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SABIP

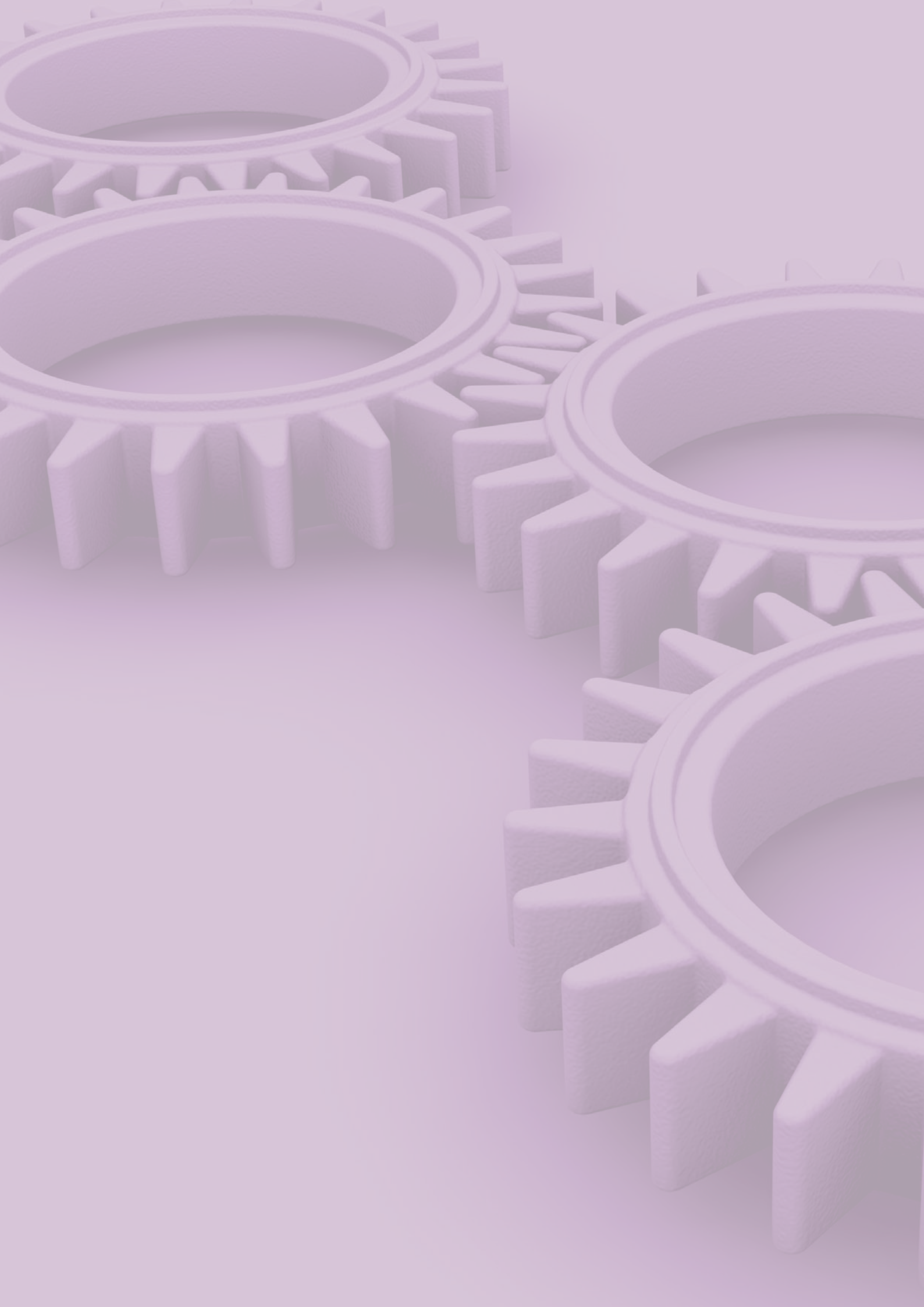
WORK PROGRAMME

2010-11

Providing Government with strategic, independent and evidence-based advice on intellectual property policy.



