

**Consultation on transitional arrangements for the repeal of section 52 of the
Copyright, Designs and Patents Act 1988**

SUBMISSION OF INTERESTED PHOTOGRAPHIC ARCHIVES AND DATABASES AND
PHOTOGRAPHERS AND AN INTERIOR DESIGNER IN RESPONSE
PREPARED AND SUBMITTED ON THEIR BEHALF BY
RUBINSTEIN PHILLIPS LEWIS SMITH SOLICITORS¹

18th December 2015

Rubinstein Phillips Lewis Smith
13 Craven Street
London WC2N 5PB
Tel: [REDACTED]
Em: [REDACTED]

¹ For a list of contributors to this submission please see Appendix A

INDEX

<u>Contents</u>	<u>Page Nos.</u>
Introduction	3
Topic 1	4 - 5
Topic 2	6-17
Topic 3	17-18
Topic 4	19-20
Appendix A – Names of Respondents	21
Appendix B – Additional sections from the CDPA 1988	22-25
Appendix C – C-168/09 Flos SpA v Semeraro Casa e Famiglia paras 56-62	26
Appendix D – What is “Artistic Craftsmanship”	27-28
Appendix E – Testimony of Ms Karen Howes – The Interior Archive Ltd.	29-31
Appendix F Submission from Ms Nicola Hill of Narratives Photo Agency Limited dated 15 th Dec 2015 plus submissions from	32-33
(a) Jan Baldwin (photog.)	34
(b) Polly Eltes (photog.)	35
(c) Brent Darby (photog.)	36
Appendix G –Lynne Bryant of Arcaid Images email dated 4 th Dec 2015	37
Appendix H – Gap Interior Images Limited submission dated 17 th Dec 2015	38-39
Appendix I.-Bruce Hemming (photog.) email 5 th Dec. 2015 and CV	40-41
Appendix J – Mark Luscombe-Whyte (photog.) email 5 th Dec 2015	42
Appendix K – Image of Hubert Zandberg (designer)’s home	43-44
Appendix L – Fritz Gr. von der Schulenburg – quote from “Luxury Minimal” +CV	45
Appendix M –Simon Upton (photog.) email dated 7 th Dec 2015	46
Appendix N –Alex James (photog.) email dated 9 th Dec. 2015	47
Appendix O - Andreas von Einsiedel (photog.) email dated 6 th Dec 2015	48
Appendix P - David Parmiter (photog.) email dated 6 th Dec 2015	49
Appendix Q - Derry Moore, Earl of Drogheda (photog.) submission	50
Appendix R - Tim Beddow (photog.) email dated 6 th Dec 2015	51
Appendix S - Fiona Walker-Arnott (photog.) email dated 8 th Dec 2015	52
Appendix T - Richard Powers (photog.) email dated 7 th Dec 2015	53
Appendix U- Luke White (photog.) email dated 10 th Dec 2015	54
Appendix V – Graham Atkins Hughes letter received 18 Dec 2015 -	55
Appendix W– Four illustrative images of interiors containing 3D “Product”	56-57

INTRODUCTION

The United Kingdom government has invited submissions from interested parties concerning the forthcoming implementation of EU Directive 98/71 (EC) in the Laws of the United Kingdom, and in particular that of England & Wales, which necessarily requires the repeal of Section 52 of the Copyright Designs & Patents Act 1988 ("Section 52") as amended and the decision of the European Court of Justice in Flos SpA v Semeraro Casa e Famiglia SpA². The United Kingdom government enacted Section 74 of the Enterprise and Regulatory Reform Act 2013³ and had previously anticipated a transitional period to run until April 2020. However, as the result of a challenge in the form of a request for judicial review in June 2015 as to the proposed length of the transitional period the government on 23rd July 2015 announced a further review is now proposing that the transitional period prior to implementing the repeal of Section 52 CDPA 1988 is to end on 28th April 2016 with a sell off period of pre-manufactured stocks limited to a further six months to 28th October 2016.

The effect of the proposed repeal will be to give, from the date the repeal is brought into effect, all designs formerly covered by Section 52 and thereby all products which have been produced from those designs, copyright protection for a period of the life of the author + 70 years.

Submissions are requested to address four distinct topics

1. The time of the period until repeal of Section 52 is brought into effect
2. The status of existing stocks of products of licensees and traders as at and following the date Section 52 is repealed
3. The status following the repeal of Section 52 of copyright works constituted by designs for articles more than 50 of which have been reproduced so as to be subject to the limited period of protection prescribed by Section 52, created prior to 1st June 1957; and
4. The proposed repeal of the compulsory licensing regime as it applies to such design works the copyright in which will be revived by the repeal of Section 52, as the result of the **The Duration of Copyright and Rights in Performances Regulations 1995**⁴ and EU Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society⁵

A Reply was originally required by 4.30pm on 9th Dec. 2015 but the deadline for submission was extended on 7th Dec. 2015 to 4.30pm on 23rd Dec. 2015

² **Case C-168/09** - REFERENCE for a preliminary ruling under Article 234 EC from the Tribunale di Milano (Italy), made by decision of 12 March 2009, received at the Court on 12 May 2009, in the proceedings **Flos SpA v Semeraro Casa e Famiglia SpA**, intervener: **Assoluce –Associazione nazionale delle Imprese degli Apparecchi di Illuminazione**

³ On 25th April 2013

⁴ S.I.1995 No. 3297

⁵ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society

TOPIC 1

- **What will be the impact of a transitional period of six months, both costs and benefits?**

In relation to the respondents making this submission, please see eg: Appendices F, G, I and M post

- **Should the six months run from the start date of this consultation or from a different date, and if different, why?**

The six month period should not begin at all in respect of 2D representations captured in photographs or artworks of 3D products. If it has to start, it should not start until the completion of the UK government's consultation.

- **Should a longer or shorter transitional period than six months be adopted, and if so, what are the costs and benefits?**

The period should be not less than one which expires at the earliest on 28th April 2020 for 2D representations of 3D products and or their underlying design documents. That a different and shorter transitional period should exist for ceasing to place 3D copies of the newly protected 3D products is entirely consistent with the above submission as the real harm done to the owners of rights in 3D products which have ceased to be protected by the current term provided by Section 52 is the unauthorised distribution of cheap 3D replicas in the market competing against sales of the 3D products made by the owners of the design right originally provided by Section 52.

The owners of the proposed new copyright in 3D products (and their underlying design documents) will not be prejudiced by the existence of 2D photographic representations. The current position is that designers and owners of design rights in 3D products, which usually are not works of artistic craftsmanship, is that they enjoy a symbiotic relationship with photographers of their 3D products which are featured in publications, as it gives the designers and owners much needed free publicity, especially when used in an editorial context. The more prominent the photographer and the publication in which the photographer's image appears, the more kudos attaches to the 3D product if it indeed is noteworthy. Currently there has been no insistence by individual design rights owners on express licences to permit 2D representations of 3D products or upon on any specific criticism and review. The mere fact of inclusion in collocations which include the 3D products of the design right owners which helps to promote public awareness of those products is customary. This is even more the case when featured in 2D images of interiors designed by top designers for, or acquired and used by prominent individuals who agree to have their homes photographed to allow the public to see their taste. In those cases, the 3D design right owners routinely and customarily permit 2D representations of their 3D products to be reproduced without objection.

As is apparent below, the value of the free publicity, promotion, and keeping the public aware of such 3D products, especially when their prime marketing period has already passed, for such 3D design rights owners should be sufficient recompense. An aggressive regime of requiring photographers and publishers to pay significant licence fees in respect of 2D representations of the 3D products and their underlying design documents would result in images which have contained

such representations simply being buried and the designs being consigned to a speedily forgotten past. The longer period proposed above, and which was originally proposed by the UK government to be provided for the transitional period in respect of 2D representations, is an entirely proportional and balanced response to the risk of negligible harm to the proposed new copyright owners on the one hand, and the very significant and damaging cost threatened by this retroactive restriction upon photographers and their agents and subsequent utilisers of 2D representations of 3D products.

It is respectfully submitted that the UK government, by setting the transitional period to expire in April 2020, originally correctly applied the proportionality and balancing exercise mandated by the European Court of Justice in Flos SpA v Semeraro Casa e Famiglia SpA in respect of 2D representations of 3D products (and their underlying design documents). However it may have erred in failing to distinguish between the economic harm done by 2D representations on the one hand and 3D replicas on the other hand to owners of the new copyright in 3D products. Had it done so it would have originally set a shorter transitional period for manufacturers, distributors and sellers of replicas of such 3D products. Further and more detailed discussion is set out in Topic 2 below.

• **Are there any other issues which the guidance should cover which are not listed?**

YES –

1. Section 62 Copyright Designs & Patents Act 1988⁶ should be amended:-

1.1 to include alongside the categories of works already protected by copyright which are installed in a public place or which are buildings visible from a public place, and which can be photographed, painted etched or sketched without a licence from the owner of any design upon which the product is based, without attracting liability for infringement of copyright, the following

- (a) Street furniture and their component parts (eg: street lighting, signage, bus shelters; bollards, railings, gates, etc) ⁷
- (b) Temporary structures such as stages, proscenia and rostra
- (c) Vehicles of all descriptions
- (d) Patterned textiles or other articles of clothing such as hats and accessories such as bags, belts and jewellery, being worn by members of the public going about their business in public places

1.2 That the exemption in relation to the foregoing categories of works in which copyright may subsist shall not be dependent on any degree of permanence in the public location, when photographed, painted or sketched.

Also see Point 2 at Page 17 post.

⁶ See Appendix B; pp24-25 post

⁷ Ken Howard OBE RA is well known for depicting traffic lights and other street furniture in his street scenes; see <http://www.arctotis.net/kenhoward.co.uk/Ken%20Howard%20Exhibitions.htm>

TOPIC 2

- **Do you agree that the Government is right not to distinguish between two- and three-dimensional copies?**

NO.

The UK government has written the following amongst other matters in its draft Impact Statement forming part of the Consultation Paper, which it currently proposes to put before the Minister of State to sign off the regulation to implement the repeal of s.52.

“Other key non-monetised costs by ‘main affected groups’

UK businesses that manufacture, assemble, import or sell unlicensed copies of artistic⁸ works face transition costs (investment in new designs, factory retooling, marketing, agreeing licences with rights holders, expenditure on research and legal advice, costs from breaking contracts early). There will be costs to some creators and users of two-dimensional images affected by the proposed change as they incur costs of licensing and adapt business plans. There may be welfare costs to consumers arising from reduced product choice.”

And

“Other key non-monetised benefits by ‘main affected groups’

Copyright owners and exclusive licensees of designs benefit from an extended term of protection. These groups may benefit from reduced competition from unlicensed copies; if a licensing system develops, rights holders will receive royalties when copying is permitted. A long-term indirect benefit to the design industry could arise if consumers seek other designs as unlicensed copies disappear from the market.”⁹

The UK government has also formed the view expressed in the Consultation Paper that

“The Government believes that this applies equally to two- and three-dimensional representations of the affected artistic works, as no distinction between these was made in Flos.”

The UK government’s justification for this view is, it is respectfully submitted, fallacious, as the EUCJ in **Flos SpA v Semeraro Casa e Famiglia SpA** was not called upon to address any question of two dimensional infringement of the complainant’s 3D realisation of its design drawings. It was dealing with a straight 3D replica of the complainant’s classic Arco light. As the matter only concerned an infringement by means of a direct replica it was not called upon to make any determination in relation to a two dimensional representation which amounts factually to an indirect or partial copying.

The second ruling expressly provided:

“Article 17 of Directive 98/71 must be interpreted as precluding legislation of a Member State which – either for a substantial period of 10 years or completely – excludes from

⁸ Contrast the use of “artistic” works here with the criteria for works of artistic craftsmanship used elsewhere in the Consultation Paper as a suggested method of avoiding conferring protection on 3D products which lack any artistic merit.

⁹ Extracted from UK government Consultation Guide Summary and Analysis p3

copyright protection designs which, although they meet all the requirements to be eligible for copyright protection, entered the public domain before the date of entry into force of that legislation, that being the case with regard to any third party who has manufactured or marketed products based on such designs in that State – irrespective of the date on which those acts were performed.”

The EUCJ expressly used the word “products” with reference to Article 17 of EC98/17/EC, and that directive defined products as

Article 1(b)

‘product’ means any industrial or handicraft item, including inter alia parts intended to be assembled into a complex product, packaging, get-up, graphic symbols and typographic typefaces, but excluding computer programs.

That definition does not cover or include a photograph, painting or sketch. Nothing would have been easier than for the Article to have included reference to those two dimensional representations but it did not. That is because none of a photograph, sketch or painting would be regarded as an “industrial or a handicraft item”.

