UK-IPO will then publish its response to this consultation in the form of a second paper which will consider legislative options based on the information and evidence gathered in the first consultation. The two-stage consultation process will ensure that the detail of the law accurately reflects the policy intentions and provides workable, practical solutions.

## IP CRIME/ENFORCEMENT

### I STRUCTURE

#### 3.49

Intellectual property crime (IPC) has become a growing global concern for legitimate business. The Organisation for Economic Cooperation and Development (OECD) estimates that the global trade in fake goods is worth around \$200 billion, which is higher than the Gross Domestic Product of more than 150 countries.

#### 3.50

Creativity and innovation are key generators of wealth within a knowledge based economy. Criminal enterprises have realised that if ideas can be owned they can also be traded or stolen. There are increasing numbers of criminals taking advantage of the creativity and innovation of law abiding businesses and generating illegitimate wealth.

#### 3.51

The negative impact of IP Crime is not only confined to local and national economies. There are growing risks to consumer safety, illustrated in a recent study by the Centre for Medicines in Public Interest (CMPI) who estimate that global sales of counterfeit prescription drugs set to reach \$75 billion by 2010.

#### 3.52

The UK-IPO continues to occupy a lead position in helping to combat IP crime and is committed to continuing in this role. We have recently strengthened resources by bringing in police officers with specific expertise in intelligence and proceeds of crime and assets recovery. We have also been working hard to build on a solid list of accomplishments over the last few years, and in 2008 we will be focusing on:



- The Fake Free London 'pilot' IP enforcement campaign aimed at developing best options for a sustainable enforcement strategy in the lead up to the Olympics. The pilot campaign will give us clear learning opportunities that can be exploited and to gain a broader impact across other UK cities and regions.
- The fourth IP Crime Report which is becoming a key UK reference resource highlighting the scope and scale of IP crime.
- Continuing with a wide range of national training programmes to enforcement authorities including packages related to the Diploma in Consumer Affairs.
- Setting up a National Centre of Excellence to deliver expert police resources that will focus on assisting and advising enforcers on tackling IP crime at a local level and national level.
- Developing good practice toolkits on the utility of the Proceeds of Crime Act (POCA) 2002 and the protection of supply chains; these will both will be published later this year.

### 3.53

For patents, designs and trade marks, there are well established routes for tackling infringements, validity and ownership questions, and where appropriate effective criminal routes for dealing with counterfeiting and other criminal activities.

## II ISSUES

### 3.54

These can be complex and too costly, especially for small businesses, and we need to continue to look for improvements in the litigation system, and new enforcement mechanisms. For example, in addition to the Office's statutory powers to decide IP disputes, we also offer mediation and non-binding legal opinions on patents.

### 3.55

However, copyright enforcement is made much more difficult by changing user behaviour, and by the facilitation that digital technology provides to users intent

on making unlawful use of copyright material. The direct economic impact of the theft or misuse of copyright material is very significant – the International Federation of the Phonographic Industry (IFPI) estimated that the trade of pirate discs was worth \$4.5 billion globally in 2005. At the same time, almost 20 billion tracks were illegally swapped or downloaded in 2005 (source: The Recording Industry Piracy Report, IFPI). The indirect impact, through loss of investor confidence and wider uncertainty, is also likely to be just as significant.

### 3.56

The Gowers Review<sup>1</sup> made clear that the Government, through co-ordination and liaison by the UK-IPO, needs to make extra efforts to ensure that the UK's enforcement arrangements are as effective as possible. These arrangements must continue to reflect developments in technology, in user behaviour and in the economic significance that copyright material has in the economy. The Gowers recommendations are a priority for the Office and a significant amount of work has already been done to build relations with the enforcement community.

## III ACTION

### 3.57

Raising awareness and facilitating effective enforcement by others will continue to be a significant strategic challenge for the UK-IPO. Successfully responding to this challenge means enforcement agencies will need to be helped to engage more effectively with IP legislation and related criminal activity. That in turn means building a set of new partnerships and relationships which had not previously existed, and ensuring that the concerns of industry and rights-holders are properly taken into account without losing sight of other priorities, and considering any effect of increased enforcement on consumer behaviour.

### 3.58

Against this background the Government published in February 2008 its Creative Economy Programme Strategy "Creative Britain<sup>3</sup>", which recognised the need for further action to tackle the issue of IP crime. The UK-IPO has committed to help deliver improvements within current enforcement arrangements. This includes a pilot campaign, led by enforcement agencies, that will bring



together rights holders, creative industries, and Government bodies and will aim at establishing optimum methods and resources to combat counterfeiting and piracy in the lead up to the 2012 Olympics. A National Centre of Excellence on IP Crime will be established. This will build on UK-IPO's current work on partnerships. The UK-IPO will also continue to work with other government departments on key issues, including the forthcoming consultation on possible regulation to deliver co-operation between rights holders and Internet Service Providers (ISPs) in tackling the issue of illicit filesharing of copyright protected works.

