



Federation of Small Businesses
The UK's Leading Business Organisation

KEY TO THE KNOWLEDGE ECONOMY

MAKING THE MOST OF SMALL BUSINESS INTELLECTUAL PROPERTY

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Executive Summary

- Intellectual Property (IP) is key to supporting small, innovative, and R&D-intensive businesses. In fact 30 per cent of small firms with IP are reliant on those rights for at least 75 per cent of their turnover. IP is becoming increasingly important and must continue to be developed to give businesses the security they need to move forward new products and services in both the UK and overseas.
- The Hargreaves Review set out a base for a series of reforms to modernise the UK IP regime that supports new innovation through encouraging new techniques and supporting the exchange of licences through a marketplace.
- Small businesses have invested significant amounts in developing and trying to protect their IP rights, with 22 per cent spending more than £5,000 in the last five years. Many are seeing major benefits, but 20 per cent of FSB members describe their investment as being poor value for money. This leads to a risk of small businesses being discouraged from investing in the IP they need, and could act as a block on innovation.
- Infringement remains a key concern for small businesses with a quarter of businesses with IP rights experiencing infringement within the last five years.
- Forthcoming EU reforms to harmonise copyright are welcome, but must not lead to a lower level of protection in the UK system, or an increase in costs.

Recommendations for future reform

Infringement

- Local Enterprise Partnerships (LEPs) and Growth Hubs to engage early on and work with small businesses to ensure that the range of advice the Intellectual Property Office (IPO) offers is properly signposted to businesses.
- IP lawyers to engage and work with small businesses to develop new models of charging for legal advice such as commission-based models, which will encourage innovative businesses who currently find the legal costs of securing a patent prohibitive.
- Government to promote the relaunched IPO Mediation Service as a go-to service for small businesses to access mediation, but continue to keep the service under review if usage numbers remain low.
- Government to increase the upper limit for the small claims track of the Intellectual Property Enterprise Court (IPEC) from £10,000 to £15,000 to expand access for swift resolution of relatively straightforward low-value claims.
- Government to ensure that IPEC is sufficiently resourced to meet demand and avoid a backlog of cases, and to investigate the feasibility of an additional venue in the North of England.

Collecting societies

- Government to review the law on the principles behind collective rights management, and consult on a new statutory definition of what constitutes playing in public, which reflects the quasi-domestic circumstances of many small workplaces.

Finance

- The IPO to take forward the approach outlined in the *Banking on IP report*, building on the progress made through the introduction of the IP finance toolkit.
- Government to use Business Growth Service and Growth Hubs to drive awareness and use of intangible assets to support applications for finance.

Exporting

- The IPO in partnership with other countries to develop the Unitary Patent and Unified Patent Court so that they are accessible and valuable to small businesses.
- The IPO to prioritise ongoing international co-operation with emerging markets to ensure existing problems around weak IP regimes and failures of enforcement are tackled.

Introduction

Why IP matters for small businesses

IP is a key factor for many small businesses. 30 per cent of small firms with IP say that over 75 per cent of their turnover is reliant on this protection¹. This demonstrates that there is a core of IP-intensive businesses that rely on protection. In addition IP is a consideration for a large number of businesses, with 26 per cent of small businesses holding at least one form of IP rights². This protection is essential to driving UK innovation and enabling R&D intensive businesses to compete at home, and on the global stage.

The last few years have seen a number of reforms to the UK IP landscape, chiefly resulting from Professor Ian Hargreaves's *Intellectual Property and Growth 2011 Review*. This review made a number of clear recommendations on modernising the UK's IP regime, which were largely welcomed by both business and the wider IP community.

These recent reforms, and those to come, need to be put into the context of the wider IP regime, and how small businesses understand what they need to do to get maximum value for their IP. This paper sets out some of the most significant changes that have been made and the issues still facing small businesses with IP.

Small businesses invest significant amounts on getting the protection they need for their IP, with over half who had spent money on securing their IP investing more than £1,000 in the last 5 years, and 22 per cent investing more than £5,000³. In many cases businesses have benefited, with 43 per cent describing their investment as good or very good value for money, but the results of the survey also suggested that a high proportion are not getting the return on investment they expected, with 20 per cent describing their investment as poor or very poor value for money and 24 per cent describing it as average value for money⁴.