When reference is made to Directive 2001/29/EC, the Parliament and Council said in the Preamble at Para (20)

“(20) This Directive is based on principles and rules already laid down in the Directives currently in force in this area, in particular Directives 91/250/EEC(5), 92/100/EEC(6), 93/83/EEC(7), 93/98/EEC(8) and 96/9/EC(9), and it develops those principles and rules and places them in the context of the information society. The provisions of this Directive should be without prejudice to the provisions of those Directives, unless otherwise provided in this Directive.”

That Directive 98/71/EC was intended to address replication of three dimensional products is, it is submitted, reflected by its omission from the specifically cited directives in Directive 2001/29/EC even though EU Directive 98/71 preceded Directive 2001/29/EC by just over three years.

Indeed in its judgment the EUCJ made reference to the legislative background to the complaint before it, referring to EU Directive 98/71/EC and to Articles 1 and 2 of EU Directive 2001/29/EC¹⁰. On that basis the EUCJ addressed the matter before it which only involved a direct copy by replication. It made no determination in relation to issues of indirect copying in the context of Article 17 of EU Directive 98/71; and it is not open to the UK Government to allege that the silence of the EUCJ amounted to a determination in relation to a two dimensional representation, or two dimensional copying, or indirect copying, or what constituted indirect copying of a three dimensional object. The UK government should recognise the vice which was being considered by **Flos SpA** –

“On 23 November 2006, Flos brought proceedings against Semeraro before the Tribunale di Milano (Milan district court) complaining that Semeraro had imported from China and marketed in Italy a lamp called the ‘Fluida’ lamp, which, in its submission, imitated all the

¹⁰ **Reproduction right**

Member States shall provide for the exclusive right to authorise or prohibit direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part:

(a) for authors, of their works;

stylistic and aesthetic features of the Arco lamp, an industrial design in which Flos claimed to hold the property rights.”¹¹

In its Policy Objective section of the Consultation Paper at p.6 the UK government’s cited objection for doing nothing – Option 0 – is based entirely on the alleged economic harm done by 3D reproductions of 3D products generated from 2D designs.

In discussing Option 1 the UK Government at Page 7 of the Policy Objective states:

“This option allows rights holders to assert copyright protection of their artistic works after the 6 month transition period has elapsed, while limiting the period in which businesses that currently manufacture, import or sell replicas of artistic works would be able to adjust their business model and product range. This period assumes that affected businesses have already started to change their business model given the notification of the impending change of law via the Enterprise and Regulatory Reform Act 2013 and the now revoked Enterprise and Regulatory Reform Act 2013 (Commencement No.8 and Saving Provisions) Order 2015.”
(emphasis supplied)

“For example, one rights holder said that they incurred losses (no figure was provided) as their market share was lower in the UK compared with other EU countries due to replicas being available in the UK.”
(emphasis supplied)

“The business that provided its estimate of potential gain in the EU (in “Option 0”) estimated that annual loss from replica sales in the UK exceeded £17m.”
(emphasis supplied)

“A number of other designers in the UK responded to the consultation and claimed that they would benefit from the change in law as they would not incur costs to protect their own work and would likely make gains due to not losing revenue to firms making and selling copies of [their] products. No further evidence was provided and the Government is therefore unable to assess this benefit.”
(emphasis supplied)

“One EU-based rights holder has estimated that it could sell 3 times more of one of its products if 8 replicas were absent in the market.”
(emphasis supplied)

Long term benefits to design industry

“Once the change in law comes into effect, the supply of replicas in the market from the UK should cease, and selling replicas of artistic designs will no longer be lawful. The benefit of a lack of availability of unlicensed copies of artistic works is that they may drive the development of new works and consumers to consider original works of designs that are not yet as well-known and popular as the licensed copies/authorised originals.”
(emphasis supplied)

¹¹ Case C-168/09 Flos SpA v Semeraro Casa e Famiglia SpA, intervener: Assoluce –Associazione nazionale delle Imprese degli Apparecchi di Illuminazione:- Para 20

From what the UK government records in its Consultation paper it appears that there was no complaint about photographs of 3D products based on 2D design artwork; and certainly no recital of any economic loss being caused to such complainants from the use of photographs in books, magazines or other publications which promoted the reputation and awareness of such designs

In the interest of proportionality it is incumbent upon the UK government to recognise that no determination was actually made by the EUCJ in respect of two dimensional photographic representations. It should place that in the balance of the economic harm which would be suffered by those owners of copyright in designs for three dimensional products, when photographs expressly had not been included within the ambit of EU Directive 98/71/EC. It should be acknowledged that there is good reason to differentiate between replication of consumer goods which constitute products in three dimensions of a unit which can be mass produced and retailed for significant sums, and representation in a two-dimensional photograph, the reproduction value of which, reflecting its representational nature of a quotidian article is necessarily modest, or that of a painting or a sketch which is not in itself mass replicated. The proportionality question in relation to the underlying new design copyright becomes of more significance still where the 3D product is one of a number of 3D objects represented within the 2D image.

It is barely conceivable that consumers would benefit from the proposal to impair creativity and sterilise information, by promoting a copyright regime to protect designs for commonplace and utilitarian products, for an unconscionably long period. This will only remove from the public domain a seminal canon of design, which will no longer be available for use by new designers to cannibalise parts of those designs in producing futuristic new designs. The UK design sector in particular will be vastly impoverished by that sterilization – and for what gain ? And consumers will be impoverished, as books which are currently acquired by academic institutions to fill their reference libraries, both physical and on-line, will no longer be able to acquire them. Those books of quality will simply not be produced from within the UK going forward. UK Design will be under a serious threat of impoverishment. And that's not just in design; sectors dependent on design include a whole swathe of lifestyle and necessity sectors, all of which require source materials to inspire, and encourage development in the young – art has ever been derivative and cumulative. From cars to shoes – the current regime arrived at in the UK which gives limited protection to designs has promoted and encouraged a thriving design industry which is regarded in many quarters as the envy of the world – in particular in garments and footwear.

Cost is not just measured in immediately quantifiable £s and pence; but in longer term and more damaging impoverishment of the rich cultural diversity in the United Kingdom. That in turn will impact on this country's ability to flourish commercially in sectors in which it traditionally has been a leader in innovation and enterprise. What is being discussed here is a very long way from cheap Chinese replicas of a classic Arco lamp design. And this is not to argue that replication of classic designs should be encouraged where it constitutes copying like for like.

The potential diversity of three dimensional utilitarian products governed by their function is far more constricted than the diversity of a language, or of a visual palette. To apply Section 17(3) of the Copyright Designs & Patents Act 1988¹² to categories of utilitarian three dimensional products to

¹² “ In relation to an artistic work copying includes the making of a copy in three dimensions of a two-dimensional work and the making of a copy in two dimensions of a three-dimensional work.”

extend copyright protection beyond a limited period of protection against two dimensional copying, to life of author and seventy years is likely to stifle creativity. So be it. But such a step is counter intuitive, based on generations of experience, and the UK government need to apply this with a light hand, not a battering ram. Taking those points into account is part of the UK government's duty to implement s.74 of the Enterprise and Regulatory Reform Act 2013 proportionately and before so doing to carry out a balancing exercise to assess whether it is acting proportionately.

As part of the exercise to be undertaken in pursuit of achieving a balanced in the interests of proportionality, the UK government should heed paragraph 35 of the preamble to EU Directive 2001/29/EC which provides as follows:

“(35) In certain cases of exceptions or limitations, rightholders should receive fair compensation to compensate them adequately for the use made of their protected works or other subject-matter. When determining the form, detailed arrangements and possible level of such fair compensation, account should be taken of the particular circumstances of each case. When evaluating these circumstances, a valuable criterion would be the possible harm to the rightholders resulting from the act in question. In cases where rightholders have already received payment in some other form, for instance as part of a licence fee, no specific or separate payment may be due. The level of fair compensation should take full account of the degree of use of technological protection measures referred to in this Directive. In certain situations where the prejudice to the rightholder would be minimal, no obligation for payment may arise.”

(emphasis supplied)

According to the EUCJ in **Flos SpA v Semeraro Casa e Famiglia SpA**, the EU Directive does not require member states to apply a broad brush equation between the position of those who manufacture replicas with those who make representations from original 3D specimens by creating 2D images. The measures proposed in each circumstance have to take account of the realities and the differences and be correspondingly proportionate – the one consisting of replication of the 3D product, and thereby a direct representational copy of the design drawing, and the other consisting of a representation of a part of the 3D product which is deemed to constitute indirect copying of a design drawing - . The Court expressly stated

“The legislative measure adopted by the Member State concerned must be appropriate for attaining the objective pursued by the national law and necessary for that purpose – namely ensuring that a balance is struck between, on the one hand, the acquired rights and legitimate expectations of the third parties concerned and, on the other, the interests of the rightholders. Care must also be taken to make sure that the measure does not go beyond what is needed to ensure that that balance is struck.”¹³

It is not appropriate for the UK government, through apparent unwillingness to conduct the balancing exercise to achieve the required proportionality, to expose a significant proportion of the population to potential criminal prosecution and punishment, and allowing by default the circumstances to be determined by test cases.

¹³ See Appendix C : Case C-168/09 Flos SpA v Semeraro Casa e Famiglia SpA, intervener: Assoluce –Associazione nazionale delle Imprese degli Apparecchi di Illuminazione:- Para 57

Infringement of copyright is a criminal act¹⁴. That goes well beyond what is “*necessary for that purpose*”. A simple repeal of Section 52 without corresponding clarification and definition of the boundaries will result in the measure going “*beyond what is needed to ensure that that balance is struck*”

Repealing legislation and thereby creating a new copyright in 3D product (and the underlying design documents) which requires each photographer, and each subsequent exploiter of an image which contains in it a depiction of a 3D product, to calculate which of the representations in the image may satisfy, or fail to satisfy, the exceptions provided by the criticism and review¹⁵, current news reportage¹⁶, and incidental use¹⁷ exceptions may result in exposure to criminal prosecution and sanction, alternatively an exposure to additional statutory damages¹⁸ - precisely what the UK government seems to be intent on doing if what it has written in the consultation paper is to be given credence :-

“However, it should be noted that users and creators of 2D images of artistic works may be able to benefit from existing copyright laws (i.e. copyright exceptions) that allow the use of a work for the purposes of quotation, criticism and review, or for the incidental inclusion of copyright work in another artistic work, film or broadcast.”

(emphasis supplied)

If the photographer or subsequent user miscalculates, an offence could well have been committed since taking a calculated risk will likely result in the risk taker being accused that he ought to have known that he was committing an offence, if in taking the risk, he gets it wrong. And he will not find out whether he has got it wrong until after a trial.

A further vice in the UK government’s approach is its failure to address the issue of comment through a visual representation – since “quotation” in its ordinary meaning does not apply to the simple reproduction of an image – and if the UK government intends by the “quotation” reference to refer to the “substantial part” test it is difficult to envision how a 2D representation of a 3D product (and thus the underlying design documents) is going to be capable of being an insubstantial part, given the provisions of s.17(3) Copyright Designs & Patents Act 1988.

Reference is again made, in the context of the risk of individuals committing acts which could be asserted to be criminal, to the urgent need for an amendment of s.62 Copyright Designs & Patents Act 1988 as proposed under Topic 1 supra.

This is a plainly unsatisfactory position for, in particular, British Nationals to be left in by the UK Government’s failure to comply with the proportionality requirement and balancing act required by the EUCJ in **Flos SpA v Semeraro Casa e Famiglia SpA**. Clarification on these points is urgently needed from the UK Government before a whole swathe of individuals and businesses are exposed to condemnation for criminal behaviour. A proper transitional period until April 2020 will give the UK government adequate time to carry out necessary and badly needed amendments and or

¹⁴ **Section 107 Copyright Designs & Patents Act 1988** – actual knowledge or having reason to believe that an article is infringing is sufficient to expose the infringer to a penalty of up to ten years imprisonment.

¹⁵ Section 30(1) Copyright Designs & Patents Act 1988

¹⁶ Section 30(2) Copyright Designs & Patents Act 1988

¹⁷ Section 31 Copyright Designs & Patents Act 1988

¹⁸ Section 97(2) of the Copyright Designs & Patents Act 1988

clarifications of the Copyright Designs & Patents Act 1988 to ensure that it has acted proportionately and has struck the right balance between competing interests.

- **Do you agree that applying the depletion period only to those contracts entered into prior to the start time and date of this consultation (is) appropriate, and what are the costs and benefits of this?**

These Respondents do not respond to this question. Their position is made clear from the responses to the other questions contained in TOPIC 2 .