### 3.59

If enforcement is going to be an effective tool in the online world then it is important that we make sure that the penalties that are available are proportionate to the harm caused to UK industries and that they act as an effective deterrent. In view of this we will also consult this year on introducing exceptional summary maxima (above £5,000) in the Magistrates' Courts for offences of online and physical copyright infringement.

### 3.60

The increasingly global nature of counterfeiting and piracy means we must also work across national boundaries to ensure IPRs are enforced around the world. There are a number of issues to be addressed here. Improved exchange of information between national authorities and multilateral institutions such as WIPO, the World Customs Organisation (WCO), World Health Organisation (WHO), the Organisation for Economic Cooperation and Development (OECD) and Interpol are a key factor. That is why the UK is trialling the WCO's new INFO\_IPR customs information database along with several other G8 member countries. Helping developing countries build their capacity to enforce IPR legislation is essential if we are to reduce global counterfeiting and piracy. We have therefore been working in partnership with governments in some of the major emerging economies including China and Brazil on this issue. The knowledge and expertise of the private sector are also invaluable in the fight against IP crime, so partnerships between the UK-IPO and rights holders are becoming increasingly important. In the future, we intend to build on the excellent work we already do with UK industries on these issues.

## INNOVATION SUPPORT

### UK BUSINESS SUPPORT - WORKING WITH DELIVERY PARTNERS

#### 3.61

In addition to the systems for formal IPRs, there are a number of other components and activities that are important to the development of a cohesive and effective IP system that encourages and supports innovation. Promoting the effective management and exploitation of IP, both formal IP rights and the equally important elements of trade secrets and know-how, plainly involves significant challenges. We have been developing a number of activities in this vein as part of our broader innovation strategy.

#### 3.62

It is important to appreciate that the IP framework in the UK and the EU forms part of the wider economic infrastructure which seeks to make the economy as innovative and competitive as possible. In the UK, it includes much of the work undertaken not just across DIUS and BERR, but also DCMS and the productivity work in HM Treasury. At the EU level, the Lisbon Agenda provides a wider framework for the development of a competitive European economy.

#### 3.63

Delivery for UK-based companies comes through an extensive business support and innovation system. In addition to the UK-IPO, support is provided by the Technology Strategy Board (TSB), the Research Councils, the Confederation of British Industry (CBI), National Endowment for Science, Technology and the Arts (NESTA), the NHS National Innovation Centre, the Design Council, the Learning and Skills Council, UK Trade and Investment (UKTI), Business Link and the RDAs, as well as the devolved administrations.

In order to enhance the economic benefit of IP to the UK economy, we will continue to work with partners to ensure that IP is fully understood and properly embedded into this wider system. This is itself an important operational challenge for the UK-IPO.



### 3.64

It is easy for IP to be seen as a specialist subject, remote from the reality of business. Nothing could be further from the truth: IP is an essential part of the UK's economic infrastructure; the work done by the UK-IPO in policy, delivery and maintenance of rights, and outreach, is fundamentally an economic, business-focused task, albeit in a technical and legal form.

## THE UK AND THE EUROPEAN KNOWLEDGE TRANSFER LANDSCAPE

### 3.65

The rapid and effective translation of ideas from the research base to useful products is vital to Europe's competitiveness and to meet the challenges of climate change, security and health. Knowledge transfer is not just about the transfer of our world-class science, however; it extends to the arts and humanities, financial and business services. The Sainsbury Review<sup>2</sup> has now made it clear that knowledge transfer is an essential element of the mission of higher education institutions in the UK. In the last five years UK universities have seen a doubling in patent applications to over 1,500 per annum and a tripling of licensing income to £58 million. Of particular note is that income from consultancy involving IP in the form of know-how is six times higher than that arising from formal IP licensing income. The UK also has over 140 public sector research establishments that in 2005/06 generated over £220 million in IP licensing revenue, 347 patent applications and 83 spin-out companies.

### 3.66

We want to create the conditions so that IP, as a value-capture system, a currency, is used effectively and appropriately within the innovation ecosystem. We are doing this, for example, in our role as the secretariat to the Lambert Group, the UK's "think-tank" on IP and knowledge transfer, and also through our activities on the European IP Code. The Lambert tool-kit marked a significant step in smoothing negotiations involving IP between the public sector and industry, and it is currently being extended to cater for multi-party research consortia, which are becoming the modus operandi of contemporary research.

### 3.67

The new European IP Code provides a set of voluntary guidelines for governments, academic institutions and knowledge/technology transfer professionals for the management of IP in public sector research organisations. It aims to create a level playing field within the EU, for example through models of best practice and some "Lambert" themes.

### 3.68

Reach-through of these activities to the international stage is likely to be important where technology transfer is assuming significance in the climate change agenda and also more generally in transactions which involve emerging economies.

## LICENSING SUPPORT

### 3.69

"Open innovation", the exchange of ideas and innovative components, is increasingly becoming the way in which innovation happens, as opposed to the hitherto traditional approach of in-house corporate Research and Development (R&D). As a result of Gowers, we are developing the themes of the Lambert work into the sphere of business-to-business interactions. We have formed an expert group comprising a wide range of stakeholders to develop an IP licensing tool-kit, particularly for small businesses. The tool-kit is aimed at highlighting the potential that IP licensing offers to small businesses and empowering them to negotiate IP licences effectively.