STRATEGIC
ADVISORY BOARD
FOR
INTELLECTUAL PROPERTY
POLICY



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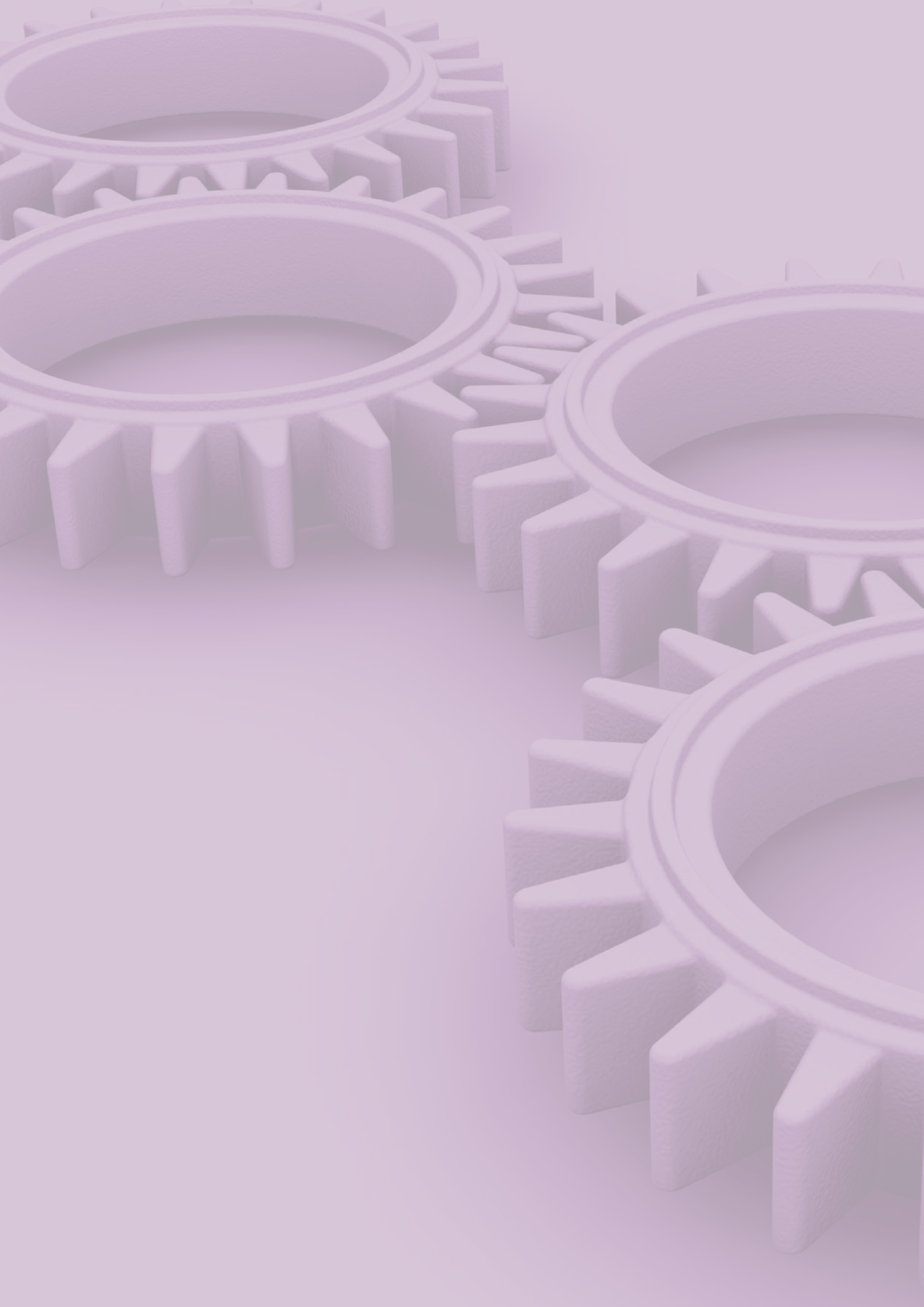
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Introduction

SABIP'S MISSION

SABIP's mission is to provide strategic, independent and evidence-based advice to Government on intellectual property policy, covering all types of intellectual property rights.