Given the importance of IP to a high proportion of businesses, it is crucial to identify where the return on investment could be improved. The survey highlighted significant issues around infringement, with those experiencing infringement more likely to describe their investment in IP as poor value for money. There were concerns around business expansion that took products and services overseas, where IP protections were considered to be less robust in some markets.

To make full use of intangible assets in the UK economy, financial services and products need to support businesses who are innovating. The IPO has led the UK's work in this area through its *Banking on IP* report, and this work must be supported to ensure small businesses are leading the pack of our international competitors.

The reform agenda presents new opportunities for the small business community. These opportunities can be developed to create and safeguard the ever more IP reliant economy, and to put businesses of all sizes in a position where their ideas can drive their business in the UK and overseas.

1 FSB Survey October 2014

2 FSB Member Survey 2013

3 FSB Survey, October 2014

4 Ibid

Timeline

A timeline of key changes to the UK intellectual property regime

2012	Collecting societies developed new or adapted Codes of Practice based on principles set out by the British Copyright Council.
2012	Government announced principles that collecting society Codes of Practice should adhere to.
February 2013	25 EU member states reached agreement to create a Unified Patent Court.
1 April 2013	UK Patent Box introduced.
8 July 2013	Copyright Hub pilot launched.
6 April 2014	Secondary legislation relating to the regulation of collecting societies came into force, providing backstop powers to introduce statutory regulation if self-regulation fails.
1 June 2014	Copyright exceptions introduced to allow third parties to use copyright works for a variety of economically and/or socially valuable purposes without the need to seek permission from copyright owners.
1 October 2014	Copyright exceptions introduced for private copying for personal use, quotation and parody.
1 October 2014	Design rights amended, including making infringement of design rights a criminal offence to bring it in line with trademarks and copyright.
1 October 2014	Patent Opinions Service expanded.
29 October 2014	Licensing scheme for orphan works introduced (works covered by copyright but whose owners cannot be found).
March 2015	IP finance toolkit launched.
May 2015	EU proposals on the Digital Single Market launched in advance of more detailed proposals on copyright.
2015	Copyright Hub to be formally launched.
1 October 2015	Design Opinions Service to be launched.
June 2016	UK Patent Box closes to new entrants.
2016	Unitary Patent and Unified Patent Court likely to come into operation.

Reform agenda – the small business perspective

The *Hargreaves Review* provided an important opportunity to develop an IP regime fit for the twenty first century. The UK needs to stay ahead of the game to compete in the global knowledge economy. Broadly speaking, Hargreaves provided a strong framework to take this work forward. This section considers some of the main reforms and their impact, particularly on small businesses.

Copyright exceptions

A number of changes have been introduced, based on the Hargreaves recommendations, which refine and modernise the way in which copyrighted materials can be used. For example, the growth in digital music has meant that existing rules on copying are redundant, and as such the law has been updated to allow consumers to convert CDs they own to mp3 files. The law has also changed to allow other exceptions such as the reasonable use of copyrighted material in parodies, making it easier for copyrighted materials to be used in education, particularly distance learning, and to allow libraries and museums to digitise works to preserve them.

The newly developed techniques of text and data mining can be used on copyrighted works, provided the research being undertaken is non-commercial. This is particularly welcome to ensure that these innovative techniques can improve our wider knowledge base.

These changes, even where not directly applicable to small businesses, are a welcome reflection of how copyright needs to work in a modern digital economy, without restricting the needs and commercial opportunities of right holders.

Future proofing

The *Hargreaves Review* rejected importing a US-style Fair Use (See Figure 1) defence for copyright, as it was unlikely to be feasible in terms of compatibility with EU law. However, the Review found that similar aims could be achieved by using existing copyright exceptions permitted under EU law and requesting an additional exception to accommodate future technological change.

Changing technology will increasingly throw up examples of where it may be desirable to implement copyright exemptions, so there is a need to ensure that national and international rules are able to be adapted to reflect these circumstances. UK copyright exceptions for data mining are an example of a new exemption that could provide tangible benefits for the wider economy. Policymakers will need to continue to be agile to develop regimes in which new techniques and processes are welcomed, rather than instinctively restricted.

Figure 1 – What is Fair Use?

The USA has a broad ‘Fair Use’ exemption to copyright, and allows limited use of copyrighted material without requiring the permission of right holders. Examples of fair use include parody, reporting and teaching, and the concept is subject to four factors which should be considered:

- the purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes.
- the nature of the copyrighted work.
- the amount and substantiality of the portion used in relation to the copyrighted work as a whole.
- the effect of the use upon the potential market for or value of the copyrighted work*.

