KNOW IP

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Commentary

We came a long way, and there is still a long way to go – Dr Meir Pugatch and Helen Disney[1]

Back in March 2005, when we launched the first issue of *Know IP* we intended to provide a valuable contribution to the discourse on IPRs. We wanted to make the discussion less emotional and more rational, less dichotomous and more panoramic. To this extent our IP programme has emphasised three objectives.

To make the field of IP more accessible to the general public. to increase the interaction between specialists focusing on different aspects of IPRs, and most importantly, to encourage informed discussion, as well as debates, on a range of topical IP issues.

We argued (and still do) that we aim neither to idolise nor demonise IPRs. Rather, it is important to see IPRs as a policy toolbox aimed at achieving two social goals: to provide incentives for innovating and developing new knowledge and products in the future; and to ensure wide public access to such products in the present. Six years have gone by and we can note with a certain degree of satisfaction that our "quest" is heading in the right direction.

Discussions today about IPRs are certainly more open, constructive and informative. They have evolved from a stage in which one was either "for" or "against" IPRs into a more practical stage, in which the system can be viewed and judged by its own merits, looking at both its strengths and weaknesses.

Discourse today focuses on choice and co-existence, for example, using both proprietary and non-proprietary models, for the future of innovation. IPRs are no longer viewed as legal instruments, but also as assets in their own right, thereby reflecting the changing mode of innovation.

Debates on the relationship between IPRs and competition have also evolved enormously. The delicate relationship between these two fields has generated some new and valuable discussions, which are very important to policy-making in this field.

This issue of *Know IP* certainly reflects the level of maturity we have reached in the field. Matt Hayward writes about the debate over net neutrality in the US and in the EU, and about the implications of legislation in this area to the internet "autostrade".

Rachel Chu discusses the relatively new development of cloud computing and the challenges and opportunities this field brings to the fields of IPRs and data privacy. Paul Healy provides an analysis of the Hargreaves report, which seeks to examine the extent to which the UK needs a new roadmap (or a blueprint) for its IP system.

We also provide a summary of the high-level round table discussion on IPRs, standards and competition which took place this June, in collaboration with Maastricht University and *Managing Intellectual Property* Magazine. Given their growing economic importance, standards are now dominating our life. As such, we need to consider their special relationship with the IP system, and the manner in which IPRs and competition rules affect the future of standardisation and innovation.

Indeed, we have come a long way, but still, there is a long way to go. Much more data and evidence is needed in order to make informed decisions relating to the field of IPRs. Moreover, certain IP discussions (for example, on issues concerning IPRs and trade, or in the field of pharmaceuticals) are still dominated by political and emotional debates, at times generating heat at the expense of substance. In these areas we certainly have our work cut out for us, but we are confident that we can make a difference here as well.

So before heading to our summer break, we hope you enjoy this summer issue, and promise to come up with further interesting discussions in the winter.

[1] Dr Meir Perez Pugatch is Director of Research at the Stockholm Network, and Senior Lecturer, University of Haifa and Helen Disney is CEO of the Stockholm Network.

Topic of the Month

Net Neutrality: Responsible traffic management for a congested internet – Matt Hayward[1]

Equal treatment of web content is the motto of net neutrality. "Small businesses should have the same ability to reach customers as powerful corporations," said US Senator Al Franken. "A blogger should have the same ability to find an audience as a media conglomerate."[2] In reality, though, consumers prefer their internet, radio and video to stream without interruption. This necessarily involves unequal treatment of web content. The challenge for regulators is to prevent anti-competitive behaviour by internet service providers (ISPs) while allowing reasonable traffic management practices.

Traffic management practices

When demands for internet bandwidth exceed capacity, some user requests must be delayed. ISPs could do this indiscriminately, but this would lead to a poor experience for consumers.

Instead, ISPs prioritise certain content – this is known as traffic management. In particular, ISPs prioritise video, voice and gaming services, which are vulnerable to service interruptions. They also block content which customers do not want (e.g. spam) as well as illegal content.

As such, traffic management has many positive uses. The controversy in the net neutrality debate stems from how an ISP prioritises. Net neutrality advocates worry about two practices: 1) blocking legal content and 2) paid prioritisation.