- 1 The Strategic Advisory Board for Intellectual Property Policy's (SABIP) role is to advise Ministers and the Chief Executive of the Intellectual Property Office (IPO) on the development of intellectual property (IP) policy.
- 2 Established in June 2008, SABIP was set 3 strategic objectives. These are:
 - i. To provide an overview of IP policy;
 - ii. To provide an independent input into Government policy-making, advising Ministers and the IPO on steps that might be taken to improve the intellectual property framework and ensure that the UK system is based upon and incorporates best practice; and
 - iii. To advise on the UK's stance in international negotiations.
- 3 To achieve its objectives SABIP seeks to:
 - i. Reflect on and search out areas where there is a need for the development of policy and address important underlying questions concerning the rationale of the IPR system and the impact of IP and associated rights in contributing to innovation and economic performance;
 - ii. Stimulate well informed and broadly based debate on IPR issues and developments;
 - iii. Provide authoritative analysis of policy initiatives in the light of available evidence, reasonable hypotheses and realistic analytical models;
 - iv. Identify, execute and disseminate high-quality research on both 'customer' orientated analytic work and longer-term foundational work in a rolling programme;
 - v. Participate in national and international fora on intellectual property matters; and

- vi. Maintain a listening and reflective stance in relation to the views of stakeholders generally.
- 4 SABIP is committed to building its reputation as an authoritative source of advice and commentary on intellectual property policy issues. The UK's IP system needs to be fit for purpose for a 21st century economy and society. It is important to understand better the relationships between IP and economic growth, especially as the economy becomes increasingly knowledge-based. Rapid technological progress, and in particular digitisation, is also raising fundamental cultural as well as economic issues in relation to the IP framework. SABIP's programme of work will provide Government with the tools to develop evidence-based policy-making.
- 5 SABIP is working with and assisting the IPO and other Government Departments to increase awareness of intellectual property issues. SABIP is also building its network of specialist researchers, economists, legal, consumer and industry representatives and other experts.
- 6 Through its work, SABIP believes that it will be able to help the Government and specifically the Department for Business, Innovation and Skills (BIS) deliver against its Public Service Agreements (PSAs).

SECTION 2

Delivering on the objectives: SABIP's work programme 2010/11

- 7 Competitive modern economies are increasingly knowledge-based. Investment in intangible assets is already more important for growth than physical investment. Especially as the UK emerges from the financial crisis and seeks to compete in the global economy, IP policy must contribute as much as possible to growth and innovation. An appropriate IP framework can also support the development of innovative solutions to pressing global challenges such as climate change, the need for renewable energy, affordable healthcare and food security, in both the developed and developing world. However opinions are divided on the degree to which the current system is delivering on these challenges and in particular on the balance being struck between the protections for IP and the benefits of wider access to, and dissemination of, new ideas and inventions.
- 8 There is a need for robust and impartial data and more empirical evidence of the relationships between IP, IPRs and innovation and on the advantages and disadvantages of the current IP framework for producers, users and consumers. It must be questioned whether the current system of IP rights is fully fit for purpose and whether it is able to respond well to dynamic developments,

including new products and services, new distribution channels, and evolving value chains in an increasingly knowledge-based economy.

- 9 SABIP has been building up its working tools and practices to supplement its expanding knowledge base. It has made considerable efforts to fully understand the views of stakeholders through a variety of methods, including:
 - i. Identification of policy needs: SABIP has engaged stakeholders and convened experts for example through a forum to discuss the economic value of IP.
 - ii. Building up a knowledge base through research and information gathering: SABIP has commissioned reviews of existing literature to ensure that any new work builds on past experience, to identify gaps in the knowledge base and to develop insight about methodologies for future work.
 - iii. Refining the research questions through dialogue with experts in the field: SABIP holds regular workshops to explore policy options, test research questions and validate results and policy conclusions. SABIP has also convened a group of expert IP academics and practitioners to help explore the role and rationale of patents in the 21st century, and what implications these have for policy-making.
 - iv. Creating a Copyright Expert Panel: SABIP has established a panel of experts representing a balanced mix of stakeholders to provide insight to the Board on copyright-related matters.
 - v. Responding to requests for quick strategic analyses around copyright and enforcement: SABIP has commissioned studies on contract and copyright and commissioned surveys and other analysis on firms' attitudes to procedures for IP enforcement and related costs.
 - vi. Identify specific policy recommendations for Government: SABIP fed evidence-based recommendations into the Jackson Review of Civil Litigation Costs and provided input to the development of the Intellectual Property Office's ©: *The Way Ahead: A Strategy for Copyright in the Digital Age*.
- 10 The programme described below builds on SABIP's work to-date and looks to develop insight on the role of IP and the IPR system in the economy. Its work programme will contain short, medium and long term elements.
- 11 The 2010/11 programme has been generated from over fifty potential projects that were proposed over the course of the last year and particularly through the Forum on the Economic Value of IP. Projects have been selected to ensure complementarity with the work being done elsewhere and on the basis of the following criteria:
 - i. Strategic significance: Policy relevance either in addressing a major background question or in providing information and analysis on possible