* US Code Title 17, Section 107, Limitations on exclusive rights: Fair use

Orphan Works

The *Hargreaves Review* highlighted a particular category of works where authors could not be identified that were not being effectively exploited, furthered also by the *EU Orphan Works Directive*.

This change was aimed at removing barriers to economically beneficial use of work that would otherwise go unused. The key point of this proposal is that it should not have losers, as unidentified right holders were already failing to benefit. There has been concern that some groups of hard to identify right holders may effectively lose their copyright and the Government must ensure that these reforms are working to ensure this principle.

The licensing scheme that has been introduced restricts licences to use orphan works to a limited group of institutions and requires a thorough search to take place before a licence can be granted by the IPO.

Design Rights

For many small businesses, the design of a product is key to its success, and registered and unregistered design rights provide important protections for business. The *Intellectual Property Act 2014* developed and extended the protections afforded by design rights, whether registered or unregistered, which are currently held by six per cent of small businesses⁵. These allow designers to protect their rights for 10 years after the design is first sold, or 15 years after it is created, whichever is earliest.

Under the provisions of the Act, infringement of a registered design has now been made a criminal offence, aligning it with trademarks and copyright. This will provide welcome additional protection to small businesses using registered designs.

Businesses must also be aware that as a result of changes made by the Act, if they commission a designer to produce work, the IP will be held by the designer, not by the business, unless specifically agreed otherwise.

The IPO will also launch a Design Opinions Service along the lines of the Patent Opinions Service to provide non-binding opinions on design matters. This is due to be launched on 1 October 2015. This is a welcome initiative and should help more businesses to resolve disputes over designs without having to go to court.

Copyright Hub

One of Hargreaves' recommendations that is fundamental to reform, focused on introducing a Digital Copyright Exchange where licences can be bought and sold. This will be achieved through the implementation of a Copyright Hub, and is a welcome step to simplify the exchange of copyright.

While the project is still in development, the Hub does already contain some useful information about where to find right holders and how to use copyrighted works. At the moment the site is largely focused on sourcing content from larger organisations such as collecting societies and stock image libraries. We are keen to see the site develop into the exchange originally envisaged, which provides opportunities for small right holders to make their work easily findable, and open potential new revenue streams.

As always with this sort of initiative, awareness is key and the advantages of the Hub must be well communicated to right holders and those who seek to use rights in their business.

Patent Thickets

Patent thickets, described as “a dense web of overlapping intellectual property rights that a company must hack its way through in order to actually commercialize new technology⁶”, have been identified as a block to innovation in key sectors, and can be seen as negative IP which obstructs innovation rather than creates a base for it. An important role for patent offices globally is to ensure developing technology is not besieged by patent thickets. Hargreaves recommended that fees should be based on innovation and contribution to growth rather than running costs of a patent office. If small firms are going to be able to innovate, and benefit from IP, then obstructions like this need to be cleared.

Unified Patent Court

The Unified Patent Court (UPC) presents an opportunity to simplify the system relating to EU territory patents by providing one court system through which patent infringements can be pursued. There are concerns over how accessible it will be for small businesses and what sort of protection will be provided. Inevitably businesses with existing rights will be nervous about transferring patents to an untried legal structure and will need to be well informed about the process if they choose to opt out.

Crucially, to be effective the costs structure of renewal fees in particular will need to work for small businesses. Meeting the objective of funding the new system, while providing a unitary option that is attractive to small businesses selling in relatively few European markets, is a significant challenge – particularly as Spain will not be covered by a unitary patent. Italian participation would provide a welcome boost after recently announcing their support.

Initial proposals for renewal fees provided two options. The first option was based on fees for the four most popular patent destinations (TOP4). The second option was based on fees for the top five destinations, but with a discount for SMEs (TOP5). Neither of these options are likely to be attractive to small businesses with little commercial interest outside key markets, typically the UK, France and Germany. Equally it is not clear whether the proposed fees as calculated represent a true TOP4 or TOP5 calculation.

If a fees structure is not developed that is attractive to small businesses operating in several markets, this will present a missed opportunity to meet the goals of a unitary patent. A limited fees structure would also discourage businesses from entering new markets where demand for their product is unproven, restricting the spread of innovation. Further progress should be made on the fees issue, so that the unitary patent is an attractive option that is affordable for as many businesses as possible.

