



## UK to foster the next Google? Sorry, we haven't got an app for that

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Will the next Google come from Clacton-on-Sea? With the UK's current IP laws, it's highly unlikely

With the wealth of technology talent in the UK, you'd think the flash of inspiration leading to the next Google is as likely to come from this country as it is from the US. Sadly, the intellectual property system to support the kind of enterprise such an idea will probably emanate from is not in place here – yet.

The Hargreaves report on UK intellectual property law recommends some forward thinking steps to make IP protection more accessible while updating our antiquated copyright system, and it provides great insight into the thinking of those on both sides of the front line – the innovators and the legal system.

However, the report missed a great opportunity to modernise the UK regime more radically, appearing to recommend that when it comes to protection for computer-related patents in the UK, the status quo is fine for now.

In my view, the way we approach protection for the software industry needs to be radically overhauled and simplified to ensure the UK becomes an ideal location for technology entrepreneurs. Until we address this issue, we will never foster the next Google.

Take, for example, two potentially "changing life as we know it" applications – one being developed in Colorado and one in Clacton-on-Sea.

In America, the first thing the ideas men do is head for the IP corral – the simpler and more open IP policies allow them to protect a new idea in their home market with relative ease.

This opens up routes to achieving investment, and from there, to developing their home market before turning to markets abroad. And, as things stand, they probably won't find too many barriers preventing them launching their new app in the UK.

Meanwhile, according to Hargreaves, the software developer with the big dreams in Clacton is more worried about tackling the array of regulations outside IP that face every new UK startup, than about protecting his own creation. This is particularly so given the general misconception that software is not patentable.

Even if it does occur to him that the first question a potential investor will ask is "how will you stop competitors from stealing the idea", discovering he is likely to face great difficulty getting patent protection on his own doorstep – because the UK patent system isn't built to apply comfortably to his app – is likely to put him off entirely.

Initially, both developers will launch their products in their respective home markets and are unlikely to be sued (at least while they remain below the radar). However, as sales grow, competitors will notice and quickly try to compete. The UK software developer will have little to stop competitors developing competing apps and his market share will soon be eroded, due to the established reputations of the larger developers.

What's more, while it may be difficult for the small developer to protect his app because of the UK Intellectual Property Office's isolated view of software inventions, larger companies can afford to fight for the deserved protection – meaning the little guy is also at risk of infringing the competitor's patents and will have nothing to negotiate with.

In contrast, the clearer and more liberal patenting policies in the US mean the Colorado developer will have his own patent protection that he can use to protect his home market, either to fend off competition or as a cross-licensing tool if he does get sued.

Hargreaves refers to the "patent thickets" in computer-implemented ideas which may prevent some from entering the market. But the risk of being sued is just one of many faced by companies launching new products and there are, of course, strategies to minimise this.

What is clear is that without patent protection, a software developer can do very little to prevent competitors developing competing apps that will take away from their market share and ultimately limit their growth.

The sad truth is that while the UK has the creativity and technological know-how to produce the next Google, the relatively smooth road to patent protection in the US isn't mirrored here – and that's a stumbling block that will hinder the growth of the UK software developer.

- *Alan MacDougall is a chartered patent lawyer and partner at Mathys & Squire*