



STRATEGIC
ADVISORY BOARD
FOR
INTELLECTUAL PROPERTY
POLICY

**The Strategic Advisory Board for Intellectual Property Policy (SABIP)
2009-10 Annual Report**

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1 INTRODUCTION

The Strategic Advisory Board for Intellectual Property Policy (SABIP) was established in June 2008, as an advisory Non-Departmental Public Body, in response to a recommendation from the Gowers Review of Intellectual Property.

SABIP was sponsored by the Intellectual Property Office (IPO), an Executive Agency of the Department for Business, Innovation and Skills. SABIP's objective was to give Ministers and the Chief Executive of the Intellectual Property Office (IPO) independent policy advice based on solid evidence.

The report covers the period from 1st April 2009 to 30th July 2010.

Beginning in October 2009 the IPO developed a complementary work programme to build economic evidence for IP policy. On 30th July 2010¹ the Government announced the dissolution of SABIP. The SABIP programme was integrated into the IPO's own.

¹ <http://nds.coi.gov.uk/content/Detail.aspx?ReleaseID=414492&NewsAreaID=2>

2 SABIP OVERVIEW

SABIP was set 3 strategic objectives:

- to provide an overview of IP policy;
- 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 to ensure that the UK system is based upon, and incorporates, best practice; and
- to advise on the UK's stance in international negotiations.

To achieve these objectives SABIP sought to:

- reflect on and search out areas where there is a need for the development of policy, and to 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;
- stimulate well-informed and broadly-based debate on IPR issues and developments;
- provide authoritative analysis of policy initiatives in the light of available evidence, reasonable hypotheses and realistic analytical models;
- identify, execute and disseminate high-quality research: both „customer' - orientated analytical work and longer-term foundational work in a rolling programme;
- participate in national and international fora on intellectual property matters; and
- maintain a listening and reflective stance in relation to the views of stakeholders generally.

To assist in formulating this advice, the SABIP Board had a programme of engagement with key stakeholders, inside and outside Government, with an interest in intellectual property. This engagement helped to inform the development of the Board's work programme for 2010 - 11² which was published in March 2010.

² <http://www.ipo.gov.uk/ipresearch-sabip-201003.pdf>

3 WORK PROGRAMME

The Board met every two months to discuss SABIP business, to review its work programme and develop thinking on where added value could be provided to the broad IP policy debate. Each strand of the work programme was led by a Board member, who met regularly with other Board members and the Secretariat to drive the work programme forward.

In two years, SABIP delivered, as part of its core mandate, a number of research projects organised around five streams:

1. the social and economic role of copyright;
2. attitudes and behaviour in the digital age;
3. the role and rationale of intellectual property;
4. the role of intellectual property in university-industry knowledge flows;
and
5. enforcement of the UK's intellectual property system and SMEs.

In addition, SABIP identified three workstreams to pursue:

1. the roles of IP and IPRs in innovation;
2. a comparative study on international IP enforcement regimes; and
3. the relationship between IPRs and competition law.

Progress on the SABIP workstreams, and future developments, are detailed below.

4 THE SOCIAL AND ECONOMIC ROLE OF COPYRIGHT

In December 2008, SABIP appointed a Copyright Expert Panel (CEP) to assist its thinking on copyright policy. This resulted in the publication of “Strategic Priorities for Copyright”³, which set out the key areas of copyright that SABIP aimed to explore.

SABIP hosted a number of events to discuss specific policy issues around copyright:

- a stakeholder workshop exploring the case for simplification of the copyright framework⁴;
- a policy panel event exploring the issues surrounding the Google Books⁵ initiative and mass digitisation;
- a stakeholder workshop exploring the relationship between copyright and contract law⁶; and
- a policy panel event on international perspectives on moral rights⁷.

As part of its copyright workstream, SABIP published the following research:

- The Economics of Copyright and Digitisation: A Report on the Literature and the Need for Further Research⁸ (May 2010);
- An academic review of The Relationship between Copyright and Contract Law⁹ (July 2010).

