From:	Chuck Neuenschwander - NA
To:	roi
Cc:	NIST Director
Subject:	Comments: Draft Green Paper
Date:	Wednesday, January 30, 2019 11:51:16 AM

Allow me to add my appreciation to that of others you must hear from for your efforts to tackle the issue of modernizing calcified rules and practices for dissemination of government sponsored innovation. I wish you the best of luck in moving the needle and I hope to help in some small way.

In my earlier submission ("an Inconvenient Problem") I touched on the lack of a cohesive strategy to deal with instances of unauthorized use of the fruits of innovation from government sponsored and paid-for research. Chastise me if I am wrong, but it appears little or nothing is said in the report on this subject. For instance:

- The words infringe or infringement can be found four times in the document
  - Page 26. "What We Heard: America Invents Act" – a generalization about the ability to receive an injunction.
  - Page 27. "Government Use License; Background" – a factoid about protections for the government's use of patented technology.
  - Page 39. "Software Copyright; Background" – a brief tutorial on copyright law as it relates to software.
- "Unauthorized" appears three times
  - Page 26. "What We Heard: America Invents Act" – again, injunction.
  - Page 92. "Federal IP Data Reporting System(s); Background – the need to properly secure proprietary information.
  - Page 104. "Strategy 5; Introduction" – balancing export laws and openness.

Here is a concern. I can accept that the issue I address can be outside the scope of this initiative. It is an inconvenient problem, but it is important for the stewards of government funded technology to deal with it. The proposal is not to immediately solve the problem, but to study it and propose policy if it is determined that the issue is large enough to warrant doing so.

To decide the value of pursuing this matter, please consider:

- How can there not be a policy – even if it is "turn a blind eye" – to guide all labs?
- If there is a problem, does anyone know how large it is?
- Is there no (muted?) clamor in the labs that, at least in the most egregious instances, there needs to be more enforcement?
- What is the incentive for someone in industry to enter into a paid-for tech-transfer license if they know they can get it free because they see others use government funded innovation without paying a royalty? What little royalty that exists might dry up. Further, notwithstanding the export control issue, outright infringement by foreign parties competing with industries in the U.S. is real and what is the policy and strategy for that?
  - If a policy is chosen that provides all transfers of technology to be royalty free, so a license is immaterial, does this apply to an international high-tech company in Asia?
- What is the impact on scientists and engineers seeing peers in industry whose patents

are defended (and maybe the inventor rewarded) while their patents are infringed but no one cares? After all, Strategy 3 for the L2M CAP Goal is to "build a more entrepreneurial R&D workforce" and unsanctioned use of inventiveness throws cold water on putting in the effort to be entrepreneurial.

I know firsthand the reticence of many to address this matter; the push pull of dissemination vs protection. Because it is unknown whether there is a good answer, the tendency is to bury it, like the crazy uncle in the closet, and pretend it does not exist. That is wrong.

In conclusion, I believe: 1) the report needs a section that includes a discussion covering what is written here and 2) funding should be provided to create a study team to analyze the issue and make recommendations.

Good luck with your initiative.

My best regards,
Chuck Neuenschwander

Charles R. Neuenschwander
President

Neuenschwander Associates
16201 Shadybank Drive; Dallas, TX 75248
crn@neuenassoc.com; 214.542.0510

This email may contain confidential or privileged material for the sole use of the intended recipient. Any review or distribution by others is strictly prohibited. If you are not the intended recipient please contact the sender and delete all copies.