- policy developments with potential significance for the operation of the IPR system and/or its impact on economic performance or social welfare;
- ii. Value-adding: Focussing on those areas where SABIP has particular contributions to make in terms of adding insight, information and analysis to existing IPR research and policy work;
 - iii. Relative advantage: Undertaking work for which SABIP is best placed to be responsible, including asking policy questions that others are not able to due to political or time pressures;
 - iv. Authoritative: Focusing on areas which SABIP is competent to define and monitor, and where its conclusions are likely to be recognised as authoritative contributions to discussion and understanding by Government and other stakeholders.
- 12 In order to ensure that the work programme achieves the appropriate balance the following strategic considerations have also been taken into account:
- i. Impact: Identifying a range of projects that deliver policy advice which is both distinctive and relevant to the overall objectives of policy over the short, medium and long-term;
 - ii. IP and IPR coverage: Ensuring that SABIP explores the full range of IP mechanisms, including those which have to date been relatively neglected in policy and research such as design rights or trade secrecy;
 - iii. Geography: Ensuring that projects take account of national and international issues;
- 13 SABIP will leave 20-25% of its budget uncommitted so as to be able to respond appropriately to ad hoc requests from government and other urgent emerging issues where SABIP can add value.

WORK STREAMS

I. Role of IP and IPRs in innovation

- 14 There is currently significant debate about the role of IPRs in promoting innovation and economic growth. Are realistic alternatives available to business? What are the mechanisms by which the two are linked? How strong is the causal relationship? What other factors stimulate or constrain successful innovation and creativity? Is the contribution of IPRs greater in some sectors than others? What would be the consequences if the system of IPRs had different features, or if there was no such system?
- 15 SABIP's work will explore the landscape of IP use in different sectors. It will draw upon the current SABIP review of the role and rationale of patents, together with the outcome of joint work with the IPO which saw the launch in November 2009

of a research programme to advance understanding of the economic value of intellectual property.

- 16 This research may take the form of:
- i. A data-based review of the use of IPRs across sectors, countries, time periods and by size of firm.
 - ii. A literature review of studies on the role of IP/IPRs in promoting invention, creative outputs and overall aspects of economic performance.
 - iii. A survey-based investigation, if appropriate, to establish information about firm choice of alternative protection and exploitation strategies, the advantages and disadvantages of each and the implications of alternative strategies for the development of public policy.
- 17 This stream of work may focus on the UK or be structured as a multi-country study to explore the relationship, if any, between appropriability strategies and the nature of the legal environment in different countries. The scope of work will be restricted and defined in partnership with research suppliers and other relevant stakeholders.
- 18 Intended outcomes: The intended outcomes for policy concern the following questions: what role does the IPR system play in our innovative performance and could this be improved? What flexibilities might we need in an IPR system to meet the idiosyncratic needs of different sectors (with different value chains and different routes and lead times to market)? What is the role that IPRs play in the ability of firms to export/collaborate/develop new products and secure investment, including follow-on invention? How can/should the legal framework be adjusted to improve performance?