## OUTREACH ACTIVITY

### 3.70

The Gowers Review<sup>1</sup> also makes clear that there is a much wider outreach activity that needs to be undertaken. The Office, in response to Gowers recommendation 27, has undertaken some initial IP health checks for a limited number of SMEs. The early indications from this pilot support the view that effective IP management is essential if innovative businesses are to maximise the value of their intellectual assets.



### 3.71

The Office has brought together all of its innovation-related activities in a single directorate, which will provide better policy linkages in this area with the rest of DIUS, as well with the TSB, NESTA, the Design Council, the Research Councils, and the many other actors in the wider business support area.

### 3.72

There is clearly a significant challenge in ensuring that there is appropriate support for UK companies, especially SMEs, to make the best use of their intellectual assets and, where appropriate, protect, manage and exploit their IP. The challenge is not one which falls solely to the UK-IPO. However, the Office does have a significant repository of expertise in many important areas of IP, and has been able to demonstrate a very real “convening power” to bring together expertise from both the public and private sectors.

In order to ensure that there is appropriate support for UK companies, especially SMEs to make best use of their intellectual assets, the Office’s Innovation Directorate will develop its work, in a way which is congruent with the Government’s wider policy on business support, and yet which fills an important gap in the support available to companies. This is another area where the Office does not have all the expertise and will need to work in partnership with others to meet this challenge.

## COMMERCIAL SERVICES

### 3.73

The Office also provides significant non-statutory services in the area of patents and, to a lesser extent trade marks and designs, to companies who pay commercial rates. This service is currently being reviewed to ensure that it is directed and managed in a way in which is consistent with the Office’s wider innovation strategy, and the Government’s innovation policies.

## EDUCATION

### 3.74

The Creative Industries Group that was set up by Government, considered a range of IP issues and made a number of recommendations. Some of the key recommendations related to IP and education. As a result the CREATE Group, which includes the UK-IPO, DCMS and DCSF (Department for Children, Schools and Families), was formed to drive forward these recommendations. This group recognises that awareness of the value of ideas, and respect for IP, are really important educational objectives if our young people are to be properly equipped. Both the UK-IPO and DCMS have been involved for some time in the development of educational material on IP for schools. The CREATE Group continues to be committed to work in this area.

### 3.75

We have provided educational material through the Think-Kit Programme and the more recent Cracking Ideas project. Our educational material has been well received by teachers, students and intermediaries (and in the case of Cracking Ideas, regarded as very exciting); however, they have been less successful in terms of uptake than we would want. We have adjusted our approach for 2008/09 to try to increase uptake.

### 3.76

The potential need for greater education on IP within the school and exam curriculums was one of the issues considered in the recently published Creative Economy Programme Strategy and working through the CREATE Group, we will be working with other departments and rights holders to consider whether further provision would be valuable.



## EFFECTIVE GLOBAL IP FRAMEWORK

### 3.77

Increasing attention is being paid to the role that IP plays in the development and diffusion of technologies to tackle climate change. Some have called for compulsory licences to be granted for “climate friendly” technologies to spread their use in least developed countries. However, it is not clear that IP constitutes a significant barrier to the diffusion of such technologies and measures to encourage technology transfer should not be at the expense of incentives to innovate.

### 3.78

IP is not just a matter for the UK and EU. There are significant IP interests embedded in the rules and work of the WTO (where the EU acts as a single entity). Some of these are reflected in the formal arrangements contained within the Agreements on the Trade Related Aspects of Intellectual Property (TRIPs) which is part of the Uruguay round package of agreements that established the WTO in 1994. Negotiations on IP issues are being conducted as just one part of the Doha Development Round. The key issue for the UK concerns the disclosure of genetic resources in patent applications. The UK supports the principle of disclosure of origin or source of these resources, but any post-grant sanctions should not affect the validity of the patent. The UK is committed to achieving an ambitious, pro-development outcome from the Doha Round.

### 3.79

WIPO is responsible for the administration of the PCT system for patents, the Madrid system for trade marks and The Hague system for international design registrations. In addition to this operational purpose, WIPO is intended to be the forum for the development of new global IP rules. It has also taken an important role in providing technical assistance for developing countries, many of whom see the significance of an appropriate IP framework for providing one of the conditions for economic growth.

### 3.80

WIPO has run into serious governance issues that have impaired its ability to make rules and support developing countries. The UK has been actively involved in seeking to resolve these difficulties, and will continue to be so.

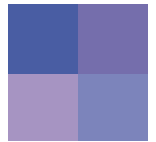
The key point is that a functioning global framework for the development of new IP rules in the short to medium term is highly desirable for the UK in a globalising economy. In the longer term it is absolutely essential.