- **Are there any other factors that the Government should consider for the depletion period?**

YES. The UK Government should consider whether a one-size-fits-all depletion period applied to all categories of products complies with its obligation to act proportionately and to carry out a balancing exercise for differing third parties whose products have very different shelf lives. The temptation to which the UK government appears to be succumbing is to avoid work (which could be done reasonably and easily) ascribing a range of shelf lives to differing classes of products. From its Proposal Paper the UK Government appears to be ignoring the differing losses of differing categories of third parties previously entitled whose entitlements will be truncated by the entry into force of s.74 Enterprise and Regulatory Reform Act 2013. The UK government would appear to want to cut a corner by its proposed imposition of a one-size-fits-all depletion period across the board for all categories of product (even assuming photographs, paintings and sketches are “Products” as defined in EU Directive 98/71/EC). Take a practical example. A number of manufactured replica chairs can be sold down within a relatively short period. Those chairs themselves , as replicas, would have no inherent copyright entitlement of their own prior to or following the repeal of Section 52, being slavish copies of the original designs. Photographs however do not fall within the same ambit. The recorded images are unique artistic compositions which may contain a representation of a 3D Product in them, but the shelf life of such a photograph is the life of the author + seventy years.

It is submitted that a failure to differentiate between the categories of Product on the one hand and 2D images not included within the definition of “Product” on the other hand will result in the UK government failing to act proportionately. It would be manifest evidence of a failure to carry out an appropriate balancing exercise in accordance with the mandate of the EUCJ in **Flos SpA v Semeraro Casa e Famiglia SpA**

Do you agree that the period provided for depletion of stock is proportionate?

NO – the shelf life of photographs is life of author and seventy years. The UK government’s measure will deprive many photographers (whose photography has focussed on design, taste, fashion, style and interior design) of the economic benefit of their photographs of and or containing images of 3D objects, the design drawings for which are to attract copyright protection upon implementation of the repeal of Section 52, by rendering them uneconomic to exploit. Those images will lie sterile in their archives or those of their agents, and publishers will not be able to exploit backlist stocks of works which contain those images. The proposal to sterilise the rights of photographers by making the fruits of their labour uneconomic after a long struggle to give photographers the benefit of their creativity which was achieved in 1956 will result in one category of economic harm being inflicted disproportionately on Photographers in order to give another

category of (new) rights owners an entitlement to recover licence fees in respect of images to which the only contribution by that rights owner has been to manufacture many years in the past a utilitarian 3D product for which the right owner has already received a full remuneration at the time of manufacture and/or sale.

The same point applies to visual artists who have incorporated in their paintings representations of products manufactured from to-be-protected design drawings; the fact that depictions of those 3D products appear in their paintings cannot be said to be incidental under any circumstance. Indeed their works will no longer be able to be reproduced by museums or collections without the artists being required to pay licence fees determinable at the whim of a furniture manufacturer, or the manufacturer of a traffic light¹⁹

- **Should a longer or shorter depletion period than six months be adopted, and if so, what are the costs and benefits?**

YES – FOR 2D REPRESENTATIONS

A longer period as originally projected by the UK government, until at the earliest April 2020, should be contemplated to allow for managing stocks of 2D images which embody not direct copies of the design artwork but at worst, incomplete representations of a 3D Product, amounting to indirect copies by reason of the representations being 2D images of the realised 3D product in part; it being impossible to capture or “copy” the entirety of the 3D product in a 2D image.

If 2D representations of 3D products are to be included in the review, a recognition has to be made of the reality of the absence of any significant economic damage caused by photographs taken of Products to the rights of owners of design copyright in industrial design. That period should allow the UK government to provide for a compulsory licensing scheme which will encourage both photographers and the (new) copyright owners to arrive at sensible licensing arrangements in respect of past generated images which are newly subjected to entitlements of 3D product copyright owners

It is apparent that the UK government recognises in reality that the principal economic vice, which has to be addressed, is 3D replication of 3D works. The UK government however seeks to equate the economic vice of 3D replication with 2D representational copying, and then seeks to escape a want of intellectual rigour by throwing reproducers of 2D images onto the exceptions from infringement of copyright.

The UK government is required to carry out a balancing exercise – and to act proportionately – before allowing a repeal without making a consequential adjustment of the copyright legislation governing two dimensional copies of three dimensional products which have been subject of industrial exploitation. That requirement is recognised by Directive 98/71/EC, which the UK government has decided to enact into UK law. The ability of the UK government to carry out the balancing exercise which permits a different outcome for photographic representations of 3D

¹⁹ See again - <http://www.arctotis.net/kenhoward.co.uk/Ken%20Howard%20Exhibitions.htm> and, for example Ken Howard OBE RA's Rain Effect, in which he clearly has a fascination with traffic lights. Should he have to pay for “copying” prominently the traffic light design several times from different angles in 2D ?

products as opposed to straight replication of 3D products, is set out at Preamble 8 to EU Directive 98/71/EC:-

*“Whereas, in the absence of harmonisation of copyright law, it is important to establish the principle of cumulation of protection under specific registered design protection law and under copyright law, whilst leaving Member States free to establish the extent of copyright protection and the conditions under which such protection is conferred”;*²⁰

Again it is necessary to state the requirement of proportionality stated by the EUCJ is set out in **Flos SpA v Semeraro Casa e Famiglia SpA**

*“The legislative measure adopted by the Member State concerned must be appropriate for attaining the objective pursued by the national law and necessary for that purpose – namely ensuring that a balance is struck between, on the one hand, the acquired rights and legitimate expectations of the third parties concerned and, on the other, the interests of the rightholders. Care must also be taken to make sure that the measure does not go beyond what is needed to ensure that that balance is struck.”*²¹

(emphasis supplied)

The UK government is required further to have a proper regard as to what EU Directive 98/71/EC is intended to address; it is intended to address Products. See:-

Article 12 - Rights conferred by the design right

The registration of a design shall confer on its holder the exclusive right to use it and to prevent any third party not having his consent from using it. The aforementioned use shall cover, in particular, the making, offering, putting on the market, importing, exporting or using of a product in which the design is incorporated or to which it is applied, or stocking such a product for those purposes.

Product is defined as follows:-

Article 1(b)

‘product’ means any industrial or handicraft item, including inter alia parts intended to be assembled into a complex product, packaging, get-up, graphic symbols and typographic typefaces, but excluding computer programs

The relationship between designs used to create 3D products and copyright is set out in Article 17:-

²⁰ DIRECTIVE 98/71/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 October 1998 on the legal protection of designs - Preamble 8

²¹ See Appendix C : Case C-168/09 Flos SpA v Semeraro Casa e Famiglia SpA, intervener: Assoluce –Associazione nazionale delle Imprese degli Apparecchi di Illuminazione:- Para 57

Article 17 Relationship to copyright

A design protected by a design right registered in or in respect of a Member State in accordance with this Directive shall also be eligible for protection under the law of copyright of that State as from the date on which the design was created or fixed in any form.(emphasis supplied)

The use of the word “eligible” relates to the date from which the design was created or fixed in any form. This makes clear that the date on which retrospective protection is not mandatory but optional, otherwise the Directive would have stated that such a design “... shall be protected under the laws of that State as from”. That the Article requires copyright protection to be conferred to such extent as the member state determines is clearly stated by the last sentence of the Article:

The extent to which, and the conditions under which, such a protection is conferred, including the level of originality required, shall be determined by each Member State.(emphasis supplied)

CONCLUSION

Given the disparity in economic harm to the owners of copyrights in designs of three dimensional products posed by replication on the one hand and representation in photographic 2D images on the other hand, the UK government would be acting entirely proportionately, through conducting the balancing act mandated by **Flos SpA v Semeraro Casa e Famiglia SpA** by giving utilisers and exploiters of photographs of products made from designs protected by the copyright protection mandated in Article 17 of EU Directive 98/71/EC a significantly longer period to establish the parameters by which that class of professionals and traders can avoid exposure to criminal sanctions and additional statutory damages under the Copyright Designs & Patents Act 1988.

Allowing for current publications and the shelf life of publications which cater for design, life style, fashion and decoration, which is of perennial interest to the public, it is submitted that any such change for 2D representations of 3D product should be delayed until 28th April 2020, as was originally correctly provided for by the UK government. That at least would indicate that the UK government was attempting to act proportionately by carrying out the balancing act it is required to carry out. It would also enable the UK government to make necessary amendments to the Copyright Designs & Patents Act 1988 which these Respondents consider to be necessary and which are articulated elsewhere in this Submission.

On the other hand the UK Government may wish, and is indeed urged, to reconsider its approach to the scope of protection for registered designs, or unregistered designs, which have expired under the regime provided for and as recognised currently by Section 52 which is proportionate to the risk of economic harm posed by two dimensional partial representations of three dimensional Products. Such an approach is specifically envisaged, coupled with a compulsory licensing provision, by EU Directive 2001/29/EC ²²

²² **ARTICLE 5 - Exceptions and limitations...**

2. Member States may provide for exceptions or limitations to the reproduction right provided for in Article 2 in the following cases:

In particular, the UK Government is urged to review its commitment to require photographers, photographic libraries and publishers to acquire licences to reproduce pre-extant images of three-dimensional products as defined in EU Directive 98/71/EC in photographs to avoid the risk of having to meet awards of additional statutory damages or, worse, criminal prosecution. In that regard the proposition is addressed below in response to questions concerning the proposed abolition of a compulsory licensing scheme in relation to this category of “art” works. It is again respectfully submitted that the UK government’s currently proposed course of action does not comply with the approach mandated by the EUCJ in **Flos SpA** cited supra.

- **Do you agree that no legislative change should be made in respect of items previously purchased under section 52 CDPA? If not, what provision would you make and why?**

NO.

- 1 Under English law no artistic quality or merit is required to generate a copyright in an original graphic work– the infringement of which is going to be in issue, unless the UK Government specifically legislates by amending the Copyright Designs & Patents Act 1988, for the design documents underpinning such works which are embodied in a 3D industrially produced “product” to be both required and deemed to be works of artistic craftsmanship²³. It is not an answer for the UK government to say that those design documents which should have been registered as registrable designs and which were registered, or which were not, or which were unregistrable in any event, will probably be treated by the Courts as works of artistic craftsmanship, because they are neither three dimensional nor works of artistic craftsmanship. If the 3D item is to be treated as a work of artistic craftsmanship, without having regard to the design drawings, which are works of graphic art, which do not require artistic merit to attract copyright protection, the UK government is going to generate complete chaos in the English Courts. The UK government has a responsibility to provide certainty in this area.
2. A number of other changes to the Copyright Designs & Patents Act 1988 analogous to the right of the owner of an artwork to have it depicted in a sale catalogue for the purpose of selling it, such as a private person’s right to have his rooms photographed to appear in an estate agent’s catalogue without having to pay a fee to every rights owner asserting the new copyright entitlement in respect of most of the proposed seller’s furniture depicted in a room view appearing on the estate agent’s website; ditto for any person proposing to sell a car, or any designed item on e-bay, for example.

In addition it should be an owner’s inherent right to have items in his home photographed by specialists in interior design, or in the design media, at his whim, as owner of the items he

(a) in respect of reproductions on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects, with the exception of sheet music, provided that the rightholders receive fair compensation; ...

5. The exceptions and limitations provided for in paragraphs 1, 2, 3 and 4 shall only be applied in certain special cases which do not conflict with a normal exploitation of the work or other subject-matter and do not unreasonably prejudice the legitimate interests of the rightholder.

²³ **Section 4 - Artistic works.**

(1) In this Part “artistic work” means—

(a) a graphic work, photograph, sculpture or collage, irrespective of artistic quality,

(b) a work of architecture being a building or a model for a building, or

(c) a work of artistic craftsmanship.

has collectively purchased. He should be allowed to have his room photographed to reflect his own taste even if 3D Products protected by the new copyright are in situ, provided it is the room which is being photographed rather than specifically the 3D product itself.

It will be for other respondents to make the case about photographing individuals who are wearing jewellery or designer clothes, especially vintage clothes, either which they own or which they have hired. Wearers of jewellery and specific clothing usually specifically select those items to enhance their appearance and as such the jewellery and clothing are likely to be a significant feature in any portrait photograph.

A simple example will suffice – the personality of a portrait sitter will be conveyed to the observer by the choice of clothing and accessories which the sitter has chosen in which to be photographed. Will that clothing and those accessories be incidental to the portrait image, or important components of that image? How will the “quotation” exception mentioned by the UK government save the photographer and the publisher of that portrait? Quite simply, it will not.

TOPIC 3

- **Do you agree that Paragraph 6 of Schedule 1 of the Copyright, Designs and Patents Act 1988 should be amended to exclude items protected by copyright in the EU at 1 July 1995?**

NO: The first objection arises from the post-mortem reverter of copyright from a freelance assignee of copyright assigned by an author during his life to a third party, which was required by the Proviso to section 5(2) the Copyright Act 1911²⁴. This would lead to extraordinarily complicated clearance procedures in relation to the works of freelance designers who had had their designs exploited by manufacturers part of which required an assignment of design rights – not every designer was in the position of Clarice Cliff; given the extension of the period of protection of entitlements of an author to life of author and seventy years, this will result in the likelihood of estates having to be re-opened, uneconomically for the most part, to enable the revived new copyrights to be claimed by the rightful owners; because of the complexity, the designers will be most unlikely to benefit; those who are more likely to benefit are the manufacturers, in relation to whom the rights will probably have reverted.

