



Public Sector IP Exploitation – a practical guide

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1. The Context for Intellectual Property Exploitation

“...The stock of public sector assets in the UK is currently valued at £818 billion¹. This figure is a conservative estimate of the importance of public sector assets to the national economy given that it probably under-values certain asset types, in particular intangibles such as intellectual property...”

Operational Efficiency Programme announcement,
Yvette Cooper, July 2008

There are powerful impulses behind the pressures on public sector chief executives to maximise the use of all public sector assets. Coming from longer term efficiency drives (Wider Markets, Gershon, Lyons and most recently the Operational Efficiency Review), there has long been emphasis on gaining more benefit from assets created by the public sector.

Up until comparatively recently, that emphasis has been on physical and service type assets. But the belief that UK PLC needs to grow its knowledge economy and release the “Power of Information” for both e-democratisation reasons and for the wider economic benefit of UK PLC has focussed policy makers and Government on the potential to be unlocked in Intellectual Property assets.

Over the years the public sector (and central government in particular) has developed, acquired and paid for a wide range of Intellectual Property (IP), much of which lies undisturbed in archives and the memories of those who commissioned and oversaw the projects which led to its genesis.

IP assets include data, software inventions, processes, patents and trademarks – anything which is the product of human knowledge and which has potential value, even if not recognised formally in any balance sheet (or even asset register!). The UK public sector has much of value in its IP but faces real difficulties in assessing and realising its value.

This paper seeks to identify quick steps to identifying IP asset value, acquaint the reader with sources and examples of best practice, and place the quest for IP asset value within current Government policy context and progress.

2. Barriers to IP Exploitation

Wider Markets initiatives (HM Treasury's attempt since the 1990s to get public sector bodies to make better use of assets created in the public task but with utility and value beyond that) have generally been focussed on physical and service type assets. Intellectual property assets generally have been ignored, with the exception of the data and information assets exploited by Trading Funds such as Ordnance Survey and the Met Office.

The reasons for this include:

- Public servants are not clear on what IP really is
- They do not know what IP they already hold
- There are no clear guidelines how to assess its potential value
- IP asset assessment is a specialist skillset not normally within the toolkit of public bodies
- Routes and processes that could lead to cost effective exploitation (eg tools, skills and incentives) are not developed or nurtured in a manner that can short circuit the path to success
- There is a complexity and ambiguity around the compliance frameworks which can inhibit effective exploitation

Often public sector bodies are placed in an apparently invidious position whereby they are asked to create more efficiencies, drive greater value from their assets, yet also make everything they produce freely available and ensure they do nothing to interfere with the freedom of natural markets.

Yet despite apparent contradictions and undoubted difficulties, they are increasing ways of cutting through these barriers to realise benefits for the public sector organisation and UK PLC.

3. Cutting through to a Solution

3.1 Policy Enablers

The past year in particular has seen an increased policy and regulatory emphasis on the knowledge economy and the public sector's role in it. Examples include:

- the "Power of Information Taskforce"¹ is stimulating and supporting the public sector's use and exploitation of its information and web technologies (with an emphasis on creating value and e-democratisation and empowerment);
- the enhanced role of the Office of Public Sector Information (OPSI) in helping public sector bodies identify and unveil information to the wider economy in line with the European Directive on Public Sector Information;
- the key strand of the Operational Efficiency Review around "Asset Management and Sales" which will focus on IP assets as well as traditionally conceived assets
- the Treasury inspired review of Trading Funds activities by the Shareholder Executive aimed at clarifying the role of commercial units within Government and the definition of the public task and charging policies
- the current investigations by the UK IPO (Intellectual Property Office) in defining balance sheet treatment (valuation and reporting methodologies) of IP as well as best practice examples of IP asset exploitation both in the UK and from abroad

All of these initiatives are likely to coalesce from 2009 onwards to create a better environment for the development of IP assets. The challenge for public sector Chief Executives will be to take advantage of these developments and respond to the policy pressures.