### 3.81

The global system for patenting, already under strain from high demand in excess of capacity in the major offices, is likely to need significant attention in the future as patent filing continues to grow fast in China and India. New arrangements will become essential if this growth in the volume of patent activity is not to overwhelm the existing arrangements, a development which would be very harmful to the UK's economic interests.

In order to position WIPO so that it has good governance systems in place and is supported in its institutional reform, it is a key objective of the UK-IPO to share its expertise in these areas.





## 4

### THE PLAN: 10-3-1

#### INTRODUCTION

##### 4.1

Previous sections have set out an analysis of the strategic, external challenges facing the UK-IPO and some of our achievements. This section looks at how we are going to respond to the challenges ahead. The Office's approach to planning follows a 10-3-1 model and incorporates a Balanced Scorecard. This means setting a longer term 10 year vision, some important intermediate goals for 3 years ahead, and immediate objectives for the coming year, as we work towards those goals.

##### 4.2

This year's plan focuses on the major strategic challenges, and on the steps the Office needs to take to ensure that it is properly equipped to meet those challenges.

#### CONTINUED HIGH QUALITY DELIVERY OF TRADE MARKS, PATENTS AND REGISTERED DESIGNS

##### 4.3

The planning process necessarily focuses on what is new, and on what needs to be done. But the Office also faces the enduring challenge of continuing to build on the established world class patent search, examination and grant system. The Office must continue to provide a competitive, high quality trade mark examination and registration system, and an effective system for the registration of designs. These activities consume the majority of the Office's resources, they underpin the Office's reputation and its ability to deliver to individual customers. Without constant attention to these processes, the other challenges and objectives set out in this plan could not be met effectively.

##### 4.4

For patents, this means continuing to focus especially on quality, skills and efficiency. The implementation of a peer review pilot as recommended in the Gowers Review<sup>1</sup> will enable us to harness a potentially wider field of prior art, which is key to delivering a high quality patent. Equally crucial to that objective is that our patent examiners' knowledge keeps up with the cutting edge of the technologies they are reviewing. Our new Continuous Professional Development scheme has been an effective, and popular, introduction, but we need to deepen it and extend it more widely. And to deliver improvements in efficiency, we shall be implementing a review just completed in the Patents Directorate to ensure that we are maximising the benefits that our electronic casefiles and other recent innovations offer us.

##### 4.5

Many of the same challenges exist for trade marks too. In order to continue to deliver timely and high quality decisions on trade marks we will review our processes end to end before exploring whether additional automation of case file handling will offer significant benefits. But while this work is done, we will need to continue to ensure that we have the right people in post to maintain the high quality service that applicants value.

#### 10 YEAR GOAL

##### 4.6

**Play a central role in the support that Government provides business. We will be offering cost effective and timely access to Intellectual Property Rights (IPRs) in the UK and internationally. We will support that role with good advice to our immediate customers, and the wider business community. This will be complemented by excellent support to Ministers, and strong advocacy of the UK interests in IP in Europe and around the world.**



### 3 YEAR GOALS

#### 4.7

Arising from the analysis set out in the first section of the Corporate Plan, the Office has identified five distinct external challenges which will form the basis of our 3 year planning horizon. Together with the immediate priorities (identified as 1 and where appropriate, 2 and 3 year objectives and Balanced Scorecard measures) that we will aim to achieve, as we build towards the goal that has been identified.

#### **Developing and improving the economic evidence base.** [paragraphs 2.6 and 2.10 refer]

The Office has just established an economics capability to lead this work. It is already clear that the strongest conclusion to emerge from the strategic review undertaken by the Office, building on the Gowers Review<sup>1</sup> and the Sainsbury Review<sup>2</sup>, is that we need to quickly put in place a programme to develop and to make effective use of economic evidence about the role of IP and wider intellectual assets in the modern UK economy. Without a strong up-to-date evidence base we are unlikely either to get our policy judgements right and to give full support to the Government's wider innovation agenda, or to be able to provide appropriate support and engagement for our direct customers on innovation related issues. This will be a significant area of new activity. The launch of this Plan coincides with the launch of SABIP, the independent body set up to give strategic advice to Ministers on IP. SABIP will use its research budget to commission empirical research to underpin its thinking.

#### ONE, TWO AND THREE YEAR GOALS ARE:

##### BY 31 MARCH 2009:

- We will have designed and launched the work programme necessary to achieve our three year goal, and its first fruits will have influenced our policy work (one year goal).
- SABIP will have formulated its first annual work programme, established a number of project groups and begun substantial work on selected topics (one year goal).

- We will have agreed which areas of our business should receive a Value For Money study (one year goal).

##### BY 31 MARCH 2010:

- Our programme on the economic understanding of IP and innovation will have acquired a reputation and enhanced our standing in the UK and Europe (two year goal).
- SABIP will have made its first annual report, will have submitted reports on a number of selected topics and will have established a sound relationship with major stakeholders (two year goal).

##### BY 31 MARCH 2011:

- We will understand the extent to which UK firms and institutions are making the best decisions on creating, exploiting and managing IP, and to be supplying evidence-based advice on achieving improvement (three year goal).
- We will have reviewed the services the UK-IPO needs to offer to deliver the 10 year goal, and the future size of the Office will be clear (three year goal).