The second objection is that even if the entitlements of the manufacturer were secure under Section 5 (1) (b) of the Copyright Act 1911 the manufacturer may have gone out of business, or have been liquidated without assigning the copyright before dissolution²⁵, or have been taken over and subsumed generating a long and complex chain of title; the possibilities are extensive, and a moment’s reflection will show that the task of carrying out clearance of every 3D product manufactured before 1st June 1957 and then unprotected by registered design right and which has been featured in a photograph, is plainly uneconomic. It is not an answer for the UK government to

²⁴ “Provided that, where the author of a work is the first owner of the copyright therein, no assignment of the copyright, and no grant of any interest therein, made by him (otherwise than by will) after the passing of this Act, shall be operative to vest in the assignee or grantee any rights with respect to the copyright in the work beyond the expiration of twenty-five years from the death of the author, and the reversionary interest in the copyright expectant on the termination of that period shall, on the death of the author, notwithstanding any agreement to the contrary, devolve on his legal personal representatives as part of his estate, and any agreement entered into by him as to the disposition of such reversionary interest shall be null and void, but nothing in this proviso shall be construed as applying to the assignment of the copyright in a collective work or a licence to publish a work or part of a work as part of a collective work.”

²⁵ In which case the copyright entitlement would have vested in the Crown.

suggest that such an image can simply be mothballed to avoid the problem, which is being created by a blunt and unthinking application of a principle, without recognising the realities of what is involved.²⁶

- **If Paragraph 6 of Schedule 1 of the Copyright, Designs and Patents Act 1988²⁷ is repealed or amended, are you aware of items where copyright would be conferred which never previously had copyright protection anywhere?**

YES, Apart from the list spelled out in Schedule 1 Para 6 cited above, in England & Wales in respect of some products for which sufficient originality was found to justify the criteria for registration under the Registered Designs Act 1949 and in particular Section 1B(3)²⁸. Elements of a pre-existing work which have no inherent originality may have been copied and when combined with new elements in the design, that would produce a registrable design for the purposes of the Registered Designs Act. Copying a substantial part of the work which was unoriginal but for which copyright would attract under the UK government's proposal would thereby result in copyright protection being acquired in respect of the unoriginal part of the design, whether appearing on the design document itself or in 3D form as a product.

²⁶ See in particular the impact in relation to wallpapers and fabrics etc described in Appendix S in the context of the posited repeal of Schedule 1 (6) of the Copyright Designs & Patents Act 1988, post

27. Sched 1 6(1) Copyright shall not subsist by virtue of this Act in an artistic work made before 1st June 1957 which at the time when the work was made constituted a design capable of registration under the Registered Designs Act 1949 or under the enactments repealed by that Act, and was used, or intended to be used, as a model or pattern to be multiplied by an industrial process

(2) For this purpose a design shall be deemed to be used as a model or pattern to be multiplied by any industrial process—

(a) when the design is reproduced or is intended to be reproduced on more than 50 single articles, unless all the articles in which the design is reproduced or is intended to be reproduced together form only a single set of articles as defined in section 44(1) of the Registered Designs Act 1949, or

(b) when the design is to be applied to—

(i) printed paper hangings,

(ii) carpets, floor cloths or oil cloths, manufactured or sold in lengths or pieces,

(iii) textile piece goods, or textile goods manufactured or sold in lengths or pieces, or

(iv) lace, not made by hand.

²⁸ **Section 1B - Requirement of novelty and individual character.**

(1) A design shall be protected by a right in a registered design to the extent that the design is new and has individual character.

(2) For the purposes of subsection (1) above, a design is new if no identical design or no design whose features differ only in immaterial details has been made available to the public before the relevant date.

(3) For the purposes of subsection (1) above, a design has individual character if the overall impression it produces on the informed user differs from the overall impression produced on such a user by any design which has been made available to the public before the relevant date.

(4) In determining the extent to which a design has individual character, the degree of freedom of the author in creating the design shall be taken into consideration.

TOPIC 4

• Do you agree that Regulation 24 of the Duration of Copyright and Rights in Performances Regulations 1995²⁹ should be repealed?

NO. For the reasons outlined above, if 2D representations of 3D Products are to be deemed copies of the same or the underlying design documents, the regime should be preserved for exploitation of photographs containing 2D representations of 3D products and their respective design documents for which this new copyright entitlement is being generated. A compulsory licence regime will help to prevent the new rights owner from demanding disproportionate licence fees to enable the photographer to exploit his entitlements in the recorded image which cannot be replicated. The recorded image should not simply be sterilised due to a small but nevertheless prominent part of the image as a whole being used to leverage the greater part of the realisable exploitation value of the image, at the same time with the rights owner cashing in on the reputation of the photographer who would not be likely to be compensated.³⁰

If this is not done, the photographer's entitlements in the recorded image will be rendered nugatory; and that is equally egregious as it would be to suggest that the rights owner of the design should not be compensated at all in respect of the new copyright entitlement.

• Have you relied on or been subject to compulsory licensing in the past under Regulation 24 of the Duration of Copyright and Rights in Performances Regulations 1995, and what were the costs or benefits?

These Respondents do not respond to this question.

• Would you expect to rely on or be subject to compulsory licensing in the future, and what would you expect the costs or benefits to be?

YES – As and when the new copyright entitlement comes into force for owners of expired or unregistered design right, Photographers will have to take account of a reasonable and fair reward for genuine claims to entitlement to copyright. The margins within which to operate commercially are tight for most photographers and their agents³¹ who are likely to be significantly affected by this change in the law, and the existence of a compulsory licensing regime will help to contain costs of

²⁹ Revived copyright: use as of right subject to reasonable royalty

24.—(1) In the case of a work in which revived copyright subsists any acts restricted by the copyright shall be treated as licensed by the copyright owner, subject only to the payment of such reasonable royalty or other remuneration as may be agreed or determined in default of agreement by the Copyright Tribunal.

(2) A person intending to avail himself of the right conferred by this Regulation must give reasonable notice of his intention to the copyright owner, stating when he intends to begin to do the acts.

(3) If he does not give such notice, his acts shall not be treated as licensed.

(4) If he does give such notice, his acts shall be treated as licensed and a reasonable royalty or other remuneration shall be payable in respect of them despite the fact that its amount is not agreed or determined until later.

(5) This Regulation does not apply if or to the extent that a licence to do the acts could be granted by a licensing body (within the meaning of section 116(2) of the 1988 Act), whether or not under a licensing scheme.

(6) No royalty or other remuneration is payable by virtue of this Regulation in respect of anything for which a royalty or other remuneration is payable under Schedule 6 to the 1988 Act.

³⁰ See for example Appendix W and the carpet in Image 2

³¹ See Appendices

negotiation, and the need to consult lawyers extensively over usages which will generate for the most part small sums.

When it is considered that photographers and their agents carry the risks of clearing images for use, and publishers usually seek full indemnities including liability for damages (which could include additional statutory damages, and legal costs, which in this sector reflect the specialisms of the practitioners in this field), the availability of a compulsory licence system will help to minimise the level of risk of getting caught unawares.

It may also result in a rights owner, once it becomes aware of the proposed use, being willing to accept a reasonable licence fee in return for the exposure that the rights owner would get from its association with the photographer.

APPENDIX A

Name of Respondent :	Address:	tel:
The Interior Archive Limited	The Round House, Chawleigh, Chulmleigh Devon EX18 7HJ	
Narratives Photo Agency Ltd Including submissions from Jan Baldwin Photography, Polly Eltes, Photographer Brent Darby	57 Military Road, Rye East Sussex TN31 7NX www.janbaldwin.co.uk www.pollyeltes.com www.brentdarby.com	
Arcaid Images	Arcaid, Parc House, 25-37 Cowleaze Road, Kingston upon Thames, Surrey,KT2 6DZ	
Gap Interior Images Ltd	The Old School Hall, Little Tey Road Feering ESSEX CO5 9RP	
Bruce Hemming	http://www.bhphoto.biz/	
Mark Luscombe-Whyte	www.markluscombewhyte.com	
Hubert Zandberg	www.hzinteriors.com	
Fritz Gr. von der Schulenburg	www.fritzvonderschulenburg.co.uk	
Simon Upton		
Alex James		
Andreas von Einsiedel		
David Parmitter	www.davidparmiter.co.uk	
Derry Moore, Earl of Drogheda	www.derrymoore.com	
Tim Beddow		
Fiona Walker-Arnott	www.fwaphotography.com	
Richard Powers		
Luke White		
Graham Atkins-Hughes	www.grahamatkinshughes.com	

APPENDIX B

Sections extracted from the Copyright Designs & Patents Act 1988

52 Effect of exploitation of design derived from artistic work.

(1) This section applies where an artistic work has been exploited, by or with the licence of the copyright owner, by—

(a) making by an industrial process articles falling to be treated for the purposes of this Part as copies of the work, and

(b) marketing such articles, in the United Kingdom or elsewhere.

(2) After the end of the period of 25 years from the end of the calendar year in which such articles are first marketed, the work may be copied by making articles of any description, or doing anything for the purpose of making articles of any description, and anything may be done in relation to articles so made, without infringing copyright in the work.

(3) Where only part of an artistic work is exploited as mentioned in subsection (1), subsection (2) applies only in relation to that part.

(4) The Secretary of State may by order make provision—

(a) as to the circumstances in which an article, or any description of article, is to be regarded for the purposes of this section as made by an industrial process;

(b) excluding from the operation of this section such articles of a primarily literary or artistic character as he thinks fit.

(5) An order shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(6) In this section—

(a) references to articles do not include films; and

(b) references to the marketing of an article are to its being sold or let for hire or offered or exposed for sale or hire.

213 Design right.

(1) Design right is a property right which subsists in accordance with this Part in an original design.

(2) In this Part “design” means the design of any aspect of the shape or configuration (whether internal or external) of the whole or part of an article.

(3) Design right does not subsist in—

(a) a method or principle of construction,

(b) features of shape or configuration of an article which—

(i) enable the article to be connected to, or placed in, around or against, another article so that either article may perform its function, or

(ii) are dependent upon the appearance of another article of which the article is intended by the designer to form an integral part, or

(c) surface decoration.

(4) A design is not “original” for the purposes of this Part if it is commonplace in the design field in question at the time of its creation.

(5) Design right subsists in a design only if the design qualifies for design right protection by reference to—

(a) the designer or the person by whom the design was commissioned or the designer employed (see sections 218 and 219), or

(b) the person by whom and country in which articles made to the design were first marketed (see section 220),

or in accordance with any Order under section 221 (power to make further provision with respect to qualification).

(5A) Design right does not subsist in a design which consists of or contains a controlled representation within the meaning of the Olympic Symbol etc. (Protection) Act 1995.

(6) right does not subsist unless and until the design has been recorded in a design document or an article has been made to the design.

(7) Design right does not subsist in a design which was so recorded, or to which an article was made, before the commencement of this Part.

30 Criticism, review and news reporting.

(1) Fair dealing with a work for the purpose of criticism or review, of that or another work or of a performance of a work, does not infringe any copyright in the work provided that it is accompanied by a sufficient acknowledgement and provided that the work has been made available to the public.

(1A) For the purposes of subsection (1) a work has been made available to the public if it has been made available by any means, including—

(a) the issue of copies to the public;

(b)making the work available by means of an electronic retrieval system;

(c)the rental or lending of copies of the work to the public;

(d)the performance, exhibition, playing or showing of the work in public;

(e)the communication to the public of the work,

but in determining generally for the purposes of that subsection whether a work has been made available to the public no account shall be taken of any unauthorised act.

(2)Fair dealing with a work (other than a photograph) for the purpose of reporting current events does not infringe any copyright in the work provided that (subject to subsection (3)) it is accompanied by a sufficient acknowledgement.

(3)No acknowledgement is required in connection with the reporting of current events by means of a sound recording, film or broadcast where this would be impossible for reasons of practicality or otherwise.

- **178 Minor Definitions**

- “sufficient acknowledgement” means an acknowledgement identifying the work in question by its title or other description, and identifying the author unless—

(a)

in the case of a published work, it is published anonymously;

(b)

in the case of an unpublished work, it is not possible for a person to ascertain the identity of the author by reasonable inquiry;

62 Representation of certain artistic works on public display.

(1)This section applies to—

(a)buildings, and

(b)sculptures, models for buildings and works of artistic craftsmanship, if permanently situated in a public place or in premises open to the public.