One of the most well-known cases of blocking legal content occurred in 2008 when US telecom giant Comcast blocked an online file-sharing service for video and other large files. Comcast argued that the file-sharing service clogged its network, but in effect Comcast limited subscribers' access to the internet. Should an ISP be able to decide what content its subscribers may access?

Beyond the whole free speech issue, blocking legal content provides a vehicle for anti-competitive behaviour. Several media companies both provide internet services and create web content. Hypothetically, an ISP could block a competitor's content and force subscribers to use its own online services. The outright blockage of legal content triggers legitimate concerns, especially in regions where a single ISP dominates.

Discrimination under paid prioritisation is less explicit. In a paid prioritisation scheme, a content firm pays a fee to the ISP in order to have its online content delivered faster. British broadband providers began experimenting with paid prioritisation earlier this year. In January, BT announced a new service that would allow ISPs on its network to charge content firms for faster delivery of video services.

This fee structure creates winners and losers. ISPs collect additional revenue. Content firms that pay the fee may attract additional users but at a cost. Non-paying firms have their services delivered relatively more slowly and may lose users as a result. Consumers benefit if they prefer to use the faster sites, but also for a fee. Finally, in terms of competition, net neutrality proponents contend that paid prioritisation creates a new barrier to entry for content firms. Start-up web operations may find it difficult to attract users if they have to compete against established fee-paying firms.

Regulations in the US

The US regulator for ISPs, the Federal Communications Commission (FCC), adopted regulations for traffic management practices last December. The FCC's net neutrality rules require transparent traffic management practices, prohibit blocking of legal web content and ban "unreasonable discrimination".[3] The rules are (intentionally) vague on whether paid prioritisation schemes constitute unreasonable discrimination. Also, mobile broadband was exempted from many provisions.

Once announced, the rules faced immediate criticism. Timothy Karr of the advocacy group Free Press said the new rules were "so riddled

with loopholes that it's become clear that this FCC chairman crafted it with the sole purpose of winning the endorsement of AT&T and cable lobbyists".[4] On the other side, dissenting FCC commissioner Robert McDowell wrote, "New rules are likely to have the perverse effect of inhibiting capital investment, deterring innovation, raising operating costs and ultimately increasing consumer prices."[5] Telecom companies Verizon and MetroPCS challenged the FCC's legal basis for the net neutrality regulations in US federal court.[6]

Congress also responded to the FCC regulations. Democrats have generally supported the new rules, though several have called for stronger measures. Democratic Senator Maria Cantwell introduced a bill explicitly banning paid prioritisation and extending the net neutrality rules to cover mobile broadband.[7] Republicans in the House of Representatives have attempted to block enforcement of the rules through defunding and legislative repeal.

The US debate over net neutrality has split along partisan lines, although net neutrality is not an inherently liberal cause (in the American sense). Congressional Republicans have unfortunately conflated support for large telecom corporations with support for the market. In fact, the US market for broadband is highly concentrated; 80% of Americans must choose between two wireline broadband providers. Given the lack of competition among ISPs, limited regulation of traffic management practices may be necessary to protect free speech and prevent anti-competitive behaviour (i.e. promote a free market for web content).

The European approach

European officials have adopted an altogether different approach to traffic management practices. Neelie Kroes, the European commissioner for the Digital Agenda, has defined core principles for net neutrality in Europe, such as fair competition and support for innovation. The EU regulatory framework adopted in 2009 includes the principle that "the ability of end-users to access and distribute information or run applications and services of their choice"[8] should not be compromised. The framework also encourages transparent traffic management by ISPs. The European Commission monitors traffic management practices but has not recommended specific regulations.

Instead, the Commission relies on competition among ISPs to prevent anti-competitive behaviour. Kroes has said that, "A healthy competitive environment allows tackling many potential problems at their root, avoiding the emergence of monopolistic gatekeepers, which could create serious dangers for net neutrality." If an ISP blocks content or delivers slow service, a consumer can switch providers. Fortunately for consumers, Europe has a decent level of competition between ISPs.

National governments within the EU have also been fairly hands-off in regards to traffic management. The German government's approach depends mostly on transparency and competition among ISPs. The British government declared its openness to paid prioritisation. UK culture minister Ed Vaizey has said, "We have got to continue to encourage the market to innovate and experiment with different business models and ways of providing consumers with what they want."[9]

A recent key exception is the Netherlands, where the Dutch Parliament has just adopted a measure banning its mobile telephone operators from blocking or imposing fees for using data-intensive Internet-based services.[10] In the case of the Dutch market, the debate has centred on moves by mobile operators to charge extra fees for free services such as Skype or WhatsApp, which allow smartphone users to avoid operator charges for calls or text messages.