⁶ Shapiro, Carl (2001). “Navigating the Patent Thicket: Cross Licenses, Patent Pools, and Standard-Setting”. In Jaffe, Adam B.; et al. *Innovation Policy and the Economy*

Copyright as part of the Digital Single Market

The plans to address copyright within the Digital Single Market work stream are a welcome acknowledgement of the fundamental role of IP. Greater harmonisation of copyright at EU level is welcome, and has the potential to drive economic growth. However, it is important that the protections of the UK system are retained. In many ways the UK protections work well and have already been reformed through Hargreaves recommendations to reflect a strong model of copyright protection in a modern digital economy.

As well as developing harmonisation of copyright law, the Digital Single Market package is seeking to expand the opportunities for sharing content across the EU. While right holders do need to be protected and appropriately compensated, the principle of encouraging greater cross-border portability can open up new markets and customers to creative businesses. Measures to strengthen EU-wide enforcement of copyright infringement are again welcome to protect content creators, but must recognise the opportunities for sharing content provided by innovative third party providers.

Expansion of Patent Opinions Service

The Patent Opinions Service was launched in 2005, and has provided advice on the validity of a patent for a flat fee of £200. In October 2014, the Service was significantly expanded so that it would be able to provide a much wider range of opinions, including whether a particular act would constitute infringement.

The expansion of the Patent Opinions Service is welcome, in particular for its potential to further support innovative small businesses.

Patent Box

The UK introduced its Patent Box system in April 2013. The Patent Box allows for a reduced 10 per cent rate of Corporation Tax on profits derived from products incorporating patents, providing an additional incentive for companies to innovate and commercialise patents.

However, international discussions through the OECD have led to the decision that such schemes should follow a nexus approach, where the proportion of qualifying income is based on the underlying expenditure on creating the IP. As such the UK scheme will close to new entrants in June 2016, and will close completely by 2021.

The Government intends to develop a new nexus approach to replace the Patent Box in the intervening period. A long-term approach is the right one, to ensure that there remains a strong tax incentive for innovation.

What does small business need from future reform?

Infringement

Infringement of IP rights is a major concern for small businesses, with around quarter of the 25 per cent of FSB members who hold IP rights of any description having experienced infringement⁷.

Looking more deeply into the issues faced by small businesses, the most common forms of infringement were copying of a product, experienced by 50 per cent of those who've had their IP infringed, followed by use of a copyrighted work on a website (35 per cent), use of a copyrighted work in a product or service for sale (32 per cent), and use of a trademark or passing off (31 per cent)⁸.

A number of routes to combat infringement have already seen improvements to ensure better usability in recent years, in particular the creation of a small claims track in the renamed Intellectual Property Enterprise Court (IPEC, formerly Patents County Court).

The key finding from the survey into infringement methods is, as would be expected, a limited use of the formal legal routes to combat infringement. Small businesses were asked which methods businesses had used to combat infringement in the last five years, with just one per cent of small firms using the IPEC small claims track and a further two per cent taking a case to the Patents County Court, and one per cent to the Scottish Court of Session⁹. Easily accessible and affordable justice for those who have experienced IP infringement is key, and continuing to build awareness of the option of IPEC, and in particular the small claims track, could lead to a higher take-up. However, it cannot be ignored that for most smaller businesses, more informal forms of resolution are both the preferred and probably most appropriate and affordable option if they are to protect their rights.

Direct contact (43 per cent) and legal correspondence (25 per cent), were the most common methods of combating infringement, though there was also some use of trading standards (10 per cent) and alternative dispute resolution (7 per cent) – despite the March 2013 relaunch of the IPO Mediation Service, not a single respondent had used this, though it should be acknowledged that the sample size was 103 so may not be fully representative of the wider picture¹⁰. Perhaps most worryingly 29 per cent of those affected had not used any methods to attempt to combat infringement. We asked those who had not attempted to combat infringement why not and received a mix of replies. Some of the more common reasons were the cost involved (particularly in relation to the likely benefit of a successful resolution); a general lack of resources; lack of awareness of appropriate routes, or that the infringement was minor/ineffective and as such did not have a negative impact on the business.

7 FSB Member Survey 2013

8 FSB Member Survey 2014

9 Ibid

10 Ibid

IP Advice

Getting the right advice for a business seeking IP rights can be a costly business. While patent fees can present difficulties for smaller businesses in particular, these are often relatively low in comparison with the cost of getting the right advice, which can be significant for a small business. The legal fees associated with a quality patent application are normally in the thousands of pounds, and so a smaller business developing an innovative product will often be put off by this significant outgoing. There are several potential solutions to reducing the cost and complexity of securing a patent.

Firstly, better awareness of free advice and more effective signposting of that advice. The IPO has worked with the Chartered Institute of Patent Attorneys (CIPA), to provide some advice, but this could be made more prominent. There is a need for the wider business community to ensure that firms are aware of the advice and support on offer. In particular, the establishment of Growth Hubs should provide a natural route to ensure businesses in need of IP advice are able to get it. The IPO should work closely with LEPs and Growth Hubs to ensure their services are signposted at the local level. Encouragement could also be given to alternative providers of low-cost advice.

In terms of legal advice, it would be helpful to encourage alternative models of charging, for example through the use of commission-based models. It might be helpful for the IPO to consult with the industry on appropriate alternative funding mechanisms to reach those who currently feel the cost of a successful patent application is too high to explore this option. This would also ensure that the wider benefits derived from innovation are encouraged.

The growth of litigation funding in the UK, particularly in the SME market, may also present an opportunity to reduce the cost of patent litigation. Third-party funders will take on a litigation case without a litigant having to pay upfront costs in exchange for a proportion of the costs in the event of success. Encouraging more patent holders to investigate this option may reduce the costs associated with protecting a patent and thus make a patent a more attractive proposition.

IPO Mediation Service

The responses on why infringement has not been pursued point to a need for a genuinely low cost, well understood informal mechanism that can be used in particular low value cases. The IPO Mediation Service seems ideally placed to fill this gap, with fees from £55 plus VAT for an hour's telephone mediation. While it does require both parties to agree to mediation, this is a potentially helpful route for businesses involved in disputes. The historic low usage by small businesses is a cause for concern, particularly as there is demand for alternative dispute resolution.

There are two options for the Mediation Service – either it needs to provide a function as a low cost, go-to supplier of mediation to businesses who are unsure of their options, or it should step back from delivery and exist to signpost businesses towards existing provision of mediation, as it also does currently. The IPO considered discontinuing the service previously in 2012 due to very low usage, but instead chose to relaunch the service in March 2013.

It is not proven which direction would provide most value to small businesses. However it is clear that low usage cannot go on indefinitely, and if low usage is identified to be commonplace, then much remains to be done to ensure that the service meets these goals.

In the short-term there should be a renewed focus on making the IPO Mediation Service the go-to option for businesses with unresolved low value disputes. In the long-term, if usage figures do not justify a separate service then it should be scrapped and refocused on signposting to private sector providers, with savings retained to bolster alternative options.

Intellectual Property Enterprise Court (IPEC)

The evolution of the Patents County Court (PCC) into the Intellectual Property Enterprise Court (IPEC), and particularly the creation of a Small Claims Track for relatively straightforward, low value cases is a welcome reform. It is still in its early stages and because of relatively low use by small businesses, data is limited – however, the early indications of the court's work have been that it is well set up and delivering faster, lower cost resolution of cases, as intended.

It is anticipated that although usage will represent a relatively small proportion of our members, there is significant scope for growth. More work should be undertaken to raise awareness of the Court, and particularly the small claims track. The small claims track is a potentially effective route for many small businesses, and it needs to be promoted as such. One proposal that may help secure this would be to increase the upper threshold for cases that can be held in the small claims track to £15,000 as a starting point, with a view to extending this further if feasible.

As usage does increase, the Government must look carefully at the resources available to the Court, and ensure that increased backlogs of cases do not compromise the success of the court, bearing in mind swift, straightforward access to justice is key to its purpose.

Furthermore, it is crucial that access to justice on IP is not limited to those within easy travelling distance of London. IP will increasingly be a mainstream issue for businesses to tackle and the court system should reflect that. We would recommend that the Government should investigate the option of providing an additional venue for the small claims track in the north of England.

Collecting Societies

There has been widespread criticism of collecting societies over a number of years, particularly by small businesses. Previous FSB research in 2011 suggested that there was significant concern about the way in which small businesses were being treated by the collecting societies with responsibility for music licensing, PRS for Music and Phonographic Performance Limited (PPL), in particular.

In 2012, collecting societies introduced or adapted codes of conduct for licensees, as part of a voluntary self-regulatory framework established by the British Copyright Council (BCC). Government reforms introduced through the *Enterprise and Regulatory Reform Act 2013* put in place backstop powers available to introduce statutory regulation if the new self-regulatory regime fails to meet the standards set out by the Government¹¹.

One of the standards set out by the Government was that an independent code reviewer should review the performance of collecting societies against the minimum standards. As such, in 2013, the BCC commissioned an independent review of the codes of conduct of the various collecting societies, conducted by Walter Merricks CBE. The Review proposed a number of additional measures to improve the relationship between collecting societies and users, including making joint licensing a formal objective, and setting up a Small Business Music Users Panel as a forum in which to provide updates and share feedback about the way small businesses are licensed to play music. This Panel was established by PRS and PPL in 2014, with the FSB as members, and following the first two meetings has agreed to meet every six months going forwards.

Since this system has been developed, there has been welcome engagement from PRS and PPL, with the potential for some very helpful changes, particularly around tariff simplification and joint working. However, what data we have suggests there is still a long way for collecting societies to address the concerns of the small business community, with the small businesses we surveyed reporting little if any improvement in the way collecting societies operated since 2012¹².

The key areas that collecting societies need to focus on are joint licensing, transparency and simplification of charging, as well as quality of service, to ensure that charges are well understood by small business. There remains significant confusion about the role of PRS and PPL in providing music licences and this must be addressed. Joint licensing in particular has the potential to address issues around the confusion and additional administrative burden of requiring two licences.

In the long-term, clarification of the law around public performance is necessary to provide certainty in this area. Currently, collecting societies rely on the restrictions on the use of copyrighted works provided for in Section 19 of the *Copyright, Designs and Patents Act 1988*, which means that the performance or playing of a copyrighted musical work in public is subject to the agreement of the right holder. In practice, this right is exercised on behalf of numerous right holders, (but not all), by collecting societies.

While the 1988 Act provides a legal basis for the principle that underpins the work of collecting societies, there remains no statutory definition of what playing in public entails. As case law currently stands it is taken to mean music played outside a domestic setting.

¹¹ HM Government, Minimum Standards for UK Collecting Societies, October 2012

¹² FSB Survey, October 2014

While it has been argued that a definition based on case law allows for greater flexibility depending on circumstances, in practice we believe that case law has pushed the definition beyond what most businesses would consider to be public.

Crucially, domestic playing will at various points lead to more people being able to hear the music than in a small workplace setting. It is arguable that in a small workplace with three or four employees and where music is not audible to members of the public, listening to music is more akin to listening in a domestic setting and should be treated as such.

Government should review the law in this area, and consult on a new statutory definition of what constitutes playing in public and public performance, which reflects the quasi-domestic circumstances of many small workplaces.

A particular concern of the small business community expressed to the FSB in recent years has been the position around radio broadcasts, and whether this should be treated in the same way as sound recordings. Some businesses are of the view that as radio stations have already paid large amounts to broadcast these rights, making small businesses pay separately for public performance licences amounts to double charging.

As part of clarifying the law on playing in public, specific consideration should be given to the case of small businesses who only play the radio, and the extent to which obligations to right holders have been fulfilled by wider licensing agreements.

IP and finance

Intangible assets can and should be a key part of many businesses' portfolio when they seek finance, and many have noted the need for intangible assets in supporting access to finance globally. While equity finance has often been built on an assessment of the potential value of a start-up's IP, evidence suggests that debt finance providers have not been as able to assess this value¹³.

As the IPO have made clear through the *Banking on IP* report, the UK finance sector has to make progress in this area to stop falling behind our competitors. Its recommendations included the development of a resource toolkit to help SMEs and lenders better value intangible assets¹⁴. The toolkit was launched in March 2015, and provides advice for businesses on how to go about making an application, manage and commercialise their IP, and advice on what funding may be available. Another helpful initiative is the Big Innovation Centre's Entrepreneurial Finance Hub which is developing tools to help growth companies and scale-ups assess their intangible assets¹⁵.

Survey data showed that this area is currently largely unexplored by many small businesses, with only five per cent of those with intellectual property rights having used them to support an application for finance¹⁶.