(2)The copyright in such a work is not infringed by—

(a)making a graphic work representing it,

(b)making a photograph or film of it, or

(c) making a broadcast of a visual image of it.

(3)Nor is the copyright infringed by the issue to the public of copies, or the communication to the public, of anything whose making was, by virtue of this section, not an infringement of the copyright.

173 Construction of references to copyright owner.

(1)Where different persons are (whether in consequence of a partial assignment or otherwise) entitled to different aspects of copyright in a work, the copyright owner for any purpose of this Part is the person who is entitled to the aspect of copyright relevant for that purpose.

(2)Where copyright (or any aspect of copyright) is owned by more than one person jointly, references in this Part to the copyright owner are to all the owners, so that, in particular, any requirement of the licence of the copyright owner requires the licence of all of them.

APPENDIX C

Case C-168/09, REFERENCE for a preliminary ruling under Article 234 EC from the Tribunale di Milano (Italy), made by decision of 12 March 2009, received at the Court on 12 May 2009, in the proceedings

Flos SpA v Semeraro Casa e Famiglia SpA, intervener: Assoluce – Associazione nazionale delle Imprese degli Apparecchi di Illuminazione,

.....

56 In that regard, the assessment of the compatibility of the length of that transitional period and of the category of third parties covered by the legislative measure must be carried out in the light of the principle of proportionality.

57 Accordingly, the legislative measure adopted by the Member State concerned must be appropriate for attaining the objective pursued by the national law and necessary for that purpose – namely ensuring that a balance is struck between, on the one hand, the acquired rights and legitimate expectations of the third parties concerned and, on the other, the interests of the rightholders. Care must also be taken to make sure that the measure does not go beyond what is needed to ensure that that balance is struck.

58 For that purpose, the measure may be regarded as appropriate only if it is directed at a category of third parties entitled to rely on the principle of protection of legitimate expectations – that is to say, persons who have already performed acts of exploitation in relation to designs within the public domain at the date of entry into force of the legislation transposing Article 17 of Directive 98/71 into the domestic law of the Member State concerned.

59 Furthermore, the legislative measure should ensure that the period of use of the designs by those third parties is limited to what is necessary for them to phase out the part of their business that is based on earlier use of those designs or to clear their stock.

60 The measure does not go beyond what is necessary to ensure that a balance is struck between the competing rights if it does not defer entitlement to copyright protection for a substantial period.

61 In this instance, as regards the definition of the category of third parties as against whom it is provided that copyright protection is for a temporary period to be unenforceable, Legislative Decree No 95/2001 and Article 239 of the IPC may be regarded as appropriate since they are directed solely at persons who acquired their rights before the entry into force of the national measures transposing Directive 98/71.

62 Conversely, unenforceability for a transitional period of 10 years does not appear to be justified by the need to safeguard the economic interests of third parties acting in good faith, since it is apparent that a shorter period would also allow the part of their business that is based on earlier use of those designs to be phased out and, even more so, their stock to be cleared.

APPENDIX D

What is meant by “Artistic Craftsmanship”

1. Traditional English Law:

George Hensher Ltd -V- Restawile Upholstery (Lancs) Ltd [1976] AC 64

“A work of craftsmanship, even though it cannot be confined to handicraft, at least presupposes special training, skill and knowledge for its production ... 'Craftsmanship', particularly when considered in its historical context, implies a manifestation of pride in sound workmanship — a rejection of the shoddy, the meretricious, the facile.

“It is probably enough that common experience tells us that artists have vocationally an aim and impact which differ from those of the ordinary run of humankind. Given the craftsmanship, it is the presence of such aim and impact — what Stewart J called 'the intent of the creator and its result' — which will determine that the work is one of artistic craftsmanship.”

2. As interpreted by the Australian Courts for perspective

Burge (2007) 232 CLR 336, 363-364

“The thread running through [Lord Simon's] discussion [in Hensher] is the significance of functional constraints, extreme for a dental mechanic, less so for a glazier or blacksmith, and depending upon the nature of the particular design brief. A horseshoe is one task; the Tijou gates, screens and grilles wrought for St Paul's Cathedral, Hampton Court and Chatsworth by the French Huguenot ironmaster were in a very different category. It may be impossible, and certainly would be unwise, to attempt any exhaustive and fully predictive identification of what can and cannot amount to 'a work of artistic craftsmanship' within the meaning of the Copyright Act as it stood after the 1989 Act. However, determining whether a work is 'a work of artistic craftsmanship' does not turn on assessing the beauty or aesthetic appeal of work or on assessing any harmony between its visual appeal and its utility. The determination turns on assessing the extent to which the particular work's artistic expression, in its form, is unconstrained by functional considerations. To decide this appeal it is sufficient to indicate the following. The more substantial the requirements in a design brief to satisfy utilitarian considerations of the kind indicated with the design of the [yacht], the less the scope for that encouragement of real or substantial artistic effort. It is that encouragement which underpins the favourable treatment by the 1989 Act of certain artistic works which are applied as industrial designs but without design registration.”

In this respect the Court's view may be closest to that of Viscount Dilhorne in Hensher. See Hensher [1976] AC 64, 87:

“So, in my view, it is simply a question of fact whether a work is one of artistic craftsmanship. Questions of fact are often difficult to decide but juries have to decide them. ... This question of fact in relation to copyright is decided not by a jury but by a judge sitting alone. Evidence may be called with regard to it. Expert witnesses may testify. At the end of the day, it will be for the judge to decide

whether it is established that the work is one of artistic craftsmanship. If that is not established, the claim to copyright on that ground will fail. I do not think that it suffices to show that some section of the public considers the work to be artistic, though that fact will be one for the judge to take into account, for the decision has to be made by the judge and cannot be delegated.

APPENDIX E

THE INTERIOR ARCHIVE LIMITED

Testimony of Ms Karen Howes: Managing Director of The Interior Archive Ltd.

1. Number of images potentially affected

Just from making a small sample image selection,³² it is clear that there will be significant clearance issues with a substantial number of the interior images hosted on the Interior Archive's website. The obsession with interior design that has gripped the world in the last 25 years has seen a massive change in the way rooms are documented.

It has long been the widespread practice in the industry that designers work symbiotically with leading photographers in which they allow their creations to be photographed by prominent photographers to gain kudos and, for most of them, at no cost to themselves. It is a quid pro quo. Permission is usually oral, and I have never experienced any designer complain about the editorial exploitation of his/her creations in the over thirty years I have been connected with the industry. Early imagery shot on film in the 1980s by photographers such as Derry Moore (Lord Drogheda)³³, Fritz Graf von der Schulenburg³⁴ and the Hon Christopher Simon Sykes reveals a tendency to shoot a room on a wide-angle lens without necessary homing in on detailed shots thereafter (see eg: Appendix W Image 1).

The introduction and resulting takeover of digital photography in the industry over the last decade has seen a change in the style of photography reflected not only by demands from magazines and publishers, but by the rapid expansion of the interior design market and the sheer quantity of interiors available to photograph, to feed an apparently insatiable appetite by the consumer. This has led to much more detailed photography, a room being shot to give an overall impression, followed by a couple of mid shots and then details of furniture, objects, etc.

The trend for vintage and retro furniture and objects being used in counterpoint to sofas, tables etc. designed or commissioned by contemporary interior designers shows no immediate sign of changing, which means, as will be seen from the sample selection I have made³⁵, that almost every interior photograph reveals a composition of antique, vintage, retro and new. See the image of Hubert Zandberg further on in this submission³⁶

I see no obvious economic way of being able to extrapolate which images would be usable in the future and which would fall foul under the new legislation – without any clear boundaries as to incidental use, and a lack of ability to contact the rights owner, the risk to the agency and its photographers is high, that an unwitting infringement could happen in relation to which publishers expect to be indemnified.

2.) Number of photographers affected

This change in the legislation will affect every professional photographer in the UK who earns a living from the photography of interiors and architecture.³⁷ Photographers represented by The Interior

³² See Appendix W post

³³ See Appendix Q post

³⁴ See Appendix L post

³⁵ See Appendix W post

³⁶ See Appendix K post

³⁷ It will also affect portrait photographer of vintage-bejewelled and designer-dressed women so the UK government can look forward to unadorned women opting for jeans at the request of their photographers. This will have an inevitable consequence for the domestic fashion and jewellery trades.

Archive, both through the agency as well as through the website number nearly 100 (with over 40,000 images online

It would be no answer to the dilemma to require photographic agencies such as mine to close down, whilst allowing overseas industry giants based outside the EU such as Getty, Corbis alongside Alamy in the UK, which have sufficient other images in their general archives and non-design sensitive image banks perhaps to be able to afford to curtail their sales of interiors along with other sensitive categories of images to areas outside the EU or to dump their respective stocks of interiors and architecture altogether.

3.) Main clients

Due to the nature of the content of The Interior Archive's images held for its photographers, reproduction rights are sold for editorial usage only. In the past, this has safeguarded the integrity of an individual interior designer's work. Requests I have received for exploitation by advertising or advertorial of an image are few and far between, as The Interior Archive generally declines, but on occasion we have followed up with the designer, photographer and in some cases the house owner for permission for such usage.

Our repeat clients are international magazines and newspapers - both print and online, book publishers, interior designers, graphic designers and others looking for high end, editorial content.

Loss of turnover from the sale of secondary rights to images by The Interior Archive on behalf of its photographers would well be heavy and immediate if my traditional customer base of publishers were to decide to stop producing design and interiors books and if magazines choose not to 'buy in' images in the future. Specialist photographers would also lose out on direct commissions in an already dwindling industry - so all participants would be hit twice, both on direct commissions and on secondary sales.

4.) Statements from photographers

I am forwarding these as they come in, for you to cherry-pick as you see fit.

I have yet to hear back from any interior designers.

In respect of Nicky Haslam - I worked on a book with him last year entitled 'A Designer's Life' - essentially a visual, scrapbook style retrospective of his life as a decorator

The image by Fritz von der Schulenburg on the cover of the book features an oversized plasterwork door surround, which is a tribute to the iconic American designer of the 1930s Dorothy

Draper. Nicky fully acknowledges and pays homage to all such designers to whom he has shown such respect over a long and impressive decorating career - one wonders how this type of product exploitation will be viewed in light of Section 52. Nicky refers to these people as those who have 'inspired, influenced and educated him'.



CV

Founded in 1994 and specialising in interiors, architecture and lifestyle, The Interior Archive, and its website TIA Digital Ltd, represents some of the world's best photographers in this niche market. Based in the UK, Europe and the United States, this well-connected and select group works for a wide range of clients in both the editorial and commercial sectors

APPENDIX F

narratives
lifestyle images and features

Narratives Photo Agency Ltd.
57 Military Road, Rye,
East Sussex TN31 7NX
United Kingdom
Telephone: [REDACTED]
Email: [REDACTED]
VAT No: GB 726 1222 65

Section 52 consultation
Copyright Directorate
Intellectual Property Office
4 Abbey Orchard Street
London
SW1P 2HT
15 December 2015

Dear Sir / Madam

Re: Consultation of transitional arrangements for the repeal of section 52 of the Copyright, Designs and Patents Act 1988 (“CDPA”) (“Consultation”)

Narratives Photo Agency provides international publishers with features and images about real people living in authentic family homes surrounded with associated goods and chattels, including artworks and designed objects such as modern, retro or antique furniture, soft furnishings, lighting, table and kitchen wares which will have been purchased, gifted, inherited or acquired by other means. Each home feature is researched and produced by a small team of experienced photographers, writers and stylists photographing many rooms in a property. These features would be licensed for publication. The published article offers inspirational decorating ideas to readers alongside product placement.

It would be virtually impossible to recall who created every object in an interior photo, leaving a great deal of scope for human error when cataloguing / captioning items. It makes no sense to penalise property owners for aspiring to own original artworks or designer labels and brands. This repeal would kill the symbiotic relationship that an artist designer has with their customer base and could alienate them from the publicity they crave and need to flourish.

Over the past 16 years of trading we have contributed to over 100 books including ten of designer, Sir Terence Conran’s series of interior books and 1000s of magazines worldwide. Many of our lifestyle features cover a wide variety of property owners. Residents including new and established designers, artists, artisans, collectors, architects and decorators as well as general home interest stories to inspire readers about extending and renovating their homes. Most publishers buy a one-time editorial use to publish the article. But over the past few years publishers are requesting more rights for digital media at no cost in perpetuity despite the dwindling fees. We take care to keyword and caption images and provide credits and license them accordingly. But we are finding that many software companies purposefully strip out metadata, resulting in unlicensed ‘orphan works’ which are further shared over social media. It is difficult to grasp the complexities of the internet and try to understand the pros and cons of social media and search engines and how to effectively protect rights on these platforms. Especially as today most mobile phone users have access to a camera on their phone and publish pictures online with little to no knowledge of the CDPA.

