

Title: Inspection of Documents IA No: BIS 0356 Lead department or agency: IPO, an agency of BIS Other departments or agencies:	Impact Assessment (IA)			
	Date: 03/12/2012			
	Stage: Final			
	Source of intervention: Domestic			
	Type of measure: Primary legislation			
Contact for enquiries: Natalie Morgan (natalie.morgan@ipo.gov.uk; 01633 814297)				
Summary: Intervention and Options			RPC Opinion: GREEN	

Cost of Preferred (or more likely) Option				
Total Net Present Value (£m)	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out?	Measure qualifies as
-0.029	0.007	-0.001	Yes	OUT

What is the problem under consideration? Why is government intervention necessary?

Businesses can not currently view registered designs files online or receive electronic information regarding their own registered designs or those of third parties. The current system is out-dated, bureaucratic and particularly time consuming for business. Compared to other IPR, design information is viewed at a much lower rate than patent information.

As this area is controlled by UK law, Government must legislate to enable such a change.

What are the policy objectives and the intended effects?

To enable business to view documents kept at the IPO online and receive information in respect of all registered designs. This is intended to reduce bureaucracy, clarify the scope of protection and save business time and money.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 1: Do nothing.

Option 2: Amend legislation to enable the inspection of files online and the receiving of documents kept at the IPO by electronic and paper means.

The chosen option is option 2. This will provide business with a quicker, greener and cheaper alternative in addition to the current process.

Consultation found that the overwhelming consensus of respondents was that an online system would help clarify the scope of protection and save business time and money.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 04/2018					
Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: n/a	Non-traded: n/a	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY: _____ Date: _____

Summary: Analysis & Evidence **Policy Option 2**

Description: to amend legislation to enable business to inspect information online and receive documents kept at the IPO by electronic means via an electronic system (when technology allows).

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -0.051	High: -0.010	Best Estimate: -0.029

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.018	0.000	0.019
High	0.055	0.000	0.056
Best Estimate	0.035	0.000	0.036

Description and scale of key monetised costs by 'main affected groups'

There would be a cost to the IPO from implementing the new IT system estimated at £20,000 for development and £15,000 for testing, given the IPOs experience in implementing a similar system for patents (£35,000). High - total cost of the 2011 patent system (£55,000) and low halves the central estimate (£17,500). There would be a minimal loss of revenue to the IPO by offering a free electronic information database of £5 per application, with an average of 24 filings per year, so £120 p.a. Training costs have been estimated at a range of £205 -£227 with a central estimate of £216.

Other key non-monetised costs by 'main affected groups'

None.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	0.001	0.005
High	0	0.001	0.009
Best Estimate	0	0.001	0.007

Description and scale of key monetised benefits by 'main affected groups'

It would no longer be compulsory for business to file a request and fee when requesting information kept at the IPO. This would annually save the 24 representative firms who file documents a total of £832.50 p.a. (£5 x 5 individual filings) + ((£37.50 for 15 minutes of legal billing + £5) x 19 Agent requests), with a range from £595 in the low (where legal costs are £100p/h, to £1070 in the high where legal costs are £200p/h).

Other key non-monetised benefits by 'main affected groups'

Simplifying the process would make it quicker for all businesses and other IPO offices to access information from the IPO and fulfil our commitment that all services will be offered to customers electronically. It would also be consistent with IPO's provision of information in relation to patents. Online service will lead more firms to use this service without cost to either business or government, with an unquantifiable benefit arising from better knowledge of design rights registered.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
We assume that requests will be static at the average level of filings between 2009 and 2012. We also assume that, given IPO experience, legal costs of using an agent is £150 per hour, although we allow for a £50 (33%) error around that.		

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: 0.000	Benefits: 0.001	Net: 0.001	Yes	OUT

Evidence Base (for summary sheets)

Problem under consideration

We would like to assist business by providing a more accessible and streamlined process which enables them to view and receive relevant information from a registered designs file via an online database. The present paper-based system is out-dated, unnecessarily slow and bureaucratic. In order to implement this enabling measure and reduce the burden on business Government intervention is necessary. This is due to the IPO not owning the copyright in most of the documents held on its files. We propose to legislate to enable us to make documents available to view or to be sent electronically without infringing copyright.