For their part, European telecom companies have shown limited commitment to an open internet. The Broadband Stakeholder Group, which represents British ISPs, announced a code of practice that requires disclosure of traffic management practices but the code also allows ISPs to explore "managed services", an industry euphemism for paid prioritisation. Hannes Ametsreiter, CEO of Telekom Austria, is less pragmatic: "We own the infrastructure. We should decide who uses it."[11] To pre-empt further regulation, ISPs across Europe refrain

from the most controversial traffic management practices. Nevertheless, ISPs seem likely to implement paid prioritisation on a limited scale.

Conclusion

Overall, government officials in the US and Europe have adopted diverging approaches to oversight of traffic management practices. The coming months will test whether government regulation or market competition – as contrasted in the FCC's new rules, the Dutch government's pioneering legislation and the 'hands off' approach in much of the EU – better balances the needs of ISPs, content firms, and consumers.

[1] Matt Hayward is a former intern at the Stockholm Network.
[2] Franken, A. "The Most Important Free Speech Issue of Our Time", *The Huffington Post*, 20 December 2010, http://tinyurl.com/5r754yg
[3] Federal Communications Commission (FCC), "FCC acts to preserve freedom and openness", FCC News, 21 December 2010, http://tinyurl.com/3ghrlmn
[4] Karr, T., "Obama FCC Caves on Net Neutrality -- Tuesday Betrayal Assured", *The Huffington Post*, 20 December 2010, http://tinyurl.com/3gvssda
[5] McDowell, R., "The FCC's Threat to Internet Freedom", *Wall Street Journal*, 19 December 2010, http://tinyurl.com/65jrc6m html
[6] *New York Times*, "Net Neutrality, Back in Court", 6 March 2011, http://tinyurl.com/5w9aq4b
[7] The Hill (2011), "Cantwell introduces bill to strengthen net-neutrality rules", http://tinyurl.com/65wquge
[8] Europa. "Net neutrality in Europe Address at the ARCEP Conference", Press Release, 13 April 2010, http://tinyurl.com/6adcczq
[9] *BBC News*, "BT Content Connect service faces 'two-tier net' claims", 4 January 2011. http://tinyurl.com/5sjl4qq http://www.bbc.co.uk/news/technology-12112389
[10] O'Brien, K., "Dutch Lawmakers Adopt Net Neutrality Law", *New York Times*, 22 June 2011, http://tinyurl.com/68vdfbd
[11] Rooney, B., "Telekom Austria CEO Dismisses Net Neutrality", *Wall Street Journal*, 24 February 2011, http://tinyurl.com/6x38qsq

Experts' Corner

Standardising the Standardisation Process? What next for IPRs Competition and Innovation? – Stockholm Network

The Stockholm Network, together with *Managing Intellectual Property* Magazine, The Institute for Globalisation and International Regulation at Maastricht University Faculty of Law, co-hosted a roundtable discussion on 17 June in Maastricht focusing on key issues in the debate on IPRs, standards and innovation.[1]

The roundtable is part of the Stockholm Network's ongoing work on standards. It is the second event we have held on this issue. The event featured a panel of expert speakers from academia, government and industry, who provoked a number of stimulating discussions.

Dr Meir Pugatch, Director of Research at the Stockholm Network, set the context by highlighting that the role of standards in the innovation process should help dictate the balance between standard setting by centralised organisations (i.e. standards setting organisations, SSOs) and free market mechanisms. In particular, he emphasised that standard setting deals mainly with the later phases of the innovation cycle, in which incremental innovation is more prevalent, while the market drives earlier, more radical innovations. Based on this, he argued that efforts to "standardise" the standardisation process should allow innovators the choice of coordinating with SSOs (under their frameworks) or engaging in cut-throat competition to bring forth radical innovations (which, in turn, become the next standards).

Another discussion, led by a speaker from academia, focused on the public interest in the creation of standards. The case was made that the choice between so-called "open" and proprietary standards should not only be based on competition concerns (i.e. ensuring sufficient price competition as well as product and service availability), but also on other values, such as

fairness, equity and accessibility. Such an analysis requires a broader conceptualisation of the stakeholders, including customers and other actors along the value chain.

