

# CALL FOR EVIDENCE

INDEPENDENT REVIEW OF INTELLECTUAL PROPERTY  
AND GROWTH





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DECEMBER 2010

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Since agreeing to undertake this review I have encountered two main blocks of reaction. The first is a somewhat frustrated response that here is yet another review of a subject already reviewed to death, raising the pertinent question: why another? The second is that here is a subject of considerable economic importance where we have not yet succeeded in grounding policy securely in evidence. I agreed to lead the review because I hold the second view, not the first.

That is why this Call for Evidence is of such importance. I hope to hear from the widest possible range of interests. I also urge respondents to focus upon the question at the heart of this review rather than the catch-all remit of some previous reviews, namely: what, if anything, should we do to change the UK's IP system in the interests of promoting more rapid innovation and economic growth? It is through that lens that I will be assessing all responses. The most persuasive arguments will be those supported by the most robust evidence. That evidence might come in the form of statistics or in case studies based upon direct, personal and organisational experience.

The questions set out in what follows are illustrative rather than exhaustive: please don't feel confined by them. In the New Year, we will be holding a number of public events to explore the issues and I will be seeing as many people as time permits in what is, by previous standards, a very quick review. I am due to report to Ministers in April 2011.

I look forward to hearing from you.



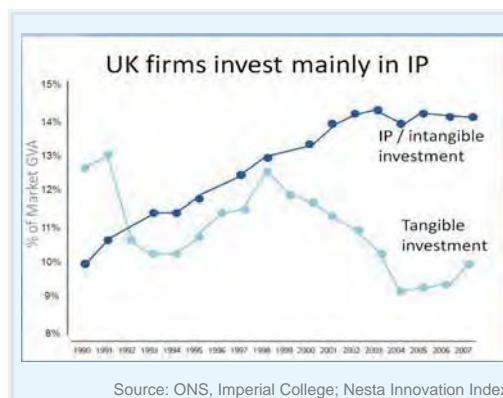
IAN HARGREAVES

The Government has asked Professor Ian Hargreaves to lead a short review of the Intellectual Property (IP) framework (law and practice) to consider how it might be changed in the interest of promoting innovation and economic growth. The Review will take into account the conclusions and evidence provided to previous reviews in this area, but we invite fresh evidence on the extent to which the current IP system successfully promotes innovation and growth and how it could do so more effectively.

### Intellectual Property and Growth

The Government recently set out its vision to create a more dynamic economy.<sup>1</sup> The IP framework has a key role to play in this. IP rights can help protect firms' income by preventing others from copying their products and so enable them to attract investment. Furthermore, the assurance of income from IP rights helps to incentivise those whose creativity drives growth.

The Government is concerned that the current IP framework may, in certain respects, be obstructing growth by failing to strike the right balance between delivering protection and enabling competitive innovation. An inflexible framework may inadvertently obstruct the use of technologies which were not imagined when regulations were developed and it may discourage established businesses from adapting to change, allowing them to stifle competition and raise the cost of market entry.



### This Review's Contribution

There have been several reviews of the IP system in recent years. The Gowers Review of Intellectual Property<sup>2</sup> took an overview of the whole system, and considered it broadly fit-for-purpose, before making 54 specific recommendations for change. The Creative Britain<sup>3</sup> (2008) and the Digital Britain report<sup>4</sup> (2009) considered the question of how copyright enforcement could face the challenges created by the Internet. Finally, the previous Government's copyright strategy<sup>5</sup> (2009) advanced 32 conclusions and actions designed to make the copyright system better attuned to the digital age. This Review, which has also been asked to focus upon the digital economy, will build upon the evidence and thinking provided by this earlier work as a basis for addressing the question of how the IP framework can best support growth in the economy. It will also establish the reasons why previous proposals for change to the IP system, relevant to economic growth, have failed to make progress.