To enable this measure we need to amend legislation.

Background

Following the Hargreaves review of IP we acknowledged that there was limited information on how important design rights were to growth, and whether the current design IP framework was meeting the needs of business. We issued a 'call for evidence' and associated survey to acquire this information. Responses to the 'call' confirmed that the designs IP framework needed to be simplified and improved in a number of areas to make it more fully meet the needs of business.

Currently, in order for business to view information in respect of a registered design they have two routes which they can take. They must either travel in person to Newport or London, or, file a letter or e-mail with a fee at the IPO to receive copies sent by post. Requests for copies received via email or fax are more expensive for business as additional fees are charged (£1 per page + vat). Business then has the additional burden of waiting for the requested documents to arrive.

We have consulted on a proposal which will mirror the IPO's new document inspection system for patents, called 'Ipsum' (see: <http://www.ipso.gov.uk/p-ipsu>). The overwhelming consensus of respondents was in favour of the additional service to provide documents electronically.

Policy objectives

To enable business to view documents kept at the IPO online and receive information electronically in respect of all registered designs. This is intended to reduce bureaucracy, clarify the scope of protection and save business time and money.

Description of options considered

Option 1: Do nothing

Costs/Benefits

There are no cost/benefits to businesses by choosing option one, as it will be the base case.

Option 2:

Option 2 would amend the Registered Designs Act 1949 to enable businesses or individuals to view electronic documents, in respect of registered designs filed at the IPO. It will also enable the IPO to supply such information electronically to a customer without infringing copyright.

We would also like, as a "tidying up" measure, to amend s.22 of the Registered Designs Act 1949 to include a reference to other documents available for inspection. We believe that this will avoid any unnecessary confusion by business.

Costs/Benefits

Amending the Act to enable the viewing and transmission of documents kept at the IPO electronically will save businesses' time and money. Quicker access will enable informed decisions to be taken when they need to be taken, easier access will encourage information to be obtained before taking any action. It will also save valuable time for business.

Given the overwhelming consensus in consultation in favour of an online system, we have assumed that most will choose the online system over the current paper-based system. Information online will be redacted, so the current paper-based system will remain in place for those that wish to view un-redacted information. The IPO could still receive formal paper based requests, though we expect this number to be small. There are no specific records on the number of in person requests. though anecdotal evidence from the IPO suggests these have been extremely rare.

Currently, design information is viewed at a much lower rate than patent information. In 2011 only 43 requests were for information contained within a registered designs file. This equates to approximately 1% of registrations. Trade marks had approximately 851 requests which equates to 2.2% of all applications and patents received approx 1,608 requests which equates to 16% of published applications.

Since the Patents Act was amended to allow for the electronic online inspection of documents, the usage figures from the start date of 03/10/2011 to 25/03/2012 inclusive is 50,219. That equates to a daily average of 287 (this figure includes working weekends). 96.9% of all contacts for information being placed on-line with only 3.1% being requests made formally to the office. Online patent inspection has resulted in an increase of 3023% in patent inspections. We expect an increase demand for design online inspections as a) a result of the changes from this IA and b) increased use of the design system due to other reforms currently underway. We do not have any of the information needed to forecast this increase in demand, and to do this with any degree of accuracy would take a disproportionate amount of time and resource.

The lower number of requests in relation to designs may in some way be down to out-dated, slow and bureaucratic methods for obtaining information. Currently to obtain an uncertified copy of information in relation to a registered design requires a request in writing accompanied by a fee of £5 per design registration number and for faxed or e-mail copies there is an additional cost of £1 + vat for each page. This is likely to place an unnecessary burden on SME's who are, in the main, the biggest users of registered design right in the UK. The proprietors of SME's are more likely to need to focus on running the business during normal business hours (and unlikely to have someone specifically to deal with IP issues) so would benefit from access to information regardless of the hour.