#### **The whole area of copyright continues to be challenging, and the related issues requiring partnership with enforcers will need further attention, and a growing level of resource.**

[paras 1.7 and 3.11 refer]

The UK copyright framework underpins the creative sector of the economy, which is of real economic significance. The legal framework (fundamentally set at EU level) is subject to pressure for changes going beyond the recommendations of the Gowers Review<sup>1</sup>. Getting this right will be a constant challenge: we do not yet have the economic evidence to underpin analysis of all the key policy issues. Copyright work is labour intensive, because there are a very large number of economically significant stakeholders and consultees involved in any process of change and a large and growing volume of Ministerial correspondence.



### ONE, TWO AND THREE YEAR GOALS ARE:

#### BY 31 MARCH 2009:

- We will have consulted further on the Gowers recommendations to amend copyright exceptions (one year goal).
- We will have consulted on amendments to Sections 67 and 72 of the Copyright Designs and Patents Act, relating to the use of sound recordings by charitable and non-profit organisations (one year goal).
- We will have informed the Commission of the UK's decision on whether to maintain the derogation and to not apply artist's resale right to the heirs of deceased artists or their estates (one year goal).

#### BY 31 MARCH 2010:

- We will have fostered a debate, at international level if necessary, on how to deliver a copyright system focused on maximising economic added value, but which also acknowledges the importance of culture, and which is understood and observed by the population at large (two year goal).

#### BY 31 MARCH 2011:

- We will have agreed a strategy for international-level action so that copyright is fit for the 21st century (three year goal).

**The related issue of enforcement of IP, which is particularly relevant to copyright, is also a growing strategic challenge.** [paras 3.49 - 3.60 refer]  
As we understand better the impact of IP crime on the economy, and on economic confidence in the creative sectors, Ministers are increasingly concerned to focus both effort and expertise on it. Partnerships with enforcement bodies is a new area of activity for the UK-IPO, involving our acquiring of new skills, relationships, raising awareness and understanding of IP by others, thereby, supporting effective enforcement through police, Trading Standards' Officers, and other agencies.

### ONE, TWO AND THREE YEAR GOALS ARE:

#### BY 31 MARCH 2009:

- We will have clarified expectations for the UK-IPO in relation to IP crime, working in partnership with other agencies, and to have developed the resources, expertise and authorisations to fulfil that role credibly and effectively (one year goal and also a Balanced Scorecard Measure).

#### BY 31 MARCH 2010:

- We will have cemented the UK-IPO's position as a key player in the UK's efforts to secure IP compliance on enforcement issues (two year goal).

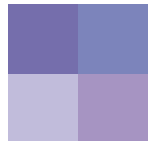
#### BY 31 MARCH 2011:

- We will drive up consumer compliance of IP law, with the aim of moving towards setting the agenda across the spread of enforcement agencies on action against IP crime (three year goal).

#### **Innovation, Business Outreach and Education.**

[paras 1.8 and 3.70 - 3.74 refer]

Building on the recommendations of the Gowers Review, it is clear that the work of the UK-IPO needs to connect more effectively with the Government's wider innovation policy and business support activities. This will involve working with partners across the Innovation and Business Support areas, to further build understanding of IP and intellectual assets issues, and turn that understanding into effective outreach to companies in the UK, especially SMEs. It also means linking it to education in schools, and making a connection to the Government's Skills Agenda. The Office's commercial services form part of this process.



## ONE AND TWO YEAR GOALS ARE:

### BY 31 MARCH 2009:

- UK-IPO, RDAs and UKTI will have ensured that all export and Business Link advisors will have received training in advising on IP management by summer 2009 (one year goal).
- We will have developed online Business-to-Business licensing resources to empower small businesses to conduct effective IP transactions (one year goal).

### BY 31 MARCH 2010:

- We will have developed and implemented a comprehensive outreach strategy, incorporating and learning from measurement of impact, to improve the performance of UK business in turning IP into value (two year goal).

### **New Rules: the Community Patent, EU Patent litigation and the Community Trade Mark (CTM).** [paras 3.26 and 3.33 - 3.35 refer]

As work goes on to develop European litigation rules, to take forward the goal of a Community Patent, and to review the operation of the CTM system, the UK needs to ensure that rules are drafted so that they continue to deliver systems that satisfy the needs of innovative companies, research institutions and individual inventors in the UK. It is by no means certain that this will automatically be the outcome. While the Community Patent, for example, is a positive proposal, there are significant practical issues which will need to be addressed: testing policy, negotiating and political skills in the Office, and ultimately engaging the whole Government.

## ONE AND THREE YEAR GOALS IN THIS AREA ARE:

### BY 31 MARCH 2009:

- We will have ensured that any decisions in the EU affecting the patent system are influenced by UK thinking and show clear potential benefits for business and society (one year goal).
- We will have shown that thinking on the CTM system has been developed on the basis of economic evidence and UK policy objectives (one year goal).