³ <http://www.ipo.gov.uk/ipresearch-strategic-200903.pdf>

⁴ <http://www.ipo.gov.uk/ipresearch-exploring-201002.pdf>

⁵ <http://www.ipo.gov.uk/ipresearch-google-201007.pdf>

⁶ <http://www.ipo.gov.uk/ipresearch-copyrightworkshop-201003.pdf>

⁷ <http://www.ipo.gov.uk/ipresearch-international-2010.pdf>

⁸ <http://www.ipo.gov.uk/ipresearch-economics-201005.pdf>

⁹ <http://www.ipo.gov.uk/ipresearch-relation-201007.pdf>

5 ATTITUDES AND BEHAVIOUR IN THE DIGITAL AGE

This workstream sought to establish attitudinal and behavioural characteristics among key consumer groups in their use of digital technology that are significant for medium- and long-term IP policy-making.

SABIP published two reports into on-line and off-line consumer behaviour:

- Copycats: Digital Consumers in an On-Line World (May 2009); and
- Changing Attitudes and Behaviours in the Non-Internet Digital World and their Implications for Intellectual Property (January 2010).

SABIP also held two stakeholder workshops exploring outputs of the reports. SABIP commissioned additional work exploring how best to generate longitudinal data¹⁰ on consumer attitudes and behaviour, including through inserting questions into existing surveys such as DCMS's Taking Part survey. This was published in August 2010. A policy recommendations¹¹ paper based on the findings of the two reports and additional work was published on 16th July 2010.

¹⁰ <http://www.ipo.gov.uk/ipresearch-consumer-201007.pdf>

¹¹ <http://www.ipo.gov.uk/ipresearch-attitudes-201007.pdf>

6 THE ROLE AND RATIONALE OF INTELLECTUAL PROPERTY

This work sought to undertake a fundamental review of the philosophy supporting the award of enforceable IPRs. In light of changing technological, economic and social conditions and pressures, the workstream explored the case for amendments to the present system in the short and longer term.

The first phase of the work explored the role and rationale of patents. Work on the role and rationale of trade marks was scheduled to take place in 2010-11.

Based on an initial meeting with experts, 10 papers were commissioned to highlight key challenges and developments in the world of patents. These are now being reviewed and a selection will be published on the IPO website.

7 THE ROLE OF INTELLECTUAL PROPERTY IN UNIVERSITY-INDUSTRY KNOWLEDGE FLOWS

This workstream builds on the Wellings Report and other studies which have examined issues of IPR management and exploitation by universities and other publicly-owned bodies for economic and social benefit.

Two literature reviews, one on hard IP and one on soft IP, were commissioned in August 2009. These helped build a conceptual framework for analysis of knowledge flows in the university-industry innovation system.

SABIP commissioned Birkbeck University¹² to develop and test this framework. A report using the developed analytical framework was published in October 2010. The IPO's research team will work with partners such as BIS to take this framework forward.

¹² <http://www.ipo.gov.uk/ipresearch-flow-201010.pdf>

8 ENFORCEMENT OF THE UK'S INTELLECTUAL PROPERTY SYSTEM AND SMALL AND MEDIUM-SIZED ENTERPRISES (SMES)

This project, commissioned from the Intellectual Property Institute (IPI), explores the behaviour of SMEs and the impact of enforcement costs upon their decisions to seek justice through the courts, to use Alternative Dispute Resolution mechanisms, and to license technologies and otherwise engage with (or disengage from) the IPR system. A report¹³ was published in October 2010.

Running parallel to the enforcement project, SABIP assisted Lord Justice Jackson's Review of Civil Litigation Costs. A paper was submitted to the Review in July 2009¹⁴ and Jackson requested that SABIP conduct an SME survey on patents, trade marks, and copyright / design rights. SABIP's findings¹⁵ were quoted in the Jackson Review final publication, in January 2010.

¹³ <http://www.ipo.gov.uk/ipresearch-ipenforcement-201010.pdf>

¹⁴ <http://www.ipo.gov.uk/ipresearch-submission-200910.pdf>

¹⁵ <http://www.ipo.gov.uk/ipresearch-submission1-200910.pdf>; <http://www.ipo.gov.uk/ipresearch-submission2-200910.pdf>; <http://www.ipo.gov.uk/ipresearch-submission3-200910.pdf>.