Turning to the role of SSOs and IP bodies, a representative from the mobile handset industry discussed the rationale of including IPR policies in standards-setting organisations. In particular, the dichotomy of IPRs and standards was raised – specifically, between the way in which essential patents enable the sharing of standards and, at the same time, can allow patent owners to acquire control over the use of a standard. It was therefore argued that SSOs seek to reduce the risk of the latter to their members by, among other things, requiring patent owners to commit to licensing their essential patents on fair, reasonable and non-discriminatory terms.

A delegate from WIPO then discussed its activities relating to patents and standards. The speaker underscored the fact that WIPO has been involved in creating forums involving a range of government and non-governmental stakeholders for discussion on different IP issues, including the patent system and technical standards. One outcome of these forums has been a call for greater collaboration between IP bodies and SSOs. The speaker suggested that one way for improving collaboration could include the sharing of information between the two communities. In particular, technical information owned by standard setting organisations may be useful for patent offices to determine the patentability of inventions contained in patent applications, and patent information owned by IP bodies may add value to patent databases of standard setting organisations.

Adding a new perspective, a speaker from the European Patent Office underlined the challenges associated with disclosure of essential IPRs as part of the standard setting process, including the risk of industry and society losing trust in the open standardisation process and the patent system. For this reason, the speaker raised several recommendations for improving transparency in the standardisation process, including better tagging of patents and technical specifications (i.e. technical field, prior art, publication date, etc), creation of standards-related patent registers, and clarification of SSOs' disclosure and confidentiality policies. For patent offices in particular, the speaker's recommendations included keeping open lines of communication with SSOs such that IP declarations databases are constantly updated and valid, as well as developing and publishing standards-related documentation.

A representative from a government IP body from Latin America brought the debate on IPRs and standards into the global context, particularly focusing on emerging economies as "newcomers" in standards setting and the potential implications of their domestic policies. She discussed the extent to which competition law and international trade frameworks can adequately resolve disputes between rights holders and users of standards, with the goal of fostering global competition and innovation.

Finally, a speaker from DG Competition, at the European Commission reviewed the rationale behind the Commission's Guidelines on Horizontal Cooperation Agreements with respect to standardisation agreements. Whilst recognising the potential economic benefits of standards, he highlighted ways in which standard setting may cause concerns under EU competition rules, including where it is abused or used to exclude competitors or gain unfair advantage in the market. The speaker noted that the new guidelines are aimed at encouraging SSOs to set clear rules that reduce the risk of competition problems and facilitate the standard setting process.

[1] The full details of the discussion and the list of speakers can be found on the section of the Stockholm Network website devoted to standards, http://tinyurl.com/6gh3j6u.

Views

Taming the Wild West: The Cloud, Intellectual Property and Data Privacy – Rachel Chu[1]

Cloud computing is shaping up to alter how we live, work and play in the digital age. The shift enabled by cloud computing – from storing information on physical, local servers to virtual servers managed by cloud service providers – is changing the way web-based services operate. Instead of paying to host expensive servers, companies only have to pay to use a slice of the cloud. This option widens the number and scope of web-based services, mainly because cloud customers can scale up storage and processing of data quickly and cheaply. In this way, web-based businesses, especially small and medium-sized companies, can scale up their services like never before. Hence, the cloud is a boon for a whole gamut of web-based services that are increasingly impacting on our daily lives.

Yet for all of its advantages, the cloud also raises a host of challenges, not least related to the storing of sensitive data in a virtual location. At its crux, this challenge can be attributed to the intersection of intellectual property and data privacy – the question of who owns and who is responsible for securing private data (including trade secrets and personally identifiable information).

While in many ways this discussion does not differ in nature from the challenges caused by local storage of data, the scale of the data and the number of customers is amplified considerably in the cloud, and services are much more concentrated. Furthermore, there is the issue of the lack of physical control over the storage of classified data. As a result, the stakes are much higher in terms of the responsibility borne by owners (and protectors) of data and the risk borne by customers.

Therefore, questions of ownership, access and protection of data stored on the cloud are very pertinent. The answers to these questions are hugely influenced by the legal frameworks in place in different countries and jurisdictions. Also, they raise further questions about the adequacy of the existing legal framework, both in terms of data ownership and protection, for addressing challenges involved in the cloud.