## BY 31 MARCH 2011:

- The CTM system will be seen to be working in dynamic balance with national trade mark arrangements and subsequent financial surpluses are being used to support innovation in the EU (three year goal).

### **Governance and Financial Reform: the EPO and WIPO.** [paras 1.1 and 3.16 - 3.25 refer]

The EPO has challenges in terms of productivity and financial management. A functioning, productive and solvent EPO is an essential component of the UK's own IP structure, as well as being vital to the wider challenge of European competitiveness in an increasingly global economy. WIPO is a key organisation for ensuring co-operation in running the global patenting, trade mark and designs systems, as well as for making new IP rules and assisting developing countries. A functioning global IP institution is a necessity, and putting new governance arrangements in place over the next two to three years is extremely important.

## OUR ONE AND THREE YEAR GOALS ARE:

### BY 31 MARCH 2009:

- We will have carried out the analysis needed on the current global IP system so that reforms will be under way or have taken place (one to three year goal).
- Reform will be underway in the EPO, to address management and financial issues (one year goal).

### BY 31 MARCH 2011:

- We will have contributed to improved efficiency and financial underpinning of the EPO and the Administrative Council will be providing effective supervision and oversight (three year goal).



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## 5

### EQUIPPING AND ENABLING THE UK-IPO

#### 5.1

The next chapter sets out a number of enabling 3 year objectives and immediate goals which we believe we need to address. In doing so we will ensure that we are as well equipped as possible to tackle the external challenges we have identified, as well as continuing to provide high quality services to our existing and prospective customers.

#### 5.2

The Gowers Review<sup>1</sup>, and our own internal review of our strategy have identified some significant strengths, which have underpinned the Office's achievement, and its enduring reputation as a high performance IP office.

These include:

- An excellent, customer focussed, delivery culture in respect of patents, trade marks, and design registration. ISO 9001:2000 is the international standard for quality management systems. The Office achieved ISO 9001:2000 certification for its pre-grant patenting process in 2003 and re-certification in 2006. The Office has also achieved Charter Mark status and is an Investor in People.
- Strong financial management. The Agency has operated as a Trading Fund since 1991. The Office has built a strong internal financial management capability and excellent internal governance arrangements.
- Stable, high performing and highly motivated workforce. The Office is fortunate in having been able to attract and retain people, both in specialist and generalist roles, who are both able and highly motivated. No organisation can take its workforce for granted, and the UK-IPO will continue to focus on staff motivation, recruitment, retention and development. We have an excellent foundation to build on, with a high level of motivation and commitment, in the best traditions of the home civil service.
- A strong international reputation. This is an intangible, but very real, strength. The UK-IPO has an excellent reputation, both for the quality of the IP rights it delivers, and for its contribution to the development of global IP policy and rules. This reputation means that we have a real advantage in seeking to influence the shape of IP policy in Europe and beyond, and to shape the wider debate on issues like the future of copyright.



## 6

### AREAS FOR FURTHER DEVELOPMENT IN THE UK-IPO

#### 6.1

The Gowers Review<sup>1</sup> and our own internal review have identified areas of new activity, or extra activity in established areas, where the Office will need to adapt and develop its capability. It is already clear that this includes:

- The creation of an **economic analysis** capability, to provide a firm evidence-based foundation for our contribution to the Government's wider Innovation Agenda through support to policy making, our core business strategies and outreach activities. This represents a significant shift in our strategic approach to planning and delivery. The longer term goal will be to establish a centre of excellence for the economics of IP.
- **Stronger policy making capability.** The policy tasks facing the UK-IPO are growing rapidly. Our existing policy resources are stretched, which has meant that we have had less opportunity than we would want to develop the skills and talents of our existing staff and less opportunity than we would want for secondment both within the Office and outside it. Developing and implementing an appropriate skills strategy for these policy areas is an important task for the Office. Our one and three year goals in this area are:

#### BY 31 MARCH 2009:

- We will have established a framework for policy skills requirements, carried out an audit against that framework and provide targeted training (one year goal).
- We will have improved our reputation with other government departments and receive cross-Whitehall recognition as the lead on IP policy (one year goal).

- We will have reviewed the UK-IPO website. The website will be more interactive, easier to navigate and encourage a wide audience. It will be refreshed in summer 2008 alongside refreshed processes for ownership and updating -this will ensure our new website remains dynamic and flexible (one year goal).

#### BY 31 MARCH 2011:

- We will have successful co-ordination on policy and coherent policy making across all spheres of IP (three year goal).

**Innovation and Outreach Activities.** Highlighted by Gowers as an area the Office needs to develop, reflected again in the Sainsbury Review<sup>2</sup> "The Race to the Top", and the Science and Innovation White Paper "Innovation Nation" in DIUS. Outreach to UK based companies, especially SMEs, is important if companies in the UK are to maximise the benefit they might potentially derive from protecting and exploiting their IP and intellectual assets. This is not an area of traditional expertise for the UK-IPO. It is, however, an area where we will need to develop skills and capabilities quickly. A new Innovation Directorate, brigading some of our existing innovation policy, outreach, education and commercial services has been formed. This will also provide the home for our economic analysis capability.