3.2 Practical Steps

Giving practical effect to any initiative to realise the potential of IP assets will require consideration and implementation of six key steps:

- a clear statement of intent – an explanation of what IP is and the importance of its exploitation in both the public body and wider public interest
- provide an incentive framework to enable individuals or teams responsible for the successful identification and exploitation of IP to benefit from such activity
- identify existing IP by undertaking inventory analysis of the public bodies' assets (can be high level at first)

¹ http://www.cabinetoffice.gov.uk/newsroom/news_releases/2008/080401_taskforce.aspx

- possessing a compliance framework for assessing the commercial potential of the IP that is 'unearthed'
- seek advice on the most effective commercial route to exploit IP to provide a revenue balance between the differing stakeholders
- implement the most appropriate exploitation route

Let's look at each in turn and how this can be translated into a viable framework for implementation.

3.2.1 IP – what is it, why it is important, and how exploitation of IP is consistent with economic, political and regulatory policies

There is a primary need to make all government departments and other public bodies aware of what IP could comprise and the benefits for exploiting this as a means of creating wealth for the organisations concerned, the treasury, industry and wider society. As we have seen, IP is not confined to datasets and information (it includes hardware, software inventions, processes, human skillsets etc).

Once the nature of IP and its importance is understood, it is then easier to consider where it might lie and what potential it may have. Many of the barriers to exploitation – regulatory, perceptual, cultural etc – can then be tackled within a context. But this requires leadership from the top of an organisation.

3.2.2 Provide an Incentive Framework

Public sector officials respond both to mandates (sometimes involving penalties) and incentives. The NAO Review of Wider Market Initiatives in 2004 (Treasury's long standing initiative to encourage public sector bodies to make better use of their assets) may bemoan the lack of progress in respect of IP realisation, but often there is little incentive to make it a priority. To really make inroads, Departments or NDPBs need to be able to retain a proportion of the additional revenues and income they can create without it all being transferred directly to the Treasury.

Organisations also need to have IP exploitation as an explicit goal with a framework for reward to encourage staff to see the benefits across the body in terms of the ability to invest some of the income in improved services and working facilities, as well as contributing to the Treasury and the wider economy.

Again, there are examples of best practice across Government (the MoD springs to mind) from which precedent can be derived.

3.2.3 Identify Existing IP

It is critical to identify in the short term IP assets which have most potential and, in the longer term, to set up processes which ensure that IP rights are established and protected by contract on an ongoing basis.

Much IP in public sector organisations is unable to be exploited as either rights have been given away, are unclear or are in dispute (often with other public sector bodies!)

A high level review of IP assets will identify possible quicker wins and scale of potential. A sense of future value or worth can be relatively quickly surmised from a systematic consideration of identified IP and a study of the market within which the public body operates.

It is critical that such an exercise is undertaken by resources which are deeply experienced in the commercialisation of IP assets at a practical level (and preferably in the markets in which the public body serves).

3.2.4 Provide a compliance framework for assessing the potential of the IP that is 'unearthed'

Private sector contractors are all too eager to provide assessments of value – but for the body facing the complexities of compliance and regulation, these views must be viewed through a public sector compliance filter before the IP asset potential can be truly assessed.

Public sector ventures operate within a compliance environment unlike no other. Issues of State Aid and Competition, proper adherence to procurement pathways, the complexities of implementing regulations such as the Public Sector Information Directive – all these colour and influence the practicalities of IP Asset potential and the latter must be assessed through this compliance framework.

3.2.5 Seek advice on the most effective commercial process to adopt for IP development

Not surprisingly, this is where many good Wider Markets or commercialisation initiatives come unstuck. Choosing the most appropriate routes to manage the types of potential the public body has identified is critical. Below are some examples of different models:

4. Different Models for Exploitation

4.1 The Licensing model

This is the easiest and most appropriate to the culture of a public body. Great support and superb examples exist for data licensing (eg the Office of Public Sector Information and its Information Fair Trader Scheme). Clean, compliant and allowing for “a reasonable return on investment” the data licensing model can be extended to service other types of IP licensing (e.g. software inventions) with greater pricing flexibility than pure data sales.

4.2 Partnering

This can take a variety of forms and may have take into account different IP asset types. The Office of Public Sector Information outsources the servicing of all its licensable IP content to a single provider. However, the asset types are similar and the contract is carefully controlled and subject to open and regular procurement. Data must not be exclusively licensed, but other forms of exclusivities, provided they do not inhibit the functioning of a free market, and are allowable. Royalty based arrangements allow for greater potential returns than fixed fees. In essence this can practically take the form of a gain-sharing arrangement where the risks and rewards of any exploitation route are partitioned between the public and private sectors.