The cloud and security – the case of Sony and other recent security breaches

In some senses, the concentration of data storage in cloud-based services – for which security is necessarily a core competency – means that information is arguably more secure than with local storage, especially for small companies lacking the means to make this their focus. Nonetheless, given the scale and the higher stakes, cases of large-scale breaches on the cloud are justifiably alarming.

The identity theft occurring on Sony's gaming and music networks in April of this year is one of the most recent cases in point. Hackers tapped into over 100 million accounts on the PlayStation and Qriocity networks, which included both personal and credit card information.[2]

And this is just the tip of the iceberg – the same group of hackers that attacked Sony also struck the US Senate, the CIA and the US Public Broadcasting Service.[3] Victims of other attacks or security glitches have included Citigroup, Lockheed Martin and Dropbox, a popular service for storing documents.[4]

Among other things, these events have ignited a round of debate concerning who should be responsible for protecting the data being stored and used on the cloud, and for ensuring that only those who own the data are able to access it.

Not surprisingly, in the case of Sony, it has borne the burden of the security breach. In addition to the cost of the downtime of the networks and the deterioration of its credibility as a cloud provider, it has had to bear the legal costs of the incident as well as make investments in data protection and breach detection software.[5]

Cross-cutting dilemmas raised by the cloud

The cases of Sony and several other businesses highlights at least two major sets of dilemmas related to the cloud, IP and privacy – one

conceptual and the other related to the legal framework governing the operation of the cloud.

Conceptual dilemmas

The first burning question concerning the cloud is, who? Who owns data stored in the cloud and who is responsible for protecting it in the face of third party access?

The answer to these questions seems to be fairly simple when it comes to situations in which the cloud service provider and the customer-facing platform (e.g. Playstation) are one and the same entity. However, what about when they are two different entities, for instance, as is the case with Amazon or Google, which "rent" space on the cloud to web-based businesses, and as such, act as a kind of middle man?

Here, there is an important dilemma concerning responsibility for protection – does the entity providing cloud services bear responsibility or does the owner of the data? To what extent should each one be liable for a breach of security? And, is there some overlap between the two functions, i.e. does the cloud service provider share in the ownership of the data?

Certainly, there are several other dilemmas, including questions concerning access to data. For example, with data in the online domain, is there a sort of "fair use" exception where use of data by third parties does not cause harm to those with rights to the data, and is therefore allowed?

And, what happens to data when the cloud services are terminated – can the service provider still access it and does it still bear responsibility for it?

Finally, should cloud customers have any instruments or safeguards at their disposal to hedge the risks of undue data disclosure or theft?

The case of Sony and related incidents have flagged these unknowns, and highlighted the need for some law and order in the cloud domain.

Challenges associated with the legal framework

This is not to say that there are currently no laws affecting cloud-based services; of course, there are established legal frameworks governing contracts, protection of personal identify information, trade secrets, etc.

Nonetheless, functioning efficiently in the cloud requires navigating through, and integrating, these different layers of the existing legal framework. Since the cloud is a relatively new forum, these laws have not necessarily been streamlined or focused to meet the needs of cloud services. Rather, certain laws may affect different players and components of cloud operations, including vendors, customers (and if they are businesses, their customers), the site of data storage and third parties. Altogether, there tends to be a great deal of uncertainty, not least because these laws may vary from country to country and because the cloud is such unchartered territory.

The challenge of understanding the legal frameworks in which the cloud operates also raises the issue as to whether it is necessary to create a specific framework aimed at cloud-based services which addresses the dilemmas raised above. For instance, might the cloud warrant a new form of IPR, a kind of data safeguard (similar to the regulatory data protection that exists with pharmaceutical test data) in which data that is "released" to a cloud vendor by virtue of engaging its storage services is protected against disclosure (conscious or unconscious) by the vendor? Perhaps a mechanism such as this might help clarify responsibility for protecting stored data.

Taming the cloud over the long-term

Certainly, the cloud is a land of opportunity, but at this time it is also a "wild west". And although the issues and dilemmas discussed here need to be answered, this does not mean it will happen quickly.

In the meantime, it is important that cloud service providers and customers (both primary customers and their customers) be aware of local laws concerning IP and data privacy. In particular, at this point, contracts play a fundamental role in resolving some of the uncertainties associated with IPRs and data privacy. Indeed, cloud vendors and customers have the ability, as well as the responsibility, to frame contracts in a mutually

satisfactory way. In this light, it is crucial to ensure that contracts governing cloud-based services are transparent and that all parties and stakeholders are aware of the terms.

The potential of cloud-based services is immense, and it calls for a robust legal and conceptual framework that enables trade secrets and personal data to be as secure as ever (or even more secure) while at the same time facilitating the scaling up of services in line with the demands of modern society.

[1] Rachel Chu is a research fellow at the Stockholm Network.
[2] BBC News, "Sony restores PlayStation network", 2 June 2011, http://tinyurl.com/6zuajha
[3] *New York Times*, "The Cloud Darkens", 29 June 2011, http://tinyurl.com/64v5owr
[4] Ibid.
[5] *BBC News*, "Sony restores..."

UK Intellectual Property: Fit for the digital age? – Paul Healy[1]

Is the UK intellectual property system in need of repair? This was the question put to Professor Ian Hargreaves, from Cardiff University, when he was appointed by Prime Minister David Cameron to head an independent review into IP laws in the UK. When announcing the review, David Cameron expressed concern that the current framework was not "fit for the internet age". In doing so, he made great hay of the suggestion, made by the company's founders that Google would never have been able to start up in Britain because its current system is not "friendly" enough for innovation. Such "friendliness" referred mostly to the "fair use" principle that gives a company like Google more liberty when using copyrighted material. The Prime Minister also suggested, to general scepticism, that the poor area of the East End of London could become a new Silicon Valley in the UK.

The findings of the Hargreaves Review

In the end, Prof Hargreaves' findings did not support the Prime Minister's assertions, aside from acknowledging the UK's archaic IP laws. It openly opposed the suggestion that "fair use" could be introduced in the UK, arguing that such arrangements in the US had been created through a long line of legal precedents and so would be difficult to replicate. The aim of "fair use" in the US is to balance the interests of people who would like to access copyrighted material and those who hold the copyrights, by allowing copyrighted material to be used without permission as long as it is used in accordance with a certain set of principles. Prof Hargreaves also warned that "fair use" in the US had encouraged rises in litigation, which ultimately hurt the same companies that the review is trying to aid. Instead, Prof Hargreaves' review suggests a range of technical measures, which look rather to tweak the system rather than the radical overhaul the UK government seemed to have in mind.

Probably the most grandiose recommendation is the proposal for a centralised online copyright exchange, which would aim to make the laborious process of licensing copyrighted content less demanding for its creators. Similar proposals were echoed by the European Union, which has recently launched its own IP strategy. However, EU measures would aim to internationalise the process and so could in fact impinge upon Prof Hargreaves' intended creation. Such an exchange would also need to be squared with content creators themselves, some of whom have expressed concerns that it could create a two-tier IP system, in which those on the exchange are given preferential treatment on enforcement.

Another suggestion made by the Hargreaves report is to legalise so-called "format-switching", a measure introduced in many other Western nations, which would officially allow consumers (many of whom were unaware they couldn't do so legally anyway), to transfer copyrighted material from one medium to another, for example burning a CD to an MP3 player. Interestingly, when such practices have been permitted in some other countries it has come with compensation to copyright holders, for example through a levy, and it is yet to see if such reparations would need to be negotiated in the UK.

Further recommendations would see easier access to use "orphan works", materials that have copyright owners who are difficult to contact. Meanwhile, "patent thickets" (clusters of patents that usually centre around one single product or design and which clog any IP system), are intended to be reduced through an increase in patent renewal fees, although this could in fact counterproductively hinder small businesses from innovating. There are also token suggestions relating to the use of music for parody, which would be loosened, however these pose such minimal burdens on content creators that they could hardly be described as essential.

Response

Generally, the report has been well received although it is clear that more radical proposals had been expected by some, whilst others are relieved that such pressures were resisted.[2] The UK government, which is not required to implement the proposals made, has said that it welcomes the review and will seriously consider the recommendations. If the measures appear difficult to implement, it is questionable how much appetite there will be to fight for them.