The enabling measure would be consistent with the way the IPO handles patent information. We are also consulting with EU counterparts to see if this is something that could be offered, by them, to UK business in the future.

In the recent consultation the overwhelming consensus was that a system which allowed the viewing online of documents relating to designs would be beneficial by users. It was felt that the ability to view online would help clarify the scope of designs and aid businesses to research and possibly prevent inadvertent copying. One respondent felt that although beneficial in respect of prior art searches in the UK, some designers would be reluctant to display the full details of their design in case others used it as a basis for new ideas. As to the specific benefits for business and individuals of a system which makes available to the public registered designs file documents via electronic transmission, the consultation responses commented that it would save time and was therefore also likely to save money. Saying this, little evidence was received as to the actual savings by business if the IPO introduced an online inspection of documents service. However, one respondent estimated that applicants would save

approximately £30 -£50 per request in time or professional fees, another felt that where inspection was necessary, 1 hour professional time, several hundred pounds, and a delay of up to a week.

Time was considered to be one of the main savings, with the added advantage of being able to inspect a file when the office is closed. One respondent felt that practitioners would use an online service, when they do not currently use the paper based one. Another found it frustrating that an open record of a publicly enforceable right was not immediately available.

In respect of the development and use of a legal framework which facilitates the issuing of electronic documents by the IPO for the purpose of allowing the design community to access such documents from a place and at a time convenient to them, the consultation found that: practitioners would use an online service, when they do not currently use the paper based one, and felt it frustrating that an open record of a publicly enforceable right was not immediately available.

As a precedent, a recent consultation (launched 31 January 2011) and subsequent amendment to legislation took place in relation to patents. This proposed to amend legislation so that online inspection of patent material would not infringe copyright, but retained the existing policy of not making available copies of journals, books or articles which are available elsewhere. Although consultation responses did not offer evidence on the economic evidence and cost of the proposal, the majority were in favour of the amendments to legislation. This situation mirrors the findings in the designs consultation.

Direct Cost Saving to Affected Parties, [£595 - 1070 per annum]

The cost of inspecting documents depend on whether firms use an agent, or submit the paperwork directly themselves. Based on the IPOs experience with stakeholders, firms using an agent are usually charged £150 per hour in legal fees and a single filing takes 15 minutes of legal fee time.

Although responses to the consultation provided little actual evidence of costs it was estimated by one respondent that applicants would save approximately £30 - £50 per request in time or professional fees. Another felt that where inspection was necessary, 1 hour professional time, several hundred pounds and a delay of up to one week.

<u>Savings for firms using an agent</u>	Central Estimate
Fee	£ 5.00
Attorney's fee worked out @ 15 minutes billing at £150 per hour (1/4 £150)	<u>£37.50</u>
Cost per request	<u>£42.50</u>

<u>Savings for Individual filings</u>	
Fee	£ 5.00
Cost per request	<u>£ 5.00</u>

Over the last three financial years the IPO has received between 12 and 43 requests for document inspection, with an average of 5 individual filings per year and 19 agent filings:

	Total requests	Agent requests	Individual filings
2009-10	17	11	6
2010-11	12	10	2
2011-12	43	35	8
Average	24	19	5

Given these averages we calculate a net saving to firms to be:

Low: £595 per annum (£5 × 5 individual filings) + ((£25.00 + £5) × 19 Agent requests)

Central: £832.50 per annum ($£5 \times 5$ individual filings) + $(£37.50 + £5) \times 19$ Agent requests)
High: £1070 per annum ($£5 \times 5$ individual filings) + $(£50.00 + £5) \times 19$ Agent requests)

We believe that customers may use an agent or legal representative to request information because they are involved in a legal dispute. For example, if they believe their design is being infringed by a third party they would request, in the first instance, a copy of the offending design. Alternatively, if they are accused of infringing they may ask an attorney or legal representative to act on their behalf. In order for the legal representative to assess the situation they would need to view the designs side by side. Additionally, they may already represent the design right holder in respect of IP matters. They may also be under the misinterpretation that requesting documents for the IPO is not straightforward and a complicated affair.

