

Submitted to: Australia Productivity Commission

Response to: Intellectual Property Arrangements: Productivity Commission Draft Report April 2016

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The report states, *“In contrast, in the software industry, some studies conclude that patents provide little, if any, boost to innovation. More generally, in industries where the speed of technological change is fast moving, innovators tend to rely more on market-based arrangements, such as first-mover advantage, than IP protection.”*

As the founder of multiple Australian-based technology companies I can say that patent protection is a serious motivator for innovation. Patent protection will not be a “boost to innovation” for large corporations with no creative talent and vested interests to protect. Nothing needs patent protection when nothing is invented. Here invention is a threat. The banking and finance industry for example is currently under threat from fintechs. Successful fintechs can displace industries that currently shackle the economy. However real success will require fiercely independent fintechs with access to capital.

Creative innovators are not likely to be found in a large corporation with a fuzzy mission statement, with a board and CEO paid millions of dollars for following road maps.

Creative people often start capital poor. Capital is needed to make a bright idea into a commercial success. Anyone who thinks that a patent will not help raise capital has not tried it or has nothing to patent.

Yes *“first-mover advantage”* is important. But it’s hard to move without capital. Consider a web-based innovation that needs to be market tested with a cheap prototype before serious investment can be attracted. With no patent the idea is disclosed before a real first-mover advantage is gained. Others with the capital could easily exploit the idea leaving the inventor with nothing.

The US and many countries allow software patents in some capacity. Software inventors need to think global. Even if Australia provides no patent protection there is little point thinking global if a competitor secures the relevant patents in the major markets. If there is no patent industry in Australia inventors will need to look to the USA or else where to find a good patent attorney. This will not help with building an innovation culture in Australia.

Ralph McKay