9 THE ROLE OF IP AND IPRS IN INNOVATION

SABIP led a major international forum on the Economic Value of IP, held on 10th June 2009. The Forum brought together top international experts on the economic value of IP from academia and industry to identify key areas in need of further research. On the basis of the Forum an agenda of research¹⁶ to define how intellectual property underpins the UK's knowledge economy was formulated and published in November.

Elements of this agenda were incorporated into the 2010/11 work programme, which identified the role of IP and IPRs in innovation as a priority area for research. This work would seek to explore the landscape of IP use in different sectors to identify the role played by the IPR system in innovative performance and how this could be improved.

¹⁶ <http://www.ipo.gov.uk/ipresearch-economicresearch-200911.pdf>

10 COMPARATIVE STUDY ON INTERNATIONAL IP ENFORCEMENT REGIMES

In March 2009 SABIP published a literature review entitled “IP Enforcement in the UK and Beyond¹⁷”. Based on this review and the outcomes of the UK-based project examining enforcement of the UK’s intellectual property system and SMEs (at 8 above) SABIP contacted ZEW Mannheim, a German research organisation, to engage in a multi-country study of the effects of national IPR litigation systems on local economies.

¹⁷ <http://www.ipo.gov.uk/ipresearch-ipenforcement-200905.pdf>

11 THE RELATIONSHIP BETWEEN IPRS AND COMPETITION LAW

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. Dynamic competition through product or process innovation may benefit from market dominance, but this may give rise to consumer detriment through higher prices and loss of competitive focus. This is reflected in the recent EC study of pharmaceuticals and in aspects of the recent debate on the proposed Google Books Settlement.

In this workstream SABIP sought to identify the types of issue with the potential to bring competition law and IP law into conflict, highlighting common themes and approaches and drawing attention to ways in which the respective policy objectives relating to these issues might be reconciled or traded-off.

12 RESOURCES USED DURING THE YEAR

During the financial year 1st April 2009 to 31st March 2010, and up to SABIP's dissolution on 31st July 2010, SABIP spent a total of £419,703. This comprises remuneration for SABIP Board Members, board expenses, including meeting venues, and costs for the CEP. The cost of the SABIP Secretariat was met by the IPO. A number of research projects were commissioned during the course of the year but will not be paid for until completion. These costs will be met by the IPO. Details of the Board, CEP and Secretariat are at Annex A.

The remainder of the SABIP work programme was formally integrated into the IPO's own work programme on 24th August 2010¹⁸. The IPO Research Programme for 2010 is at Annex B.

¹⁸ <http://www.ipo.gov.uk/about/press/press-release/press-release-2010/press-release-20100824.htm>

13 ANNEX A

13.1 The SABIP Board

The Board of SABIP was made up of a Chairman and five Members. The Board is complemented by four ex officio members as below:

13.1.1 Members

Joly Dixon (Chairman)
Dame Lynne Brindley
Dr. Cathy Garner
Professor John Pickering
Dr. Jonathan Spencer CB
Iain Wilcock

13.1.2 Ex-officio

John Alty (Chief Executive of the IPO)
Robin Webb (Director of Innovation, IPO)
Christine Hewitt (Deputy Director, Innovation Infrastructure, BIS)
Alex Heath (HM Treasury)

The Chairman's appointment was for an initial period of 2 years and he was paid £20,000 per annum and reimbursed for travel and subsistence. The Board were also appointed for an initial 2-year period and paid £12,500 per annum for 25 days. The Board were reimbursed for travel and subsistence. A register of interests was maintained by the SABIP Secretariat.

13.2 The Copyright Expert Panel

SABIP appointed a Copyright Expert Panel (CEP) in December 2008 to help enrich and inform its thinking on copyright. The CEP comprised five leading experts on copyright. They were:

Professor Lionel Bently
Dr. Estelle Derclaye
Laurence Kaye
Shira Perlmutter
Professor Ruth Towse

The members of the CEP were paid £100 per day and reimbursed for travel and subsistence expenses.