4.3 Commercialisation within the organisation

This is never the most effective means of deriving commercial asset value, but sometimes a pragmatic response to internal culture, the moderate expectations of the prize and the timeline. Slowly but surely many of the fundamental building blocks required to drive efficiency are brought into place – a chart of accounts, service level agreements, IP asset lists, balance sheet valuation methodologies etc.

4.4 Commercialisation outside the organisation

These are best exemplified in the Trading Funds model, though other examples exist of New Companies owned 100% by public bodies. It would be interesting to see how this might be affected by the present Treasury backed review by the Shareholder Executive of the Trading Funds model. For many this model exists as a staging post towards exit from the public sector.

Each of the above models – and there are other variants – has strengths and weaknesses appropriate to the situation. There are plenty of best (and worst!) practice examples. Governing principles should include: “is the juice worth the squeeze?” i.e. what is the size of the prize? ; open procurement pathways should be followed to ensure Value For Money and to demonstrate transparency.

5. Conclusion

Whichever route is followed, it is becoming increasingly clear that central Government is doing all it can to remove the obstacles and perception of difficulty which lies around the whole question of IP asset utilisation. Public bodies themselves will have to make the judgement of whether they are doing enough themselves to realise the value of the intellectual property assets which they have accrued as part of their public task.

6. Case Study

Situation analysis

The public body suffers an 8% drop in real terms in grant in aid and is forced to seek other ways of off-setting expenditure. In addition to its cost cutting exercises, the NDPB decides to explore Wider Markets initiatives around its softer intellectual property and skills assets (its physical assets having already been subjected to a previous review).

What did they do?

The NDPB commissioned a top level review of their IP assets.

Sufficiently encouraged by this, the NDPB sorted out the vires issues with its parent Department around its ability to generate and retain revenues.

It then engaged experienced IP assets commercial consultants who had a profound understanding of the compliance issues from a public sector point of view, plus market expertise in the markets in which they operated. They received back a realistic top level view of what was achievable and what was not.

Next step was about choosing the most appropriate models for the types of IP to be exploited.

The organisation refined its data licencing operation, engage the support of the regulator (OPSI) in ensuring that its pricing and supply policies were seen to be compliant. It now trades efficiently and profitably (Treasury allows a “reasonable return on investment”) and, just as importantly, uncontroversially.

It began to add licencing arrangements based on its extensive development over the years in software inventions and processes developed which were of potentially worldwide application in its field.

It established an asset registry to record all of its intellectual property assets (software inventions, data etc) and expose them to public view. It began the process of sorting out its IP rights, and especially all those MOUs (Memoranda of Understanding) with other public bodies which were vague and had unresolved ownership issues.

Finally, the organisation tackled the fundamental issue of skillsets in an imaginative and flexible way. Beginning with experienced consultants, they migrated to a model of establishing a roster of retained specialists, committed to the organisation, but able to support diverse projects requiring different skillsets and backgrounds. And they gently pushed for the implementation of the sorts of disciplines necessary to support and sustain such activities (internal service level agreements, chart of accounts etc). But which also have an organisation-wide application.

Assessment

The organisation is mid-way through its transformation process. Because compliance was built into what it did, the public sector culture was more reconciled to what was happening and indeed began to contribute to the Wider Markets initiatives more positively than before. It is making a “reasonable return on investment” in its licencing activities and increasing the efficiency of its intellectual property assets. By doing so too, senior managers believe that the introduction of Wider Markets is an important part of the cultural transformation to make public sector culture more businesslike and responsive to markets.

This is just one model, one appropriate to this particular public body, and one which illustrates successfully many of the points we made in our *Governing Thoughts on Practical Implementation* section above.

About Shane O'Neill Associates

Shane O'Neill runs a specialist interim management and strategic consultancy practice which focuses on public sector information issues.

In January 2008 he was appointed by Minister Michael Wills to the Advisory Panel on Public Sector Information , the Non Departmental Public Body which advises Ministers on information matters.

His company had advised and had practical hands on experience of commercialisation initiatives in both central Government departments and a variety of NDPBs.

Always, there is a trade off in Dr O'Neill's philosophy between "the three Cs" – Commercialisation, Compliance & Culture". Shane O'Neill Associates sits at that convergence:

