

25 July 2007

Dear colleague,

Launched in September 2006, the Stockholm Network *Experts' Series on IPRs and Competition* provides papers by leading experts highlighting the key issues concerning IPRs, competition and the interaction (as well as tension) between them.

We are delighted to attach the link to the latest paper in the series by **Simon Moore**, researcher at the Stockholm Network; ***A Statistical Analysis of the Gowers Review***

<http://www.stockholm-network.org/downloads/publications/d41d8cd9-Statistical%20Analysis%20write-up%20Version%203%20HD.pdf>

This paper uses statistical analysis to provide an insight into the submissions sent to the Gowers Review. It is an attempt to understand how the Gowers process reflects the IP climate in the UK, and whether Gowers made the best use of the nation's IP expertise. The study investigates a number of areas, including the industries and groups who provided evidence to Gowers, how much use the submissions made of the "economic analysis" Gowers requested, and what use Gowers made of the advice he was given. We conclude that, despite the shortage of economic analysis in a large proportion of the submissions that were made, he still tended to follow the recommendations sent to him.

Should you wish to explore the possibility of contributing to this series, please contact Simon Moore [simon@stockholm-network.org](mailto:simon@stockholm-network.org)

### **Executive Summary of the Stockholm Network *Expert's Series on IPRs and Competition - A Statistical Analysis of the Gowers Review***

In December 2005, the then UK chancellor of the exchequer, Gordon Brown, commissioned an independent review of the UK's intellectual property framework. In December of 2006, the former editor of the *Financial Times*, Andrew Gowers published his findings. In the seven months since the report was published, its recommendations have begun to be implemented by the British government.

Between February and April of 2006, the review process initiated a call for evidence, to which over 500 total responses, and over 250 organisational responses were received. It is these organisational responses which form the basis of our study.

In the call for evidence, Gowers stated that submitted evidence would "form a key part of the evidence base that the Review team can use to develop its analysis... alongside a range of other evidence sources, including quantitative data; surveys and views of representative groups; visits; seminars; and interviews". The question is,

how much attention did Gowers pay to the evidence he requested? Did his findings address the concerns of the UK IP community? Or was the call simply for show, with the results already set in stone?

Our analysis has shown that, by and large, the viewpoint of the Gowers Review is aligned with the submissions that were made to it. While some divergence of interest is to be expected, on almost all the significant matters, Gowers' decision equates with the prevailing opinion among the submissions.

Other findings included

- a meagre 6.7% of submissions provided significant statistical data. Bearing this in mind, is agreeing with a majority viewpoint sufficient justification for adopting a recommendation, when that majority viewpoint lacks the evidence to back it up?
- there was very little dispute as to the need for some kind of IP system. Indeed, only six submissions were categorised as being anti-IP, and five of these concentrated principally or solely on the issues of digital rights management (DRM) and open-source software
- fair dealing and exceptions to IP rights, were the most discussed topics, appearing in 40% of all submissions. Those areas are, the submissions suggest, the least clearly defined areas of IP policy.

With any investigation, the evidence is the largest determinant of success. However, when the quality of the evidence varies to the degree it did in the Gowers submissions, assessing the balance of quality and quantity is a highly precarious task. Gowers tended to align his findings with those of the majority of submissions, but not necessarily the weight of submissions backed up by economic or statistical analysis. Whether this approach is reasonable or rational is a matter of personal preference. But without recognising the discrepancy between quantity and quality, any future policy reviews are likely to suffer the same problems.