13.3 Secretariat

The SABIP Board and CEP were serviced by a small Secretariat, funded by the Intellectual Property Office. During the period covered by this Annual Report the Secretariat was staffed by:

Robert Bettley-Smith, Chief Executive

David Humphries, Head of Policy

Rachelle Harris, Head of Research

Lucy Wimberley, Research Manager

Tony Creaton, Executive Coordinator

Edith Marshall, Executive Assistant

14 ANNEX B

14.1 Building Evidence for Policy: Intellectual Property Research at August 2010

Since the decision in July to dissolve the Strategic Advisory Board for Intellectual Property Policy (SABIP) and take its research into the Intellectual Property Office (IPO) both organisations have worked to establish a single work programme to deliver evidence for future policy. The combined work is a significant contribution to the development of worldwide evidence for policy, and will support UK influence in international policy discussions. It is now being taken forward by the IPO's Economics, Research and Evidence Team, led by Chief Economist Tony Clayton.

In July and August SABIP published a number of papers on Google Books and consumer attitudes and behaviour in the digital age.¹⁹ Along with other past SABIP research these can be found at www.sabip.org.uk. In October these will migrate to a new IP research page on www.ipso.gov.uk.

Further work commissioned by SABIP will complete in the next two months, including important studies on:

- University – Industry Knowledge Flows; and
- Enforcement of IP for Small and Medium Enterprises.

These will be published by the IPO, along with SABIP work on the role and rationale of patents.

14.2 Future Research

The common thread through our work for 2010/11 is that it builds the evidence base for policy-making and evaluation. With researchers we will bring together available data on business use of IP rights, innovation and business performance at firm level in novel ways, creating a knowledge base that researchers and policy analysts will be able to access, use and develop. The programme is aimed at answering core questions related to policy issues:

¹⁹ <http://www.ipso.gov.uk/pro-ipresearch/ipresearch-year/ipresearch-year-2010.htm>

- How much does UK industry spend on creating IP protected by rights, and what does this investment deliver?
- How big is investment in the copyright economy, who earns what from it and how are value chains affected by digital media?
- How much do patents incentivise R&D, in which markets, and who gains?
- Which firms make money out of IP and innovation without patents, and how?
- Do trade marks help innovation and growth – which firms win from branding?
- Why is UK design a major success despite using few registered rights?
- Are EU copyright levies a useful reward system or a distortion of the market?
- Can patent markets create the depth and transparency required to help innovators?

In addition, we are developing a comparative study on international IP enforcement regimes with ZEW (the leading innovation research institute in Germany), comparing costs and practice in IP litigation across countries. We are also considering work on the relationship between IPRs and competition law, including proposed research on the costs to innovation and competition of lookalike packaging. A proposal to develop an observatory for copyright data is being studied internally in order to make recommendations on how this might be progressed.

14.3 IPO Research: Forward Programme

14.3.1 Committed research projects:

IPRs in the knowledge economy To be published spring 2011
To assess the value of IPRs in intangible investment and the knowledge economy

Copyright investment and income First output to be published spring 2011
New data on investment in copyright to fill data gap in the national accounts

Copyright levy systems [part ESRC funded] To be published summer 2011
To understand different EU copyright levy systems and their economic impacts on content and media markets

Patent incentives for technology investment To be published spring 2011
To assess UK business returns from patents and effects on investment & innovation

Alternatives to patents To be published spring 2011
To understand which firms use alternatives to patents to protect innovation, and how their choices affect performance

Trademark incentives To be published spring 2011
To assess value of trademarks / branding to firms, and effects on growth and innovation

Changing business models in creative industries [part ESRC / AHRC funded] To be published summer 2011
To study impact of digitisation on copyright value chains and new business models

Design economics To be published spring 2011

14.3.2 Projects being specified

To understand the use of registered design rights, and how firms protect designs

Patent markets To go to tender spring 2011
To improve understanding of current and proposed US and EU markets for patents

Copyright-related data observatory Being assessed internally
Develop database of copyright-related transactional, behavioural and attitudinal data

Comparative study on IP enforcement regimes Tendered Summer 2010
[part-funded by ZEW]
To understand access to, and use of, enforcement systems across countries.