1 [http://www.hm-treasury.gov.uk/d/growth\\_291110.pdf](http://www.hm-treasury.gov.uk/d/growth_291110.pdf)

2 [http://webarchive.nationalarchives.gov.uk/+/http://www.hm-treasury.gov.uk/gowers\\_review\\_index.htm](http://webarchive.nationalarchives.gov.uk/+/http://www.hm-treasury.gov.uk/gowers_review_index.htm)

3 [http://webarchive.nationalarchives.gov.uk/+/http://www.culture.gov.uk/reference\\_library/publications/3572.aspx](http://webarchive.nationalarchives.gov.uk/+/http://www.culture.gov.uk/reference_library/publications/3572.aspx)

4 <http://interactive.bis.gov.uk/digitalbritain/report/>

5 <http://www.ipo.gov.uk/c-strategy-digitalage.pdf>

The contribution this Review hopes to make will be threefold:

- To outline the key elements of an IP system, nationally and internationally, that would best promote UK economic growth, as a touchstone for future policy decisions.
- To set out some specific actions that should be taken as “first steps” towards this goal.
- To identify any additional areas where there appears to be real potential for improvement, but where further evidence is needed to make firm judgements.

The Review will consider all IP rights, particularly in cross-cutting issues such as enforcement and the relationship with competition law, but will focus on patents and copyright. This is not to underestimate the significance of other IP rights: rather, it is an attempt to concentrate the Review on areas where it can provide the most insight and best policy advice, in the time available.

### Terms of Reference

The Review will develop evidence-based proposals on how the UK's IP framework can further promote entrepreneurialism, economic growth and social and commercial innovation. We would like to hear about your experience of the current IP framework and your assessment of how well it promotes these objectives. The Review will draw upon on US and European as well as UK experience, focusing in particular on:

- Identification of barriers to growth in the IP system, and how to overcome them;
- How the IP framework could better enable new business models appropriate to the digital age.

Among the subjects to which the Review is expected to bring this perspective are:

- IP and barriers to new internet-based business models, including information access, costs of obtaining permissions from existing rights-holders, and investigating what are the benefits of “fair use” exceptions to copyright and how these might be achieved in the UK;
- The cost and complexity of enforcing IP rights within the UK and internationally;
- The interaction of the IP and Competition frameworks;
- The cost and complexity to SMEs of accessing IP services to help them to protect and exploit IP.

The Review will make recommendations on:

- How the IP system nationally and internationally can best work to promote innovation and growth with a view to setting the direction of the IP policy agenda for the next five to ten years;
- What short and medium term measures can be taken now within the international framework to give the UK a competitive advantage.

The Review will report to the Secretary of State for Business, Innovation and Skills and to the Chancellor of the Exchequer, in April 2011.

### Limitations of Review Scope

The Government is currently consulting on the taxation of innovation and IP. The consultation includes proposals to introduce a Patent Box; and a review of the support R&D tax credits provide for innovation, including the proposals of the Dyson Review<sup>6</sup>. These questions are therefore outside the scope of this review.

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[http://www.hm-treasury.gov.uk/corporate\\_tax\\_reform.htm](http://www.hm-treasury.gov.uk/corporate_tax_reform.htm)

### Nature of Responses Sought

In order to achieve its aims, the Review seeks economic data and related evidence which are methodologically sound, robust and clearly sourced. Responses relying on empirical data should clearly identify the methodology used and any critical assumptions relied upon, identify the source(s) of the data, and provide a copy of or a citation to each such source. At the same time, the Review welcomes evidence in the form of case-studies and individual experiences which illustrate one or more of the issues under consideration.

The set of questions below sets out the issues around which the Review seeks evidence. They should not be thought of as a “questionnaire” to work through, or as an exhaustive list, but as a prompt to setting out your own insights.

We welcome evidence which relates both to how the system is currently operating, and to possible alternatives (which might be drawn, for example, from experience in other countries).

In responding, please indicate where you consider that advantages and disadvantages lie, for instance with

- the underlying legal framework
- the way it is applied and enforced
- business practices and information provision which have grown up around the legal framework
- where the framework creates benefits or costs for creators, investors, intermediaries, business users and consumers.