II. Copyright

- 19 In 2008-2009, SABIP published its *Strategic Priorities for Copyright*, drafted with the support of its Copyright Expert Panel. SABIP has been pursuing the identified issues with stakeholders in various formal and informal settings. It has also commissioned literature reviews which have highlighted significant knowledge gaps and opportunities for advancing the evidence base. SABIP now plans to take stock of the work it has done to-date on copyright, distilling policy insights from previous work and proposing new research questions in a paper that will be published in spring 2010.
- 20 SABIP's copyright-related work during the rest of 2010-11 will focus primarily on:
- i. Deepening the understanding of the relationship between contract and copyright law;

- ii. Informing the current debate around the need for reform of the law to improve its operation, particularly concerning the complexity of the Copyright, Designs and Patents Act (1988), licensing systems and use of exceptions;
 - iii. Exploring issues that may emerge from a forthcoming report on the economics of copyright;
 - iv. The creation of a methodology and a pilot study to analyse value creation in a number of creative industries which may be taken forward by a consortium of relevant interests;
 - v. Studies to clarify other European countries' positions regarding aspects of copyright to UK policy-makers, for example cross-country comparison of the coverage of copyright frameworks and treatment of exceptions; and
 - vi. Attitudes and behaviour in the digital age (discussed separately below)
- 21 Intended outcomes: The intended policy outcomes of SABIP's copyright work-stream will explore whether the concerns raised by stakeholders are best addressed by amendments to copyright-related legislation or alternatively by improvements to market-based schemes. Is there an adequate balance between rewards to creators and intermediaries, and access to content by users and creators? It is also intended to provide improved insight on the various philosophical approaches to aspects of copyright law adopted by other countries.

III. Attitudes and behaviour in the digital age

- 22 SABIP has published two complementary literature reviews on consumer attitudes and behaviour towards content in online and 'offline' (non-internet) digital contexts. The major findings included:
- i. Some data exists on how specific demographic groups (especially students) behave in relation to digital content, however little information exists about the wider user population.
 - ii. There is negligible knowledge about the use of 'offline' channels for content consumption, such as mobile devices and hard drives, though these technologies are growing in prevalence;
 - iii. Data concerning the extent of infringement of digital content, or the attitudes of consumers towards it, is not reliable; and
 - iv. Reliable data is vital because it provides a key understanding of customer preferences and therefore of demand in the development of digital products.

23 This work stream has the following goals:

- i. *To encourage the collection of longitudinal data about the UK population's behaviour in relation to digital content.* SABIP work has highlighted a clear need for investing in the generation of data on consumer behaviour in relation to the creation, use and re-use of digital content, through more extensive surveying of the UK population on relevant matters. SABIP is therefore developing a plan for government agencies to build on *existing* survey instruments or address significant data gaps through the creation of new tools if necessary to generate better insight about consumer behaviour and its implications for IP law in the digital context.
- ii. *To explore the case for an independent repository on copyright-related data, to support policy-making and analysis.* Noting the difficulties in arriving at policy conclusions due to inconsistencies or weaknesses in the currently available data, stakeholders from all sides have voiced the need to explore the concept of a neutral, independent repository for copyright-related data. SABIP has therefore approved a project for Q1 2010 to scope the need for and feasibility of a copyright-related data repository that would host, for example, pre-competitive transaction data and longitudinal survey data. If feasible, this scoping exercise might form the basis of a recommendation to the UK Government or the European Commission for the support of such a repository later in 2010.

24 Intended outcomes: From the results of this work SABIP will develop detailed recommendations, for others to take forward, on the best means to generate longitudinal data, and options for the creation of a Copyright Observatory.

IV. Role and rationale of trade marks

25 Although brands are important to the UK economy, they are relatively little studied and there is limited empirical evidence about their interaction with other forms of IP and IPRs, particularly design rights and patents.

26 Building on the SABIP project on the role and rationale of patents, a project will be undertaken to explore the role of trade marks in the UK economy. The impact of 'lookalikes' on the UK economy (an area of concern to large brand owners) and implications for the Unfair Competition Directive may be explored within this.

27 This project will seek to explore particular features of trade marks and the way the system works, the link between trade marks and branding, the wider use of trade marks and the interaction with other forms of IPR in relation to proprietary and branded goods, enforcement issues and competition policy implications, in a national and international perspective.

28 Intended outcomes: The intended policy outcomes of this project will be to build an evidence base in an area where there is very little data in order to increase policy-makers' understanding of the role of trade marks in the UK economy and how these interact with other forms of IP.