Whilst we do support the repeal to protect 3D representations, we are not able to identify all the risks and implications for 2D representations to be included at the same time. We need definitely longer. We need clear guidelines of what 2D representations will need clearance, training on how

to get clearance and the costs involved. It would be catastrophic for the government to rely on court cases to define the law at the expense of bankrupting professional photographers and their agents. A royalty-free non-exclusive license granted by designers / artist to their patrons to use and enjoy the products /artworks they have invested in inside their homes, coupled with a property release may go some way to help protect photographers. As and when guidelines are in place can we truly identify how this legislation affects our trading. It is only then that we will be able to make a business decision amidst the threat of litigation from collection societies.

If we did have to close our agency it would affect around 200 people comprising of photographers, writers and stylist as well the staff that run Narratives.

I would imagine that to edit through our archive of approximately 400 property released house features. With each feature comprising of between 20-60 images. Reviewing say one feature per day to identify all objects within the images of the home would take 2 years to complete the task at a cost of around £50,000 and that is without clearance costs. I would say that our archive has 50,000 images. That in the current state of the picture industry, we may have to adopt a Royalty Free licensing model rather than the current Rights Managed one we operate, in order to remain competitive and provide the flexibility of licenses that clients are requesting.

Without doubt including 2D representations will have a devastating impact on our Creative & Housing Industries creating unemployment in the creative sector. I suspect that young photographers would no longer benefit the transference of skills that comes with assisting experienced photographers and working with their associated agents and a huge blow for British designers.

Yours sincerely

Nicola Hill

Director

[REDACTED]

Please note:

We are unable to provide photographs as examples given the potential risk of rights holders seeking compensation if the paper is submitted to the government and published.

Attachments:

Evidence included from Photographers: Jan Baldwin, Polly Eltes & Brent Darby.

**Evidence from Jan Baldwin Photography (www.janbaldwin.co.uk)
submitted to Narratives by email on 14/12/2015**

My professional photographic career spans 33 years during which time I have been photographing a broad range of interiors from private houses and design studios to international Hotels, Resorts and Royal Palaces for over 20 interiors books, many interiors magazines both British and international including UK & US House & Garden and Architectural Digest for example.

Regarding Section 52 ...

The unforeseen consequences of the imposition of Section 52 on my photography would virtually stop me working. If passed this legislation would add an enormous amount of work to each shoot. On average I take 25 interior shots a day for a book or magazine feature in which furniture, carpets, curtains, paintings and artwork , etc., would have to be identified and the creator credited. Possibly a total of 30 random objects per shot. Not only would this add an amount of extra work to each shoot probably in the region of several extra days, I, as the photographer would still be liable if I had missed something, wrongly labelled something or just been mis-informed. The time consuming research needed for each shoot (even if the originators could be found which may be impossible in many cases of say an African pot) and extra workload not forgetting an unlimited financial liability would make my profession unsustainable.

The speed with which this legislation is proceeding makes adequate analysis and assessment of the consequences impossible. The impact on the publishing world both on and off line would be close to devastating.

**Evidence from Polly Eltes Photographer (www.pollyeltes.com)
submitted to Narratives by email on 14/12/2015**

I am a London-based interiors and lifestyle photographer. I have established my work in this area over the last 20 years. My pictures are published in a range of media within the UK and worldwide, including books, magazines, brochures, publicity and advertising. My clients include hotels, for example Ritz Carlton and Isrotel, interior designers like Sims-Hilditch and Accouter design, and a large range of interiors businesses of all sizes. My work appears regularly across a range of interiors and lifestyle editorial magazines including Homes & Gardens, House and Garden, Elle Deco, Living etc, Country Homes & Interiors, House Beautiful, Period Living and Grazia.

I specialise in photographing people and their homes, and how they design, style and furnish them. This provides a critical showcase for the designers and artists, and gives an aspirational view of their lifestyle.

To maintain an acceptable workflow, I employ assistants on a regular basis. This is also the best form of training for anyone starting out in the business, and was an essential part of my training. Anything that affects my livelihood will have an impact on them as well. I am extremely concerned about the implications this change to the law would have on my business, and all connected with it. Not only those who work directly for me, but also the many writers and stylists who share the projects.

From each of my shoots I produce an average of at least 50 shots, each of which contains designed objects from crockery and cutlery, through furniture to architectural detail. It would be logistically impossible for me to have sought and found a license for each of these, and without them the whole endeavour is pointless. It is the very nature of my work to represent combinations of designed work that have been chosen by their owner, or a stylist to represent taste.

Combined with this impossible task of gathering permission for a shoot, the fear of litigation would mean that I would be completely discouraged. Having fought to retain copyright of my images over the years, I would be in the perverse position of having to give it up. New projects would be too difficult to consider, but also my archive of previous images, the sale of which provides a good percentage of my income, would be affected. Surely publishers, and the designers themselves, with nowhere to air their new ideas apart from advertising, would also suffer from this loss.

It looks to me that this action is being rushed through, and needs a suitable period of research and discussion. If it is applied now, it looks like it will destroy a wide ranging area of work and interest for many.

**Evidence from Brent Darby (www.brentdarby.com)
submitted to Narratives by email on 16/12/2015**

I have worked now as a professional photographer in England for over 10 years supplying work all over the world both Editorially and for private clients photographing both private homes and luxury accommodation.

I supply to a vast amount of UK editorial titles such as Elle Deco, Homes and Garden, Country Living, Country Homes and Interiors and Homes and Antiques to name just a few.

My work also appears in many other worldwide titles that help promote UK businesses from New Zealand to Holland to Russia and America.

In each case the residential houses I photograph help promote UK businesses and those that are associated with them.

The unforeseen consequences of the imposition of Section 52 on my photography would no doubt put me out of business and I would imagine have an impact on the small businesses I photograph who do not have the money to advertise on a larger scale. If passed this legislation would add an enormous amount of work to each shoot. Most houses I shoot produce at least 40 images and in any one image may have up to fifty items that might need to be identified from sculpture to curtains to lamp shades. It would be near impossible to be able to identify everything and in vast room there is always the chance of missing something and therefore under the proposed law be liable. It would be easy to be fed the wrong information by accident and still be liable as the photographer while it being no fault of my own.

I also photograph many classic properties with vast art collections, some dating back 100's of years and finding the information to who's estate to contact would be near impossible in some cases. Any foreign products would also bring up a language issue so translators might be required. The problems are endless. This law would put me and most other photographers out of business as the risk is far too great and the time taken to find out all this information would quadruple the time it takes me to produce the work making it unsustainable to carry on. I would imagine this would also have a huge impact on interior magazines, lifestyle magazines and publishers as there will be no photographers willing to take on work with such high risk. As a knock on effect both small and large businesses would loose the free advertising that comes with this style of work, this in turn will completely destroy what is left of the magazine world and then have a huge impact on British based companies who see there products displayed in the likes of House and Garden Etc every month will no longer have there products on display and will also kill off 1000's of jobs in other areas as there will be no content left to show.

The impact on my own business and those that i employ on a freelance basis would be devastating. It seems this law is being pushed through without clear thought of how many people and companies will be effected and left out of work and therefore needing government support.

APPENDIX G

ARCAID IMAGES

From: Lynne Bryant [REDACTED]
Subject: Fwd: section 52
Date: 4 December 2015 19:20:21 GMT
To: Isabelle Doran [REDACTED], Karen Howes [REDACTED], Nicola Hill [REDACTED]
Cc: Maggie Gowan [REDACTED]

Here are my thoughts Lynne

This is an objection to the inclusion of two dimensional copies of three dimensional designer objects in Section 52 and the speed with which it is being implemented.

I write not only on behalf of photographers but also our clients.

This act works to the detriment of the more than 3000 UK Royal Institute of British Architects Chartered practices and over 2000 members of the British Institute of Interior Design,³⁸ and the thousands of interior decorators - all having web sites and promotional material which feature designer furniture and lighting that they will have specified.

Architects and designers need to publish their work .

This new act penalises the very people who are responsible for purchasing the tables, chairs and lamps and their photographers.

Photographs are the only way an architect and designer can initially engage with potentially new clients.

Having the photographs published be it on social media, magazines, brochures, their own web sites or in professional awards is the only way architects and interior designers and decorators can promote their work

Using 'the Consultation On Timing of Repeal of Section 52 CDPA (2014)'

it takes 3.5 hours to clear a photograph. The Government therefore estimates that 1 person could clear 1626 photos over 3 years (assuming there are 253 working days in a year and 7.5 working hours in a day)

Architects and interior designer have thousands of images of their finished work, with hundreds on line and many more in books promoting their practices.

If each of the 3000 architectural practices alone each only had the 1626 relevant images that is a total of 9000 man years wasted trying to clear images for their own promotion of design objects they specified.

At a minimum cost of £317,250.000

The time and money being lost from developing new business and venue on which to pay tax and employ more staff.

Far from helping businesses develop businesses will close ..

The far reaching and damaging financial and economic effects of the implementation of this act needs time for consideration and reflection .

ARCAIDIMAGES

Architecture Interiors Design

www.arcaidimages.com

www.ambienceimages.co.uk

Arcaid, Parc House, 25-37 Cowleaze Road, Kingston upon Thames, Surrey,

KT2 6DZ Tel: [REDACTED]

On unreleased images the condition of the sale is that the user must take full responsibility for using the images and obtain a release if they feel it necessary. The user must indemnify the photographer and the agency if there is a claim for unauthorized use. To proceed with publication is to accept these terms.

All Arcaid material is the copyright of the photographer/Arcaid and may not be used without prior agreement. All images must be credited to the photographer/arcaid. Any image files attached to this email must be deleted after agreed usage has been made and may not be stored for future use. To see Arcaid's full terms and conditions please go to <http://www.arcaidimages.com/terms.php>

The information contained in or attached to this email is intended only for the use of the individual or entity to which it is addressed. If you are not the intended recipient, you are not authorised to and must not disclose, copy or distribute or retain this message or any part of it. If you have received this email in error, please contact the sender and delete the material from any computer. we accept no liability for any loss or damage which may be caused by software viruses or interception/interruption of this mail.

sto [REDACTED]
Building with conscience

³⁸ Also the Society of British Interior Designers with some 1500 members

APPENDIX H

GAP INTERIOR IMAGES LTD

(www.gapinteriors.com)

The Old School Hall
Little Tey Road
Feering
Essex
CO5 9RP

17th December 2015

Dear Sirs,

Reply to consultation on the Repeal of Section 52.

GAP Interior Images Ltd is a specialist image library founded in 2009, which supplies images to many of the leading magazines, books and newspapers throughout the UK on the subject of interior design / home-lifestyle. Representing over 100 photographers whose work is displayed online for licensing by publishers.

The archive currently stands at over 130,000 images and grows by 1,000-2,000 images per month. These images mostly form home-stories/features which are licensed to publishers to showcase readers homes. These images are from our photographers archives and span decades of work.

Should the repeal of Section 52 be implemented without suitable adjustment for the 2D representation of 3D objects in photographic form for editorial purposes; we expect the vast majority of our market to be no longer viable; and likely be forced to close down our business making our team redundant.

When we represent a home-story with 35-60 images; each room of the home can be full of items bought/collected/inherited over many years, some second-hand and some gifted. For a home-owner to identify whom the designer is for each object would be nearly impossible.

For a photographer who then visits this home for a day to “capture” the style and design of the home at a moment-in-time for editorial publication; to later identify these objects is unrealistic and unwieldy.

With this change being brought into effect and retrospectively affecting archives; by items that are out of copyright now having copyright resurrected; makes this task of identification impossible!

Home-owners will have since re-decorated, moved house, passed-away etc... When the photographer took the image (which may feature a room of 1950's furniture for example) they did this in good faith on the understanding that the UK law at this time permitted them to do so and to gain financially from this image for their lifetime +70 years for their heirs/assigns/estate.

This retrospective change will remove the photographers ability to continue to exploit their copyright within their own photographic archives to great detriment.

We urge the government to consider the reality of the proposal and the detriment this will have to photographers, archives and publishers.

We fully support the need to restrict the reproduction of 3D designers works by extending the copyright protection for 3D copies and reducing the effect of cheap replicas. We fully support the beneficial impact this change will have on UK designers and the UK furniture industry.

We cannot however understand how 2D representation of these works within a photograph can be “lumped together” as an equal evil to the the cheap knock-off imports/replicas.

Not specifying the law to a greater degree and allowing case-law to be used to determine the boundaries; feels like the government is washing their hands of the responsibility they have to the editorial publishing and photographic industry. Seemingly not wishing to protect the rights that currently exist for these individuals; instead prioritising the rights of a designer over and above the creative rights and copyright inherent in a 2D work of a photographer/artist.