In commenting on any actual or potential alternatives to the current framework, please consider practicality, time and cost.

### Call for Evidence: Patents

1. In your experience, are there any aspects of the patent system that currently act as barriers to UK economic growth? How could these barriers be removed or diminished? What evidence do you have to support your argument? If hard evidence is lacking, can you identify how to establish it?
2. Can you identify those parts of the patent framework which have adapted and continue to adapt well to technological change and to new business practices?
3. What evidence is there that the UK patent framework presents opportunities or obstacles compared with the framework in other countries?
  - in sectors such as video games, leisure software or other digital areas?
  - in terms of the impact on market entrants?
  - in patentability of matter? (software, business methods, healthcare)
  - in terms of degree of invention required?
4. What evidence is there that the need to obtain licences from patent holders presents barriers to innovation and growth?
  - how does this vary by industry?
  - are there particular issues around standards?
  - are there particular issues in digital industries e.g. interoperability?
  - what problems specifically face smaller companies (SMEs)?
5. What evidence is there that allowing certain activities in spite of relevant patent protection is or is not conducive to promoting economic growth?
  - for research or healthcare?
  - evidence of how compulsory licensing impacts markets/market entry
6. Is there evidence that the benefits of patents for the economy vary by technological sector or business model?
7. Is there evidence of difficulties in obtaining financing based on patent rights?
8. To what extent do features of the patent examination process act as barriers to economic growth?
  - speed/cost/quality of the process
  - uncertainty over pending patents
9. To what extent is the international system more or less significant than the UK one?
  - what is the value of the intended EU patent?

### Call for Evidence: Copyright

1. Is there evidence from other national frameworks to suggest how the UK (and EU) copyright systems could better support innovation?
  - e.g. comparisons with the USA's system (including "fair use") along with other jurisdictions in Asia and Europe.
2. Are markets involving copyright more competitive in any other countries, while still providing satisfactory incentives to creators and investors?
3. Is there evidence of how the UK copyright framework supports growth and innovation?
  - has it adapted to the economics and opportunities of the digital age?
  - does it meet the needs of digital industries e.g. software, games, internet services?
  - does it provide the right incentives for investors and creators?
4. Is there evidence of areas where the UK copyright framework does not deliver the optimal outcomes?
  - do established rules or practices obstruct research and innovation?
5. Is there evidence to suggest that the current framework impacts the production and delivery of goods and services which consumers want?
  - e.g. derivative and transformative works
  - development of new goods and services
6. What evidence is there that the necessity / complexity / cost of obtaining permissions from existing rights holders constrains economic growth?
  - in terms of licensing arrangements
  - in terms of transparency
  - the effect of collecting societies
7. What non-legislative changes could improve practices around copyright to improve overall outcomes?
  - eg standard terms and guidance on what actions are permitted
  - agreed default permissions in some areas
  - non-legislative dispute resolution
8. Is there evidence of difficulties in obtaining financing relating to copyright?
  - compared to other digitally innovative markets (e.g. US, Israel)
9. To what extent are the international rules around copyright more or less important than those in the UK? How should the UK approach this matter?
  - do international frameworks adapt effectively to support innovation?

## Call for Evidence: Enforcement of Rights

All IP rights involve some form of enforcement mechanism. While the questions below are couched in general terms, the answers for each right may be different. You should feel free to answer in relation to the IP rights you are familiar with, and note which rights are being discussed.

