



The Rt. Hon. Lord Justice Jackson
Royal Courts of Justice
Strand
London
WC2A 2LL

30th October 2009

Dear Sir Rupert,

Please find enclosed preliminary results from the surveys commissioned by the Strategic Advisory Board for Intellectual Property Policy (SABIP) to explore the two questions you asked us to consider. We plan to analyse the results of the surveys in more detail and we may be able to tease out some additional nuances from the data sets. We will send you a copy of our draft report by the end of the year and we would want to agree a publication timetable with you.

Methodology and response rate

In light of the timetable we decided to commission three surveys covering, respectively, copyright and design rights, patents and trade marks.

The samples for the Copyright and Design Rights survey were drawn from various organisations in the creative industries. Overall we contacted over 7,000 freelancers and SMEs. We obtained a suitable number of responses to construct a rich statistical dataset (see Annex 1 for further details).

The samples for the Patent and Trade Mark surveys were drawn from the Oxford Firm-Level Intellectual Property (OFLIP) database. For the Patent survey, we contacted 500 patentee firms and 500 non-patentee firms in patent-intensive industries (see Annex 2 for further details). In respect of the Trade Mark survey, we contacted 500 firms with registered trade-marks (see Annex 3 for further details). The response rates were unfortunately very poor in both of these surveys – even after email and telephone follow-up. Accordingly, we do not have robust statistical datasets in these areas.

Using an internet survey protocol was the only practical methodology open to us given the timetable and budget for the project. We recognised that the response rates might be low – but the actual level of SME engagement is interesting in itself. We will investigate further the reasons behind the lack of engagement in the Patent and Trade Mark surveys compared with the Copyright survey.

Preliminary conclusions

In respect of the following question:

- *What is the unmet need for (a) appointing a district judge to the Patents County Court and (b) creating a small claims track and fast track for intellectual property (IP) cases? If there is an unmet need, what is its extent?*

As far as copyright and design rights holders are concerned, there appears to be a significant unmet need for such forums. A substantial number of responses have been received, which provide an adequate basis for analysis. The survey found there was overwhelming support for a fast track (72.2%) and a small claims forum (78.7%).

In terms of demand, the 300 respondents who completed the questionnaire indicated that they were likely to bring 81 cases in the next year and 287 cases over the next five years to a fast track (cases between £5,000 and £25,000), and 197 cases in the next year and 883 cases over the next five years to a small claims venue (cases of under £5,000). Though we anticipate that this demand is likely to have been overstated, we expect demand to be nonetheless significant.

We can therefore be confident that there is a high level of demand for a fast track and a small claims court for copyright and design rights cases. The evidence also suggests that the introduction of any new procedures would need to quickly build capacity. Indeed, if the demand implied by our survey were to materialise, there is a risk of the procedures being swamped.

In respect of the following question:

- *Would the proposed cap upon recoverable costs of £50,000 (or £25,000 in respect of an inquiry as to damages or an account of profits) make the Patents County Court more attractive to SMEs and, if so, to what extent?*

We are unable to provide you with robust recommendations on a proposed cap on damages or recoverable costs. The lack of engagement from SMEs may be symptomatic of them being too busy to engage, of a lack of interest in the topic, or of a lack of understanding of the current system and implications of your proposals.

The small number of respondents to the survey were unsupportive of the proposed changes – this is likely the result of bias as these respondents had, for the large majority, engaged with the legal system and won.

As you may recall, we have a broader work programme underway at this time, exploring the impact of enforcement costs on SMEs. We will use this experience to refine our methodological approach and we would expect to be able to provide a more conclusive answer to this question by the middle of next year. This research will use a range of methodologies to triangulate results: survey work, but also face-to-face interviews with SMEs and legal practitioners, which should generate robust data.

Attached to this letter are 3 annexes, one for each survey. Please note that this is preliminary data and we would be grateful if you would allow us to review any mention of SABIP's work in your report, in order to ensure accuracy. Furthermore, we will be happy to provide you with a more detailed analysis of the results and our draft report by the end of the year, which might identify some additional underlying trends of interest.

I would be happy to meet and discuss any of the findings with you at your convenience.

With very best wishes and kind regards.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Iain Wilcock', written in a cursive style.

Iain Wilcock
Chairman, SABIP Enforcement Working Group