Until the government's response and strategy for reform is published it is unclear what shape IP policy in the UK will take in the future. Certainly, previous reports of this nature, for example the Gowers review in 2006, were trumpeted upon publication but ultimately resulted in very little structural reform. What is clear is that, however the government responds, it has to be wary of the ever-changing nature of the digital world, which can make any government measure obsolete even in a short period of time.

Conclusion

Society is quickly moving towards an "internet of things", whereby in the near future people 'live in the internet' rather than go on it. Advances in services, such as cloud computing, are likely to create a greater dependency of businesses and consumers on the internet, yet at the same time this will breed vulnerabilit. One such vulnerability that has already been exposed over the last decade has been IP protection, which technological advances have made it easier to bypass. Yet, society relies on IP protection to secure investment in future innovations, the benefits of which economies now rely upon heavily. Almost half of the productivity gains made in Europe over the last 15 years were contributed to by ICT.[3] On top of these challenges, policymakers will also inevitably need to tackle important issues such as freedom of speech, privacy and rights to access, which will arise from a further blurring of the lines between the tangible and the digital world.

[1] Paul Healy is senior researcher at the Stockholm Network.
[2] "Creative industry welcomes Hargreaves' fair use rejection" in *Daily Telegraph*, 18 May 2011
[3] Fornefeld, M et al (2008), *The Impact of Broadband on Growth and Productivity*

New and Notable

Intellectual Property & the Transfer of Environmentally Sound Technologies – Dr Meir Perez Pugatch

The importance of the effective dissemination and use of environmentally sound technologies (ESTs) is becoming more apparent in light of the rising profile of climate change mitigation in global political discourse as well as expectations that global energy consumption will continue to dramatically increase in the coming decades. ESTs are methods and sources for producing energy that reduce the emission of greenhouse gases during the production or provision of energy.This recent report considers the role of intellectual property rights (IPRs) in fostering successful EST transfer, along with the utilisation and adaptation of ESTs by entities in developing countries. It also reviews the importance of other economic, political, and social factors in this process. The report aims to provide a foundation for further research on IPRs and EST transfer, in order to contribute to the development of evidence-based IP and other policies for EST transfer.

The author reviews the relevant literature and available data, concluding that much of the existing evidence suggests that IPRs generally contribute to, rather than impede, EST transfer.

Dr Pugatch highlights the importance of context, including geographic location and type of technology, in determining the relationship between IPRs and EST transfer, and underscores the interplay between IPRs and other factors and policies in fostering EST transfer, use, and adaptation by entities in developing countries.

On the basis of available studies and other evidence, the report identifies: first, what is known about the role that IPRs, together with other factors, play in promoting EST transfer; second, priority areas for further research and analysis; and, third, 'wild cards' that could influence policy discussions and action to address EST transfer and climate change. These "known-knowns," "known-unknowns," and "unknown-unknowns" are elaborated in some detail at the end of the report.

This report was commissioned by the Global Challenges Division of the World Intellectual Property Organisation (WIPO).

News Flashes: Top Stories in the World of IP and Competition

US patent reform moves forward

Both the House of Representatives and the Senate have passed legislation which would overhaul the patent system in the US. The House passed a bill in June which would change the system for granting patents so that it awards them to the party that is "first to file" an invention instead of the "first to invent" it.

This change is intended to bring the US patent system in line with other countries, which mainly follow a "first to file" system. The Senate passed a similar bill in March. Now the two must negotiate a final bill, after which it will be sent to President Obama for his input and approval.

Some inventors and small businesses have complained that switching to a "first to file" system would give large companies an advantage and hurt individual inventors. Unlike in the past, patent-intensive industries have now aligned to back the most recent legislation, partly because the judicial system is has resolved the more divisive issues.

http://tinyurl.com/6zh96fq

European Commission launches IP strategy

The European Commission has unveiled its new IPR strategy, which aims to balance the needs of rights holders, to encourage innovation and still allow consumers and users ready access to online services.

In particular, the Commission will attempt to simplify music copyrights by creating a legal framework for the collective management of copyright to enable pan-European licensing. To complement this, the Commission also plans to reinforce its fight against piracy and illegal downloads by handing more power to the European Observatory on Counterfeiting and Piracy.

In parallel with this strategy, the Commission unveiled plans to review the IPR Enforcement Directive (IPRED) and further tackle infringement of IPRs through the internet. In doing so, they called for the cooperation of intermediaries, such as ISPs, whilst ensuring that such amendments respect all fundamental rights recognised by the EU Charter of Fundamental Rights.