¹³ Disrupted Innovation: financing small innovative firms, Sameen & Queded, Big Innovation Centre, September 2013

¹⁴ Intellectual Property Office, *Banking On IP?* 2013

¹⁵ <http://www.biginnovationcentre.com/entrepreneurial-finance-hub>

¹⁶ FSB Survey, October 2014

Intangible assets are the most likely form of security for new knowledge-intensive businesses providing we put in place a framework that allows those businesses to benefit from them. Clearly the provision of appropriate finance at the right time is vital to potentially innovative businesses, so it is crucial that as businesses rely less on fixed assets, and more on intangible assets such as IP, the market for various types of finance reflects this.

The emphasis that the IPO has put on this area is vital for driving the growth of innovative businesses. The fact that only five per cent of FSB members with IP rights have used them to support an application for finance suggests a current lack of demand among small businesses in this area, whether through lack of awareness or because they do not believe such an application would be successful. Alongside the measures that are being taken to encourage banks and other finance providers to adapt their models, there needs to be a conscious effort to ensure greater awareness of the potential value of IP in securing finance.

Again there could be a role for business support to drive this growth. The Government's newly-launched Business Growth Service, which provides businesses with growth potential with a range of advice and support through a single contact, includes the provision of assistance on developing ideas and protecting intellectual property. This should also ensure that a link is made between that IP and the provision of access to finance, another key strand of the service. At the local level, Growth Hubs should play a similar role.

Driving additional demand for IP led finance will encourage lenders to ensure they are able to better reflect the value of intangible assets within their models and ensure that as reforms continue to be taken forward, businesses are directly able to benefit. It may also help drive additional take-up of insurance as explored by the IPO in following up on *Banking on IP*, which suggested establishing a link between IP insurance and lending based on intangible assets¹⁷.

Take-up of insurance against risks to IP has been low in the UK, with only around 25 per cent of businesses insuring IP before encountering a problem¹⁸. This has mainly been a function of the relatively high cost of protection, with limited numbers of policy holders often seeking to protect themselves against the potentially high costs of patent litigation. Driving this market through the financing of intangible assets could create economies of scale, providing more affordable insurance to right holders.

¹⁷ Intellectual Property Office, *Banking on IP: An Active Response*, March 2014

¹⁸ Helmers, Christian and McDonagh, Luke (2012), *Patent Litigation in the UK*

Exports

The Government has set out ambitious aspirations for 100,000 new exporters and to double the value of UK exports to £1 trillion by 2020. IP rights will be important in a number of sectors, and are particularly relevant to innovative high-value manufacturers and the creative sector. Creative industries exported £17.3 billion of services in 2012, nine per cent of total UK service exports¹⁹. Between 2009 and 2012 the value of creative service exports increased by 29.7 per cent, compared with 15.4 per cent across UK service exports²⁰. Increased harmonisation and international co-operation on copyright could make it easier for those businesses to benefit.

Thirteen per cent of survey respondents said they had secured overseas IP rights to help them export, and a further 21 per cent intended to in future. Eight per cent stated that they were not able to secure rights, with key concerns mainly around cost and complexity. Additionally concerns were raised about how secure these rights would be, particularly in the context of the Far East market²¹.

Welcome steps are being taken at EU level to ensure that IP is a key part of the single market, particularly through the UPC and the anticipated reforms to copyright that were discussed earlier in this paper. Concerns about the security of IP rights in emerging markets must continue to be addressed through existing processes for international co-operation, and as Hargreaves noted, must be based on demonstrating the economic value of a stable intellectual property regime which provides a degree of certainty to businesses. Equally where countries do have stable intellectual property regimes in place, but fail to consistently enforce the rights of overseas companies, this failure should be firmly pursued.

¹⁹ Department for Culture, Media and Sport, Creative Industries Economic Estimates, January 2014

²⁰ *Ibid*

²¹ FSB Member Survey, October 2014

Conclusion

IP will continue to be a major consideration for small businesses in the future, and it should be treated as a major asset. IP is ultimately a fundamental building block of innovation, and there should be an effective system that allows businesses to harness this work and be rewarded for it, so innovation is not unnecessarily limited.

The *Hargreaves Review* and other reforms have helped clear away some obstacles that are preventing this innovation, but there are still outstanding issues that need to be resolved.

Providing swifter and more easily accessible redress for businesses experiencing infringement, working internationally to allow businesses to feel more confident in their IP in overseas markets, and making sure that the provision of finance supports businesses that rely on intangible assets, are central to making the UK the best country in which to innovate and provide creative services.



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