If a home-owner has purchased the 3D objects for their private use/pleasure and shown patronage to the designer by doing so – how is it reasonable to prevent the home-owner from sharing their finished home / interior-design with others in a 2D image?

The intention to rely on case law to build this guidance, leaves companies like ours and our contributing photographers to be at risk of many claims against us for 2D representation of 3D objects. This is despite the fact we are not making 3D copies and not undertaking any form of business that could be seen as detrimental to the future licensing/sale of the original 3D works.

In fact, the 2D image representations published via companies such as ours could be seen as regular free promotion for the individual designers of these 3D works.

Compulsory License Model:

We urge the government to consider the implementation of a compulsory license model, whereby photographers, agencies and publishers can obtain a license to reproduce the works within an image for a nominal fee. Similar to that of PRS for music, where royalties are collected on behalf of musicians and composers and distributed back to these rights-holders.

The compulsory license model would enable the photographic, publishing industry to almost carry on “business as usual”; whilst the replicas of 3D works could still be blocked. This would aid the financial benefit to designers by distributed royalties for publication of their work in 2D; they will not be competing with replicas of their own works and at the same time still have the benefit of free promotion in an editorial context. Enabling the UK design industry to continue to flourish and the publishing/photographic sector to not be wiped out as consequence of an ill-thought-through amendment to UK copyright law.

Yours sincerely,

Trevor Jennis McDermott, Director, GAP Interior Images Ltd
Iben Lund Gladman, Director, GAP Interior Images Ltd

APPENDIX I - BRUCE HEMMING

From: Bruce Hemming [REDACTED]

Subject: Section 52

Date: 5 December 2015 13:14:08 GMT

To: [REDACTED]

Hello Karen

Mark Luscombe-Whyte passed on your email - I hope that this will be of use. Thank you for initiating this action. Clearly there are parallels with the Freedom of Panorama legislation. I'm not sure just how that was resolved but I believe that changes were made to permit photography without breaching copyright or causing the photographer to seek prior permission. See https://en.wikipedia.org/wiki/Freedom_of_panorama

Regards

Bruce

As a photographer specialising in producing images for features in books, magazines and other publications devoted to architecture and interior design my business will be severely impacted by this change in law. It will not only affect any new work that I produce but will, I believe, also affect sales of existing material made by my syndication agents which contribute between 12 - 15% to my gross turnover. Inevitably there will be products within my photographs that will come under the changes in legislation and getting permission for usage will impose an unnecessarily heavy burden on me in terms of time taken to contact the copyright holders and also in the potential financial impact of paying the copyright holders a fee for the usage of the images of their products.

At this time a typical contract from a publisher contains the following clauses which I have to comply with -

5. You hereby warrant to as follows: (a) that notwithstanding 5(e) and 5(f) below you are the sole legal and beneficial owner of and you own all the rights and interests in the material(s) supplied and that those materials are not libellous and will not infringe any copyright or other third party right;

(b) that you have not licensed or assigned any of the rights in the material(s) (save for One Use material(s)) and that they are free from any security, interest, option, mortgage, charge or lien;

(c) you are not aware of any infringement or likely infringement of the copyrights in and to the material(s);

(d) that there have been no claims, challenges, disputes or proceedings, pending or threatened, in relation to the creation, ownership, validity or use of any of the material(s);

(e) the material(s) that are authored or otherwise created by you personally are original to you and have not been copied wholly or substantially from any other source.

(f) where the material(s) include images, drawings, written work and any other material(s) that were not created by you, that you have sought and obtained permission (and a valid licence to ... where applicable) from the copyright owner of these third party materials to be supplied by you to and that their publication by will not infringe any copyright or any other third party right;

6. You shall indemnify against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by arising out of or in connection with (a) any breach of the warranties contained in this Agreement (including but not limited to any intellectual property claims from third parties), or (b) the enforcement of this agreement.

There is a fundamental difference in directly copying an item for exploitation of it in its original form and producing an image of it (often attributed in the caption) as part of a scene photographed. This does not seem to be differentiated in this change to law. Design copyright holders are likely to be damaged rather than protected as the general exposure and free advertising that products get in editorial context will be severely affected.

A five year transition period would have given the industry time to produce workable guidelines and practices but this sudden rush to change will cause unnecessary difficulties. It will also affect the publishers at a time when the industry is already struggling to adapt due to online usage and inevitably will lead to reduced fees for contributors. These are largely unchanged from rates paid twenty years ago and this together with the impact on syndication sales is very likely to drive me out of business.

CV

I trained in a Diploma in Advertising and Fashion Photography at Medway College of Art (now KIAD) 1969 – 1972. In 1978 I set up as advertising photographer with studio in Beak Street, Soho. I have assisted leading advertising photographers in London studios, for example – Ray Rathborne, Martin Chaffer and others. In 1992 I focussed on location editorial photography specialising in architecture, interiors and travel. Architectural and interiors photography is my passion and I have over thirty years experience, shooting editorial features and working for commercial clients. My work has been published in The Telegraph Magazine, Homes and Gardens, Living etc, Country Living, Country Homes and Interiors, Ideal Home, 25 Beautiful Homes, Coast, Coastal Living (USA) Case da Abitare (Italy), Maco Interiors (Trinidad) and many others. I have also photograph architecture and interiors projects for a wide range of clients including:- Form Design Architecture, Stephen Fletcher Architect, Mya Manakides - Workshop Architects, Lanham Architects, Louis Henri Bührman, Nick Sunderland Interiors, Clague Architects, Jane Churchill Interiors, Nicky Bailey Interiors, Sevil Peach, Amok Design and MplusA Design.

I am a member of the council of the Association of AFAEP – now AOP – and have served on a number of specialist committees.

Contact Details

Bruce Hemming Photography

Tel: [REDACTED]

Mobile: [REDACTED]

e-Mail: [REDACTED]

Skype: [REDACTED]

web : <http://www.bhphoto.biz/>

web : <http://www.bhphoto.biz/panorama>

APPENDIX J

MARK LUSCOMBE-WHYTE

From: mark luscombe-whyte [REDACTED]

Subject: Re: Section 52 - Industrial design copyright - which will affect us all

Date: 5 December 2015 13:27:11 GMT

To: Karen Howes [REDACTED]

Please feel free to cherry pick.

I am shocked at how this is being rushed through and feel as if we are being ambushed . As a photographer specialising in Architecture , Interiors and Hotels and Resorts this legislation, if passed will impact on every area of my work. To give but a small example, I have just finished photographing a resort in the Maldives and am in the process of delivering 160 finished images to the client. Every image contains work by different designers whether it be beds, lamps, baths, carpets etc. To clear these objects would take weeks and would cause untold problems for both myself and the resort .

Ironically the legislation would also impact heavily on the people it is designed to protect as they rely on their works being published for promotion . The world of editorial photography is already on its knees and it would be virtually impossible to clear items if this legislation is passed into law and many small publishers, photographers and magazines would ultimately go out of business as would industrial designers as nobody would promote their work either in magazines or on social media. I feel that it imperative that there is an industry wide consultation so that all the issues can be discussed and a sensible solution arrived at.

Every single image I shoot would have many objects within that would require clearance. As magazines are already overstretched the onus would fall on the individual supplying the images so instead of going out and producing beautiful work most of my time would be spend getting clearance for works within images and as a business model this is not sustainable ..

Another more simplistic way of looking at this would be to consider the submission process to a magazine. On average for each submission I supply about 50 shots. I would imagine that for each shot it would take about an hour to identify the objects, track down the designers and then contact them for clearance. This would take approximately 50 hours, pretty much the whole of my working week ..

Mark Luscombe-Whyte

www.markluscombewhyte.com

MOBILE [REDACTED]

APPENDIX K – pp HUBERT ZANDBERG

Image from the interior of interior designer Hubert Zandberg's home to illustrate the problems posed by multiple 3D objects for which a new copyright is to be created – Image © Simon Upton

Dear John³⁹

Hubert Zandberg is an interior designer whose work could be very badly affected by the new laws. He has given me⁴⁰ permission to use a couple of images of the interior of his own home to illustrate the statement he makes below (*note only one used to avoid potential future complaint*)



³⁹ Email to John Rubinstein from Karen Howes dated 07.12.15

⁴⁰ Karen Howes – The Interior Archive Ltd

Begin forwarded message:

From: Mighal Pretorius [REDACTED]

Subject: Re: Section 52 - Industrial design copyright - which will affect us all

Date: 7 December 2015 16:06:53 GMT

To: Karen Howes [REDACTED]

Cc: Hubert Zandberg [REDACTED]

Dear Karen

Herewith a quote from Hubert which you are welcome to edit and add to if you need -

"It is important for all players to fulfill their role in order to keep the industry as a whole moving forward: from manufacturers and dealers to designers and photographers/publishers. This requires a certain practicality that makes economic sense for all parties. The potential complications and increased and cumbersome time constraints that the proposed legislation will bring will certainly dissuade us as designers to include the "affected items" in schemes that may be photographed, with obvious implications for the market."

Regards

Mighal

www.hzinteriors.com

APPENDIX L

FRITZ GR. VON DER SCHULENBURG

"I see everything in wide angle. By enlarging a picture, or pulling back from the focal point, I give context to the objects and furniture within a room, revealing the space in between and a perspective to their composition."

"For a photographer, composition is fundamental, but displaying and combining objects and furniture is an art form. It is the proportion of objects as a collection, as much as the objects themselves, that influences how they should be displayed."

Fritz von der Schulenburg: *Luxury Minimal* - Thames & Hudson in 2012

CV

Fritz Graf von der Schulenburg

www.fritzvonderschulenburg.co.uk

During a photographic career that has spanned over thirty-five years, Fritz has achieved international acclaim, capturing on camera some of the most beautiful, inspirational and decorated locations in the world.

Fritz's photographs have been published in numerous interior design and architectural magazines, such as *The World of Interiors*, *AD Russia*, *House & Garden*, *Veranda* and *Architectural Digest*. In addition to contributing to many books, Fritz has also published several of his own work. These include :

The English Garden Room, Weidenfeld & Nicolson
Living in Scotland, Thames & Hudson
The Curtain Book, Mitchell Beazley
Neoclassicism in the North, Thames & Hudson
Die Mauer, Ernst & Sohn
Romantic Scotland, Weidenfeld & Nicolson
Empire, Abbeville Press
The Dining Room, The Bedroom, The Bathroom, Abbeville Press
— a series of three volumes
Living by Design, Weidenfeld & Nicolson
Private Hong Kong, Abbeville Press
Decorating with Antiques, Ryland Peters & Small
The New Curtain Book, Jacqui Small Publishing
Bunny Williams, An Affair with a House
Luxury Minimal, Thames & Hudson

In recent years, the majority of Fritz's time has been spent working on private commissions, photographing houses, estates, boats and planes providing a personal record for owners and designers in the form of bespoke books and albums.

APPENDIX M

SIMON UPTON

From: simon upton [REDACTED]

Subject: Section 52 - Designer Copyright

Date: 7 December 2015 10:24:27 GMT

To: Karen Howes [REDACTED]

"Professional photographers have spent the best part of the last 25 years fighting for the return of their copyright and then trying to hold onto it.

Section 52 essentially negates the effort and energy, not to mention money, that has been spent in ensuring that photographic copyright rests in the photographer + 70 years, deemed the author of the image, sacrificing our ownership of copyright to those designers and crafts people who have ultimately benefited to date from free exposure and publicity of their work in magazines, books and online.

Much as it pains me to consider this but, as a photographer whose archive focuses almost entirely on interior design and architecture, the risk to me of potential litigation would be too great and, with no other alternative, I see myself giving up the copyright in all future shoots"

Simon Upton

[REDACTED]

APPENDIX N

ALEX JAMES

Dear Karen,

Many thanks for your e-mail concerning the proposed copyright law changes with regard to industrial design.

If implemented as they currently stand, these changes have the power to virtually eliminate the industry that we all work in. Editorial photography, has, I have always felt, been for the purposes of disseminating information, generally for the greater good. As Interiors Photographers, none of us are involved with sensationalist journalism or the indeed the negative criticism of designer products. Photography of these objects serves to heighten public awareness of their existence and is a tangible benefit for all involved. The explosion of design magazines in the past two decades has surely benefitted all involved.

Should I be required to seek licenses to reproduce photographs containing almost any item found in an average home my business will become unworkable. Apart from the quantity of paperwork involved when contacting all relevant parties (imagine a photograph of a filled Welsh dresser in a modern family kitchen) there is the possibility of paying copyright fees on top of this. The average editorial photo reproduction fee seems to be between £50 and £100 per image, this often being split 50/50 with an agency such as the Interior Archive. It would not be worth the effort even to start sorting out copyright releases for the above example image, or indeed any other. The time spent and the financial implications would make the idea a non-starter. The immediate result would mean that, as photographers, we could not have our images published, magazines would be left with nothing to print, and a whole industry would disappear overnight. Further, this does not consider the business of "policing" the regulations which would be almost impossible.