Digital industries welcomed the announcement as an important step towards addressing "issues which are holding Europe back from creating a vibrant and economically effective Digital Single Market", whilst communications organisations and consumer groups opposed suggestions that

internet service providers (ISPs) could be required to filter, monitor and eventually block content on the Internet.

http://tinyurl.com/5subp2s

Europe's "innovation emergency"

The European Commission has published a report on the EU's innovation performance in comparison to the rest of world. It states that major improvements are needed if the Europe 2020 strategy is to be effective in providing sustainable growth.

One of the key findings of this report is that "while remaining a top player in terms of knowledge production and scientific excellence, Europe is losing ground as regards the exploitation of research results". Indeed, the report points out that even though the EU has the highest number of peer-reviewed scientific publications in the world, the share of the EU Member States' patent applications in the EPO has declined and "about half of the Member States do not produce high-tech EPO patents at all".

Therefore, the report calls for a stronger intellectual property regime, including reducing the costs of IPRs by introducing a unitary EU patents.

The report also suggests improvements to knowledge transfer in the EU, emphasising the need for greater research cooperation within the EU and internationally.

http://tinyurl.com/6cnfe9f

A vision for Internet governance

Conflicting visions about the Internet and the way it should be regulated were brought to the fore at the recent "e-G8" Forum. Representatives from G8 governments and the internet and media industries met in May prior to the larger forum to discuss the future of internet regulation.

The forum was aimed at forming an international consensus on regulating the internet, but the discussion instead reflected the very different perspectives on the part of some EU governments and industry. On the one hand, President Sarkozy, on behalf of France, called for tighter controls over the internet, highlighting security issues such as the recent WikiLeaks affair and the rise of internet piracy. On the other hand, industry leaders such as Facebook and Google recommended that governments tread lightly and avoid "stupid" rules.

A key party missing from the discussion was China (not being a member of the G8), despite its role as a major source of online activity.

http://tinyurl.com/627qgw8

Nokia and Apple resolve patent dispute

Nokia and Apple have tied up a lengthy legal dispute by agreeing a wide-ranging technology licensing agreement. In fact, the agreement covers both companies' patents and should result in settlement of all patent litigation between the companies. According to Nokia, Apple has agreed a one-off payment and ongoing royalties to use its technologies.

Nokia sued Apple for patent infringements in 2009, including of touch interfaces, caller ID, display illumination and 3G and wifi technology. Apple had countersued, in turn accusing Nokia of infringing many of its patents.

The agreement is said to help Nokia reposition itself in the smartphone sector, among competitors such as Apple and Google.

http://tinyurl.com/6fxtemb

Google under antitrust investigation

The US Federal Trade Commission has opened an antitrust investigation into Google's core search and advertising business.

Specifically, it is being accused (by some of its rivals) of manipulating its search results to favour its own services at the expense of others

Google's business practices and its dominant position in the Internet have come under scrutiny both in the US and in the EU a number of times in recent years. In fact, the European Commission opened an investigation into Google's business late last year. However, previous cases did not focus on core business components; rather they dealt with components such as its plan to create a digital library. If the investigation results in accusations of misconduct against Google, some say that it could become the most serious antitrust challenge for Google to date.
http://bits.blogs.nytimes.com/2011/06/24/google-confirms-f-t-c-antitrust-inquiry/
http://tinyurl.com/69fq2of

DNDi and Sanofi sign novel IP-based partnership agreement

The Drugs for Neglected Diseases initiative (DNDi) has signed an agreement with pharmaceutical manufacturer Sanofi for a research project on neglected tropical diseases that involves an innovative intellectual property arrangement.

Sanofi will bring molecules from its libraries into the partnership, and DNDi and Sanofi will collaborate on research targeting nine tropical diseases. According to DNDi, the core of the agreement lies in the IP arrangement, under which the IP rights resulting from the partnership will be co-owned by DNDi and Sanofi.

Sanofi has celebrated the agreement, saying it represents a solid step forward in establishing sustainable, open and collaborative arrangements for R&D into diseases faced mainly by developing countries.

DNDi has said that developing countries will be able to access the drugs developed through the partnership "under the best possible conditions".

http://tinyurl.com/6jaj84v