1. Is there any evidence of the relationship between the overall IP enforcement framework and economic growth or innovation?
2. In terms of promoting economic growth, what should be the objective of the overall framework for enforcing IP rights?
  - achieving near-total compliance with IP rights?
  - achieving an acceptable level of compliance?
  - deterrence of only blatant rights infringement?
3. How can the effectiveness of the enforcement framework be measured?
  - the ability of companies to obtain financing based on their IP?
  - the ability of companies to innovate within the law?
  - the economic viability of new products, brands, or other innovative behaviour?
4. What evidence is there of the effectiveness, in terms of promoting economic growth, of various approaches to improving compliance with IP rights?
  - type of sanction: criminal / civil / injunctive relief
  - use of mediation or other alternative dispute resolution
  - adjustments in commercial terms, e.g. pricing
  - education
  - technological protection measures
5. To what extent is cost of litigation a factor in the effectiveness of civil remedies?
  - evidence on litigation insurance
  - effect of different civil fora: High Court / County Court / IPO Tribunal
6. To what extent, if any, does the enforcement of IP rights operate as a trade barrier, particularly for UK companies attempting to expand overseas? Are there particular issues with particular countries?
  - are foreign enforcement systems accessible to UK rights holders?
  - does the digital/online environment affect enforcement abroad?
7. To what extent would international courts, or similar bodies, make a difference to enforcement of rights and hence the UK economy?
  - e.g. the proposed EU Patent Court

### **Call for Evidence: Intellectual Property and Competition**

IP and competition law pursue some related policy goals using different means, by excluding competition for limited periods (IP law) and by ensuring effective competitive markets (competition law).

1. To what extent do the IP and competition frameworks complement or conflict with each other?
  - is competition hindered by a lack of transparency in some areas?
  - do you have direct experience of anti-competitive impacts arising from the IP system?
2. Could growth and innovation be stimulated by a different balance between competition and IP?

### **Call for Evidence: SME access to Intellectual Property Services**

This area of the Review is looking at the existing range of services which enable companies to exploit IP (such as those provided by patent and trade mark attorneys). It seeks to tease out the particular needs of young and innovative companies and consider whether they are being sufficiently met, or if not, what should be done about it.

1. Are there cases where SMEs face barriers in accessing IP services to help them to protect and exploit their IP?
  - issues of cost or user friendliness
  - awareness of available services
2. What can be done to overcome these barriers?
  - improvements to existing services
  - additional/new services

The Review team welcomes responses to the issues and questions raised in this paper.

**Submissions should be sent to the IP and Growth Review Team, by 1 March 2011**

**We would prefer electronic submissions to [callforevidence@ipo.gov.uk](mailto:callforevidence@ipo.gov.uk)** where possible, but you can also send responses by post to:

IP and Growth Review Team  
21 Bloomsbury Street  
London  
WC1B 3HF

Not all issues will be relevant to all respondents – please feel free to ignore questions that are not relevant to you.

We would be grateful if respondents would include with their response a filled-in version of the cover-sheet provided in order to give the Review a picture of who responds to this call for evidence.

This consultation forms part of a publication exercise. As such, your response may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). We plan to post responses on the Review website when they are received, and they may be the subject of online discussion.

If you do not want part or whole of your response or name to be made public please state this clearly in the response, explaining why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system cannot be regarded as a formal request for confidentiality.

We will process your personal data in accordance with the DPA.

General enquiries about the Review should be sent to the email or postal addresses above.

**COVER SHEET FOR RESPONSES**

Contact details of respondent	
Name	
Job Title (if applicable)	
Organisation (if applicable)	
Postal address	
Telephone number	
Email address	

As part of the evidence gathering exercise, we would like to ask a few questions about respondents to give a picture of who has responded.

What rights are you primarily interested in or do you use: (please tick)