Direct cost to the IPO, [transition cost of £17,500-£55,000, training costs of £205-£227, annual loss in fees of £120]

The IPO would lose part or all of the £5 filing fee, which would mean a loss of £120 p.a. ($£5 \times 24$) The IPO would have to implement this technical measure, but because the on-line patent file inspection system is already operational, IT suggests that the costs of adding design applications should not be as high. The patent inspection system cost £40,000 in IT development and £15,000 to test. The total £55,000 is our high cost estimate, but because the system will not have to be built from scratch, we expect that the development costs will be at most half of the development costs of the patent system, although testing will still be required. So our central estimate is £35,000, with £20,000 for development and £15,000 for testing. The low estimate halves that total again to £17,500. In respect of the ongoing maintenance and operation costs of the system, the IPO in-house IT team have plans in place to restructure the current IT system. This means in practical terms that a designs system, to allow for the electronic inspection of documents, would not need any extra resources to enable ongoing maintenance and operation of the system. This calculation has been based on the patents IPSUM system. Training for the planned IT system to allow fully electronic processing of designs will encompass guidance on a new inspection of documents system. There would also be additional costings in respect of the staff needed to redact confidential/personal information from the information being placed online. In respect of specific training we again have based the calculations on the training provided to patent staff for the IPSUM system:

Training Costs for one half day's training broken down into employment grades.

1 First line manager @ £45 – £51

4 Administrative officer's @ £40 - £44

Total: £205 - £227

Evaluation

A full evaluation strategy and Post Implementation Review is being developed for the introduction of the Hargreaves recommendations. The Post Implementation Review will detail the benefits associated with the introduction of the design reforms and will include input from external stakeholders. The plan will also set out how and when the benefits will be measured, which will depend on the type of benefit, as some benefits will be measured by applications and take-up that can be measured from the first year of operation, whereas others will depend on information that will take several years. The evaluation strategy will set out the activities that will be undertaken in order to evaluate the policy, drawing on management information collected through the design system, as well as research that is commissioned in order to measure the benefits.

The main source of data available for evaluation will be collated using industry figures. These statistics, alongside other management information on the operation of the system will be used by Government to assess the impact of the design reforms, including assessing whether benefits have been achieved and how policy or operations can be developed to realise benefits more effectively.

One In Two Out

We have classified option 2 as “Out” as it proposes a relaxation of guidelines that firms are currently forced to adhere to, and provides a net saving to business.

Proportionality approach

The number of applications made at the UK design registry in 2011 was 4,600 per annum with 43 (1%) requesting copies of information from registered design files. On the assumption that all applications are made by UK SMEs, and that each applicant is filed by a different company, it would seem very few of the total number of SMEs in the UK will be affected by this. This suggests that the impact of these proposals on the economy as a whole is likely to be minimal. As explained earlier, the impact on individual applicants is also likely to be minimal, if positive. According to the proportionality approach, we therefore believe that extensive analysis of the likely impact of this proposal is not necessary. Consultation did not provide further opinion.

Impacts on SMEs/micro businesses

Micro businesses and private individuals are the most frequent users of the UK design registration system, and tend to have fewer resources (time, expertise) at their disposal to help them understand the IP system. These measures are intended to help them by providing immediate information to their PC at no cost.

Relationship with minimum EU requirements

This implementation is intended to provide a non-mandatory optional service to business and will run along side the current paper based request for information. We therefore do not believe it goes beyond EU requirements.

Summary

Although the changes to the Act can be carried out without undue delay, the costs and resources involved with the implementation of an electronic system for designs will take considerable longer. Therefore the proposed changes to allow for the viewing online of registered design details and the obtaining of information electronically means that legislation will be in place prior to the systems. It is envisaged that the IPO will bring in electronic case management system for designs by 2015, which will also permit the proposal for the UK to join the Hague Agreement.