I cannot see any gain from introducing this legislation as it stands unless there are very strict and realistic guidelines to help us all through so that a small but beneficial industry is allowed to thrive in a correct manner. No one that I know of is interested in breaching copyright or stealing intellectual property. We work in a niche industry which is founded on mutual support.

I would strongly urge the relevant government parties to give our industry the time needed to get our house in order to accommodate any future changes. Then as photographers, designers and publishers we can all continue to work in our chosen professions and to bring further awareness of interior design, products and architecture to a wider audience.

Yours sincerely,

Alexander James

T: [REDACTED]

W: alexjamesphotography.com

Alexander James [REDACTED]

To: Karen Howes

Section 52 CDPA

9 December 2015 07:40

APPENDIX O

ANDREAS VON EINSIEDEL

Begin forwarded message:

From: Andreas von Einsiedel [REDACTED]

Subject: proposed change to the copyright law

Date: 6 December 2015 07:50:01 GMT

To: Karen Howes [REDACTED]

Dear Karen,

we all need to thank you for taking on the fight against the proposed changes to the copyright law to include mass-produced designs such as furniture, textiles, ceramics etc.

this change could have catastrophic consequences to all our businesses and the wider media business in general.

as photographers of interiors and design there is not a single day or shoot when one is not confronted with objects which in future will fall under this law.

it is not practical nor possible for small businesses - one-man shows really - like ours to obtain a myriad of clearances from the holders of the design-rights of such objects.

with the kind of photography we do, these design objects are only ever coincidental and never the main subject of the photography; we purely record what people collect, own and surround themselves with regardless of the provenance of their belongings.

it strikes me as incomprehensible why the holders of such design rights wish to put obstacles in the way of the taking and publishing of images of their products in an editorial context which exposes the product to a

wider audience

and is an invaluable promotional aid.

but surely they thought of that consequence themselves before they instigated that proposed change in the law.

this change of the law would work for us as photographers, libraries etc only if a kind of clearing house

(such as DACS)

is set up where we can collectively clear any such licenses and restrictions for a low nominal annual fee.

good luck & all best wishes,

andreas.

THIS EMAIL IS FROM:

Andreas von Einsiedel

Andreas von Einsiedel Interiors

72-80 Leather Lane

London EC1N 7TR

T. [REDACTED]

F. +44-20-7831 3712

www.einsiedel.com

Karen Howes [REDACTED]

To: John Rubinstein

Fwd: Comment from Andreas von Einsiedel

6 December 2015 08:00

APPENDIX P

DAVID PARMITER

D PARMITER [REDACTED]

To: [REDACTED]

Reply-To: [REDACTED]

Re: Section 52 - Industrial design copyright - which will affect us all URGENT
6 December 2015 17:23

Hello Karen,

Thank you for alerting me to what is a very worrying development,

I specialise in shooting interiors for magazines as well as working for interior designers, architects, and hotel companies.

If this legislation comes into force It will not only make it extremely difficult for me to sell any of my images or features but it is surely unworkable and undesirable for my clients?

Home interest magazines in particular rely on original photography of products, this is their life blood, the main reason people buy these magazines is to get inspiration for their own projects and to then go out and buy items that they like. Magazines already credit a large amount of the merchandise illustrated in features, this keeps their advertisers happy and undoubtable results in sales for manufacturers. I can see no benefit to anybody if this becomes law in fact manufacturers, designers, photographers and magazines will all suffer as a consequence.

Please let me know if I can be of any further help,

Kind regards,

David

David Parmiter Photography

27 Lottage Road Aldbourne Wiltshire SN8 2EB

t. [REDACTED] m. [REDACTED]

email: [REDACTED]

website: www.davidparmiter.co.uk

APPENDIX Q

DERRY MOORE, EARL OF DROGHEDA

If repealed, Section 52 would deal a terrible blow to publishers both of books and of magazines. It would also make the life of the professional photographer, who photographs interiors, incredibly complicated and restricted. It is hard to see who will benefit besides lawyers specializing in copyright law. One obvious change will be that rooms featuring pieces of furniture, which would incur a fee, will no longer be published. My ability to work as a photographer will be extremely limited if each object in an interior space must be researched in order to determine if it is still under copyright. The result would be that far less rooms will be photographed and published. Would this be beneficial for the manufacturers of, say, the Eames chair? Is it fair to count the photograph of a designed object to be the same as the actual object itself?

Derry Moore

12th Earl of Drogheda

<http://www.derrymoore.com/>

CV - Derry Moore is best known for his portraits and images of gardens, houses and architectural interiors. Exploring the light, space, and the visual contrasts that inform a room and create its essential character is at the core of his vision. His images range from portraits to interiors. In 1976, Moore travelled to India to photograph some of the great palaces, whose survival seemed threatened at that time. In the event what captivated his imagination were the buildings that had a hybrid quality, being a mixture of Indian and European, and the people, who had what he describes as "the atmosphere of another period". An image of the elongated and sensual curve of a prostitute's bared back lends a personal and near voyeuristic look into his travels. Moore was educated at Eton and Cambridge. He then studied at Oscar Kokoschka's School of Seeing in Salzburg, which he says 'opened his eyes'. Later he came across a book of Atget's photographs which profoundly affected him and led him to discover Bill Brandt's 'A Night in London'. He went on to become Brandt's pupil and this association greatly influenced Moore who began his professional career in 1971. In 2005, Moore's portraiture was the focus of a small retrospective at the National Portrait Gallery, which featured his photographs of John Gielgud, Rudolf Nureyev, Alan Bennett, David Bowie and the late Princess of Wales, amongst others. His photographs have been reproduced in numerous magazines and he has published over a dozen books, including: Evening Ragas: A Photographer in India, Inside the House of Lords, Rooms, and An English Room. Moore's work is also in the main collections of the Metropolitan Museum of Art, New York and The National Portrait Gallery, London. He is currently working on a book on horses.

APPENDIX R

TIM BEDDOW

I have been an 'interiors/design' photographer for over 30 years working for all the high end 'house' magazines including

The World of Interiors

House & Garden

US Architectural Digest

US House Beautiful

Verandah

AD India

AD Italy

AD Germany etc

Working in this field we are all dependent on taking images that may include interesting unusual pieces/paintings and objects. They often form part of the photograph and are intrinsic to the image. If this proposed legislation is introduced in April 2016 instead of working out suitable guidelines - as originally proposed by 2020 - it would seriously impact on my livelihood – which is diminishing anyway through the increasing internet magazine world.

Tim Beddow

Photographer

47 St. Luke's Road

London W11 1DD



APPENDIX S

FIONA WALKER-ARNOTT

8th December 2015

Hi Karen,

My thoughts on the above...I am effected directly and indirectly by this proposal. The bulk of my business involves shooting residential homes for editorial content in magazines. If I understand correctly this would mean I would need approval to include copyrighted items in my shoots. If this is the case and a fee was charged for this then my fee would be greatly diminished putting my livelihood at risk and potentially me out of business.

The time taken to chase up this kind of approval would be ridiculous and not viable. I can only imagine that this would then impact of the viability of photographers in the same field submitting features, the magazines in turn not gaining the required content and in turn folding, more jobs lost.

In short my livelihood in this niche industry depends on the freedom to incorporate designer items and furniture in terms of "critique and review" by magazines and books etc. to enable you to continue in your chosen profession.

I also work with interior designers and architects shooting their projects, the same issue applies, another stream of revenue lost...

I hope this reaches you in time.

Kind regards,

Fiona Walker-Arnott

Interiors Photographer

www.fwaphotography.com

Elle Decoration | The Independent | Country Homes & Interiors | House Beautiful | Ideal Home | 25 Beautiful Homes | Period Living | Coast | The English Home | The Mail on Sunday | Beautiful Kitchens | Essential KBB | The Wall Street Journal | Real Homes | Good Homes | Style at Home | Sussex Life | Etc Magazine | The Times | Money Week | Sussex Style |

The Tuck Shop Studio, 1 Croft Hall, Croft Road, Hastings. East Sussex. UK TN34 3BF

All images remain copyright of Fiona Walker-Arnott. Fiona retains sole Editorial rights of all photographs and features.

Follow me on Twitter: [REDACTED]

APPENDIX T

RICHARD POWERS

Richard Powers [REDACTED]
To: Karen Howes [REDACTED]
Cc: Mark Luscombe-Whyte [REDACTED]
Section 52
7 December 2015 10:32
1 Attachment, 131 KB

hi karen

mark luscombe white has forwarded your email about the whole section 52 nightmare ... he asked me to send you a one liner to bolster the argument against it proceeding

"if section 52 proceeds it will be a bureaucratic nightmare for myself, other photographers and publishers that i envisage will be impossible to administer and serve no useful purpose to either parties other than to employ consultants who will swallow up most of the revenue in processing the claims - as a photographer of design with many publications to my name I believe I promote and celebrate the designers in a positive light and with this new law approved it will severely affect my ability to continue to do this"

hope this finds you well ... please holler is you need any help or support with this case

all best

richard

Richard Powers

Photographer

[REDACTED]

<http://www.richardpowers.photography>

<http://www.powerhouse-images.com>

Tel: [REDACTED]

follow me on Instagram: [REDACTED]

APPENDIX U

LUKE WHITE

Luke White [REDACTED]
To: Karen Howes
Article 52
10 December 2015 11:04

Hi Karen

I just read the whole of the government report.

Here is what I think for it is worth.

The Government report on the repeal of article 52 acknowledges in more than one place that many designers will not take action against those businesses which make 2D copies of their work 'since images are an important marketing tool for designers'. The report fails to understand how that marketing process works.

This is partly due to the report's failure to distinguish between photography and 2d reproduction used in design such as curtains and wall paper.

Unsolicited but carefully researched and accredited photographic illustration of design objects and concepts across multiple media platforms represents a vital tool for designers to market their products and bring the attention of potential new markets to their designs and products. Due to the extremely narrow profit margins

in this sector, the repeal of section 52 will signal an end to a vibrant and creative arm of design and innovation in the UK, namely the colour photography books and magazine articles that promote and market contemporary and historical design and decoration.

I dont know if this is useful but hope so.

L

APPENDIX V

graham atkins-hughes

seven&eight ltd
78 sandringham road
hackney
london e8 2ll

Section 52 - Industrial design copyright

To Whom it may concern,

I, as an interior design photographer, am very concerned that the new rules on designs in imagery are going to have a negative impact on my ability to continue in my current career. I currently service the needs of books and magazines here in the UK, and around the EU. The proposed new legislation will entail going back through the archive of my life's work, rendering my back catalogue worthless and leaving no legacy for my children.

The market in which I work, actually benefits the designers of such products, in that it brings their talents, and awareness of their designs to the attention of the buying public. It encourages the public to consider their own home environment, and that of their work place, with a view to helping them create a space which is more pleasant, and conducive to a better way of life. It is well documented that a well designed environment both at home and at work, is better for the person. It makes people more relaxed and overall, healthier.

It is the job of the industry in which I work, not only to promote, but also to champion good design. To bring it to the attention of as many people as possible, and to show that it is possible to combine different products from all strata's of interior design and create a space and environment, which feeds your soul. This by its nature encourages commerce, and purchasing of 'designed' goods.

It is important to consider a repeal of Section 52. In my opinion, industrial design copyright will actually do the design industry more harm than good. How, other than paying for expensive marketing, is the next generation of design graduates to get imagery of their products into the public domain other than through printed and online media? If you succeed in putting businesses like mine, and that of my clients, out of business there will be no design media to do this important task of promotion. This to me is one of the worst cases of using a sledgehammer to crack a nut.

I hope you give my industry time to adapt to these changes so that all parties, including the copyright holders can get the best deal, which is what I assume was the motivation behind this act.

Yours Sincerely,



Graham Atkins-Hughes

APPENDIX W

IMAGES

1. © Christopher Simon Sykes - This image is likely to be safe to reproduce for all uses as there are no evident 3D Products on which the photographer has focused



2. This image could give rise to claims in relation to the table, the lamps on the table in particular, the pottery, the lampshades, and the carpet if and when Para 6 of Schedule 1 of the Copyright Designs & Patents Act 1988 falls away.



3. This image could not be reproduced economically without the consent and cooperation of the designer. © John Stefanidis (designer) - Fritz von de Schulenburg (photographer)



4. © Christopher Simon Sykes - Clarice Cliff – this image is likely to be as sterile as a dead dodo if the Cliff Estate were to seek to maximise their recovery from it, the image is dependent on the artistic eye of the photographer capturing this collocation of Cliff designed pottery..