V. Role of IP in university-industry knowledge flows

- 29 Since the 1980s, the use of IPRs has been encouraged in the transfer of knowledge from universities into industry through a range of policy incentives. However these are not the only forms of knowledge transfer that are used and recent research has shown that an over-emphasis on formal rights may be creating unproductive barriers between the research base and industry and may be adding unwanted costs into the innovation process. SABIP will undertake a study into behavioural issues and economic costs and benefits in terms of commercialisation and innovation in the translation and transfer of research outcomes, using a comparative cross-university, cross-disciplinary and cross-sectoral approach.
- 30 SABIP will explore the role of IPRs in the transfer of technologies from the laboratory into the marketplace and the impact on academic and business motivations, in order to understand areas where IPRs are causing barriers to knowledge transfer and exchange. SABIP will focus on areas of strategic importance, such as pharmaceuticals, environmental technologies and advanced materials. Although the initial focus of this project is on universities, this area of enquiry has implications for publicly-funded knowledge transfer as a whole.
- 31 Intended outcomes: The projects within this work stream will aim to address concerns on whether and how explicit metrics and incentives are affecting the efficiency and effectiveness of the knowledge transfer process and the implications of this for innovation in the UK economy. The work will seek to make recommendations on policies to improve the ways in which public sector research institutions release knowledge into the system for companies to deliver higher value into the UK economy.

VI. Comparative study on international IP enforcement regimes

- 32 SABIP recognises the importance of understanding how regulatory systems, legislative frameworks and judicial processes impact the functioning of the overall innovation process. Because the scale and impact of these effects are not well understood, particularly in the context of civil enforcement of IPRs, SABIP will receive and publish in spring 2010 the results of a study on civil IPR enforcement mechanisms in the UK and their implications for SMEs. Building on the findings of this report, SABIP will then partner with ZEW Mannheim, a German research organisation, to engage in a multi-country study of the effects of national IPR litigation systems on local economies.
- 33 Intended outcomes: The selected projects will aim to address questions concerning: the volume and type of cases litigated in the UK and elsewhere, IPR-enforcement-related incentives to firms to locate their value-added and innovative activities in the UK as compared to elsewhere, how well the IP system is working in the UK compared to other countries, strategies to address information asymmetries among businesses, and any potential role for IPR insurance.

