

Dear IP Australia Review Panel of Innovation Patents,

I write to you today based on your Consultation Paper: ACIP's Recommendation on the Innovation Patent System (August 2015.).

I'm a software developer for a small company and I'm their only software development employee. I develop bespoke software normally used internally within a client's environment rather than software produced for mass scale. I also work for a small software services company where we provide solutions and innovation around web and database systems for clients. Innovation is part of both these business activities however patents only present risk and never opportunity.

In response to “**The ACIP recommendation that the government should consider abolishing the innovation patent system;**”:

Definitely yes! For reasons previously submitted to the ACIP review, and summarised in recommendation 5 (section 2.5), the innovation patent system provides a high financial/legal risk to incidental infringement, protection for fairly unsubstantial ideas, a tool in legalised anticompetitive practices benefiting only market dominate companies, and hence a detriment to consumers.

In response to “**Any alternative suggestions to encourage innovation amongst SMEs.**”:

Sharing customer requirements and research

The financial margins of SME are so tight that true creativity, the exploration of ideas regardless of financial success, that hopes to provide valuable their innovation, is substantially difficult financially to sustain. The innovation that SME needs is in the collaborative forum with their customers and potentially any researchers in the field. The business concept of SMEs organising a show and tell with their competitors isn't going to happen. The concept of a customer doing a greet and meet with a large number of suppliers is also a financially draining.

Recommendation 1: IP Australia seeks out suppliers, customers and researchers in a given subject area and provide customers and researchers to communicate requirements and research discovery, and to a lesser extent for suppliers to talk about innovation without being a sales pitch.

At these forums it is essential that there is sufficient time and facilities for SME to communicate privately with customers/researchers to enrich the innovation that all SMEs there will ultimately provide. By consolidating the cost overhead of both SME and customer a greater communication of ideas can occur.

Opening up closed scientific knowledge

The harbouring of scientific papers behind a high cost per view paywall is limiting the reach of scientific papers. As such scientific papers aren't reaching or being read by SMEs who should be able to take scientific knowledge and apply this to socially acceptable commercial activities. Open Access journals exist however are under constant financial hardship and need to compete with large journals that have a close to monopoly on access to vast areas of modern scientific knowledge. These large journal have the required reputation to effectively demand that researchers contribute to them, for the researchers reputation, and then sell these journals back to the researchers' employers, to keep affront of other activities in their field.

Recommendation 2: IP Australia should use its standing and range of subject matter experts to boost the profile of open access scientific journals and promote their readership by Australian SMEs.

Copyright and fair use

While not the domain of IP Australia, the use of copyright provides significant opportunities for innovations via the creative reuse of existing works.

Like innovation patents, the intent of copyright protection has a goal of a level playing field with a legal protection for all, however in execution the protection is unfairly biased on the larger enterprises with the legal resources. The reuse and application of copyrighted material provides opportunity for innovation and commercialisation however the amount of control and duration of by original creators provides excessive restriction of innovation.

The application of fair use criteria as recommended by the Australian Law Reform Commission (report 122) provides an opportunity for the limited reuse of creative endeavours and provides recommendations that will provide digital economy innovation. A large number of the recommendations are around providing innovation and reducing legal ambiguity.

In a modern society the term for copyright protection extends beyond reason and causes IP works on untraceable origin to be protected without being able to be further commercialised.

The protection of intellectual property in the form copyright in the current form is restricting innovation. Hopefully the Productivity Commissions inquiry into IP will also find similar avenues for reform and innovation.

Recommendation 3: The ALRC report 122 recommendations, particularly around fair use be adopted.

Thank you for applying constant reform and review of IP measures to provide encourage innovation.

Daniel Black