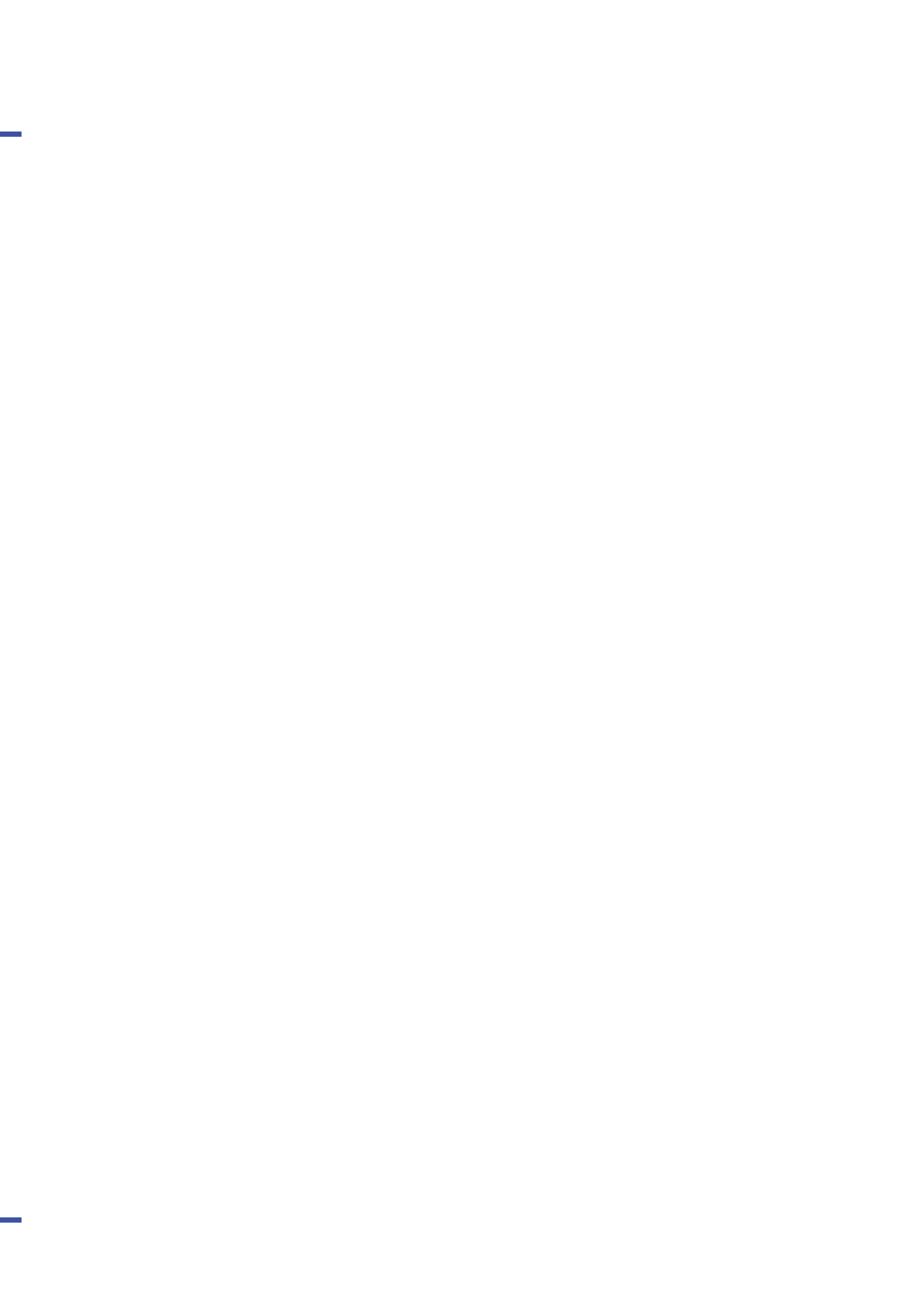
Patents <input type="checkbox"/>	Trademarks <input type="checkbox"/>	Copyright <input type="checkbox"/>	Design Right <input type="checkbox"/>
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How do you interact with IP Rights? (tick all that apply):

Create <input type="checkbox"/>	Manage <input type="checkbox"/>	License out <input type="checkbox"/>	License in <input type="checkbox"/>	Legal <input type="checkbox"/>	Collections <input type="checkbox"/>	Interested party <input type="checkbox"/>
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What type of respondent are you? (please tick)

Private individual <input type="checkbox"/>	Interest group / organisation <input type="checkbox"/>	SME (0-250 empl.) <input type="checkbox"/>	Large firm <input type="checkbox"/>
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[www.ipo.gov.uk](http://www.ipo.gov.uk)

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Revised: December 10