VII. The relationship between IPRs and competition law

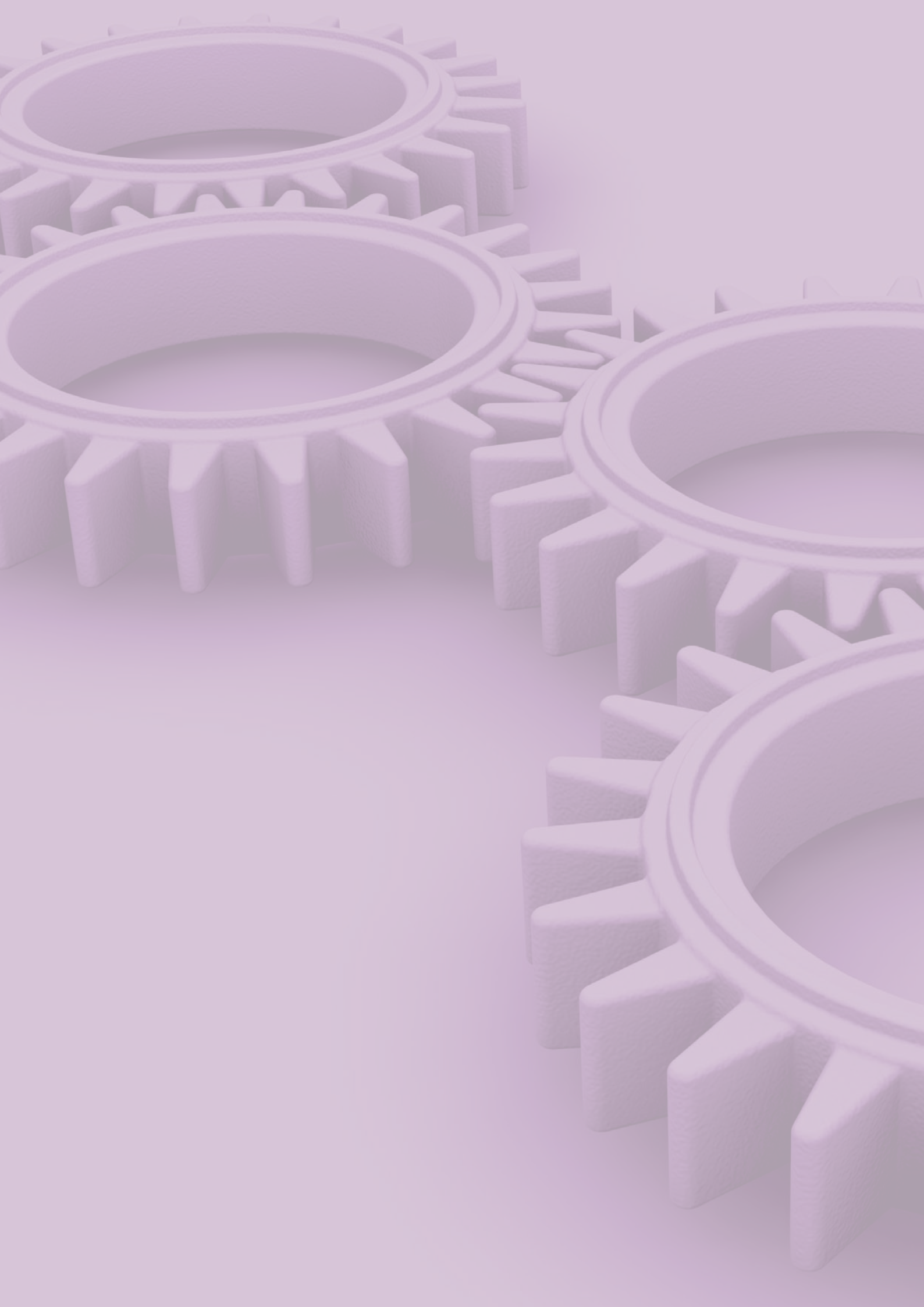
- 34 IPRs function by granting a temporary monopoly, enabling a creator or innovator to recoup their investment. This has considerable implications for the structure of industries; in some industries successful innovation may give rise to long-term market dominance. Furthermore, collaborative research may have implications for participants under cartel law and some mergers may impinge on competition through new product discoveries and development.
- 35 This brings into sharp focus the relationship between IP laws and competition law. Dynamic competition through fundamental product or process innovation may benefit from market dominance. But this may run the risk of giving rise to consumer detriment through higher prices and loss of competitive focus. This is reflected in the recent EC study of pharmaceuticals and by aspects of the recent debate on the proposed Google Books Settlement. This is a complex and controversial area so, to contribute to policy thinking, research will need to be well specified and conducted.
- 36 As SABIP's first venture into this topic, the balancing of these issues of innovation and competition will likely be pursued through a review of relevant cases in major economies - US, EU (particularly Germany and the UK) and Australia. Due to existing commitments, this project will be started either late in the year, or as part of the 2011/2012 work programme.
- 37 Intended outcomes: The initial work will aim to identify the types of issue that bring competition and IP laws into possible conflict. It will indicate common themes and approaches and draw attention to ways in which their respective policy objectives may be reconciled or traded-off. From this may well follow proposals for further work, e.g. to investigate the nature of business incentives and constraints arising from these areas of law.


VIII. Ad hoc projects

- 38 SABIP has an ongoing interest in a range of important policy areas. It would welcome the opportunity to contribute, at the request of Government departments, to relevant policy questions as the need arises.
- 39 This might be through new empirical research, evaluation of state-of-the-art thinking through literature reviews, policy reflections by the Board, or SABIP convening experts groups for the purpose.
- 40 Topics of interest include, but are not limited to:
- i. The role of IPRs in the development and diffusion of critical environmental, health and agricultural technologies
 - ii. The role of design rights in innovation

Resource implications of the programme

- 41 The budget for the work streams discussed above will be allocated at their inception. SABIP will leave approximately twenty per cent of its resources uncommitted in order to respond to findings from the outputs of its first projects and for ad hoc projects as discussed above.
- 42 Projects will be staggered and there will be flexibility around timescales, depending on resources to be committed to other priorities.





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