- Over the next three years our outreach activities will be guided by: a better understanding of the links between IPR and innovation, including sectoral differences; greater understanding of the links between R&D expenditure and innovation; and evidence to demonstrate how IPRs can increase/decrease innovation (one, two and three year goal).



**Information Technology.** The current IT systems which support patent and trade mark examination, grant, registration and post grant procedures are complicated, sometimes obscure and seriously disjointed. The Office has long identified the need systematically to modernise its IT as a priority and work has begun to address significant areas of risk for the Office. We are committed to a significant overhaul of our systems over the next two years:

**BY 31 MARCH 2009:**

- We will have established a new technical platform that will provide modernised e-mail, document management, workflow and collaboration capabilities. Integration software will allow us to access and update information on the mainframe more effectively and to extend our on-line services to a wider range of transactions.
- The new technology will have been piloted in our register maintenance area both to test the approach and identify operational efficiencies from automation of form-based transactions which update customer name and address details, licenses or assignments.

**BY 31 MARCH 2010:**

- Work to modernise our Trade Marks operation will have commenced with the automation of the domestic registration process using electronic case files.
- Patent processing systems will have been reviewed to identify opportunities to improve operational efficiencies from closer integration of those systems onto the new technical platforms.

**Skilled Examiner Numbers.** The Office's strong reputation for delivery in the area of patents, trade marks and designs is built on our ability to continue to offer a comprehensive service, to a very high quality standard, in a timely fashion. To achieve this we need to maintain the required numbers of trained examiners. This will require recruitment, training, development, retention and a wider career structure so that we can continue to attract the very best candidates for patent, trade mark and design examination. We must actively manage our skills in these areas if we are to continue to provide the quality of service to our customers they have come to expect. Against that requirement, we will develop a skills strategy.

- We are producing a Resource Management and a Developing People Strategy. This will cover mapping core skills; embedding a new culture and behaviour; encouraging new ways of working and improving leadership at all levels. Achieving these outcomes will underpin the HR programmes being implemented over the next year.

**ONE YEAR GOAL:**

**BY 31 MARCH 2009:**

- The strategies outlined above will allow us to put systems in place to better manage our head count. As a first step towards this we will look to launch a targeted severance scheme.

**Governance.** As an Executive Agency of DIUS, and a Trading Fund, the UK-IPO is governed by five key documents:

- I the Framework Document, which provides the formal structure for our relationship with DIUS, our parent Department;
- II our Trading Fund Order, which sets out the activities we can undertake using the funds we recover from fee payers;
- III the Fees Order, which sets out the services we are entitled to charge fees for;
- IV the Accounting Officer Letter, issued to successive Chief Executives, setting out the requirements for financial control, governance and accountability (broadly applying to the Office the same standards applied to main Departments, with certain exceptions in respect of staffing and some other matters);
- V the Corporate Plan, which sets out the UK-IPO's programme of work and priorities during the succeeding 3 years, including specific milestones contributing to the achievement of its core objectives.



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## 6.2

We are reviewing, in consultation with HM Treasury, the UK-IPO's Trading Fund Order and Fees Order (both dating from the 1190s) to ensure that they are, and remain, appropriate for all the functions that we are required to perform. This is particularly important following the recommendations of the Gowers Review<sup>1</sup>, the Sainsbury Review<sup>2</sup> and Ministers' wider requirements in respect of innovation, copyright and liaison with enforcement bodies.

## 6.3

To achieve the destination outlined in previous sections (the Plan, Equipping and Enabling the UK-IPO and Areas for Further Development) a number of key targets have been identified in addition to our 1, 2 and 3 year goals. These key targets are set out as a Balanced Scorecard that will allow us to monitor the delivery of our immediate priorities that contribute to our longer term goals.

## 6.4

The Balanced Scorecard measures are also our Agency Targets (those are targets for reporting back to our Minister/DIUS) and will allow us to move towards achieving our 3 year goals. The priorities for the year ahead have been prepared with full involvement of staff, our Steering Board and our Minister. They also take into account feedback we have received from our customers in respect of the service we provide. We are confident that we can achieve the targets listed overleaf:



Balanced Scorecard Perspective	UK-IPO BALANCED SCORE CARD 2008/09 Measure/Agency	
	Target	
Customers and Stakeholders	1*	To receive an overall "good" or "satisfactory" rating in at least 80% of responses in customer surveys.
	2	Issue 90% of patent search reports within 4 months of request.
	3#	To issue a substantive response to an allowable request for accelerated patent examination within 2 months of receipt in 90% of searched applications.
	4*	To register 90% of processed trade mark applications, to which no substantive objections have been raised or oppositions filed, within 7 months of application.
	5*	To register 95% of all correctly filed design applications within 2 months.
	6	Meet 80% of agreed milestones in development of policy initiatives.
	7#	By 31 March 2009, 66% of business advisors (UKTI export and Business Link advisors and their devolved counterparts) will have received training from the UK-IPO in advising businesses on intellectual property (IP) management. (Contributing to the Science and Innovation Strategy goal for all business advisors [UKTI export and Business Link advisors and their devolved counterparts] to have received this training by summer 2009).
	8#	By 31 March 2009, to have a defined role for UK-IPO in relation to IP crime, working in partnership with other agencies, implementing the commitments in the Government's Creative Economy Strategy, and to have developed the resources, expertise and authorisations to fulfil that role credibly and effectively.
	9#	Refine copyright policy and improve its relevance in the digital age and to make visibly perceived progress in the eyes of stakeholders through the chain from producers to end users.
Finance and Resources	10	Achieve the target of 4% on Return on Capital Employed.
	11*	The Office will deliver additional direct benefits to customers and stakeholders of £2.5m through a combination of the implementation of new or expanded services, and reductions in Office statutory fees.
Internal Processes	12	Make the correct decision on registerability in at least 98.5% of trade mark applications.
	13*	Give good customer service in processing patent applications in 95% of quality assured cases.
	14*	Promote a healthy workforce where people are fit and able to come to work 97% of the time.
	15*	Complete, sign off and return 95% of Performance Management Forms to Personnel by 31 May 2008.
	16	To achieve 99% of the agreed monthly service levels for key IT systems.
	17#	Reduce consumption of water, energy, travel and waste by 2%.
Change and Development	18#	Develop a highly trained workforce where 90% of people who have identified a legitimate training need will have received their training.
	19*	To achieve 80% or more of agreed milestones for key business-change projects within the reporting year.
	20#	By March 2009, UK-IPO Together will be embedded in the office culture and 80% of staff know and understand the management values.

**KEY:** \* Amended 2007-2008 Measure # New Measure

Progress against these targets is monitored monthly by the Executive Board and reported quarterly to our Steering Board. Our performance against each target is also published on our website.



## FINANCIAL PLAN

£ M	2008/9	2009/10	2010/11	2011/12	2012/13
<b>Income</b>	61.7	61.8	63.5	63.4	63.6
<b>Expenditure</b>	57.2	58.3	58.5	59.0	59.5
<b>Gross Surplus (Deficit)</b>	4.5	3.5	5.0	4.4	4.1
<b>Depreciation</b>	(2.0)	(2.3)	(2.2)	(2.5)	(2.5)
<b>Interest Receivable</b>	3.2	3.3	3.4	3.5	3.6
<b>Net Surplus (Deficit)</b>	5.7	4.5	6.2	5.4	5.2
<b>Interest Payable</b>	(0.2)	(0.2)	(0.1)	(0.1)	(0.1)
<b>Dividend</b>	(2.8)	(2.9)	(3.0)	(3.1)	(3.2)
<b>Retained Surplus</b>	2.7	1.4	3.1	2.2	1.9

### KEY ASSUMPTIONS:

Income is forecast from expected customer demand and constant product prices.

Expenditure reflects the staff numbers expected to be employed in order to meet customer demand and Ministerial requirements.

Dividend payable assumes continuation of the existing Return on Capital Employed Target of 4% set by HM Treasury for the 5 years ending 31 March 2009.



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## GLOSSARY

<b>BERR</b>	Department for Business Enterprise and Regulatory Reform	<b>SMEs</b>	Small and Medium Enterprises
<b>CBI</b>	Confederation of British Industry	<b>TRIPs</b>	Trade Related Aspects of Intellectual Property
<b>CMPI</b>	Centre for Medicines in Public Interest	<b>TSB</b>	Technology Strategy Board
<b>CTM</b>	Community Trade Mark	<b>UK-IPO</b>	United Kingdom Intellectual Property Office
<b>DCMS</b>	Department of Culture Media and Sport	<b>UKTI</b>	UK Trade and Investment
<b>DCSF</b>	Department for Children, Schools and Families	<b>WCO</b>	World Customs Organisation
<b>DIUS</b>	Department for Innovation, Universities and Skills	<b>WHO</b>	World Health Organisation
<b>DPMA</b>	German Patent and Trademark Office	<b>WIPO</b>	World Intellectual Property Organisation
<b>EPC</b>	European Patent Convention	<b>WTO</b>	World Trade Organisation
<b>EPO</b>	European Patent Office		
<b>EU</b>	European Union		
<b>GVA</b>	Gross Value Added		
<b>IFPI</b>	International Federation of the Phonographic Industry		
<b>IP</b>	Intellectual Property		
<b>IPR</b>	Intellectual Property Rights		
<b>ISPs</b>	Internet Service Providers		
<b>NESTA</b>	National Endowment for Science, Technology and the Arts		
<b>OECD</b>	Organisation for Economic Cooperation and Development		
<b>OHIM</b>	Office for Harmonisation in the Internal Market		
<b>PCT</b>	Patent Co-operation Treaty		
<b>PECS</b>	Patents Electronic Case File System		
<b>R&amp;D</b>	Research and Development		
<b>RDAs</b>	Regional Development Agencies		

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