

# **Consultation: Transitional provisions for repeal of Section 52 of the Copyright, Designs and Patents Act 1988**

## **Response from the Victoria and Albert Museum**

**21 st December 2015**

The V&A welcomes this new opportunity to respond to the Consultation for the transitional provisions for the repeal of Section 52 of the Copyright, Design and Patents Act 1988.

Since its inception the Victoria and Albert Museum has championed design and designers. The V&A has a statutory obligation to promote the public's enjoyment and understanding of art, craft and design and its mission is to be the world's leading museum of art and design; enriching people's lives by promoting knowledge, understanding and enjoyment of the designed world. As a leader in inspiring new design and celebrating designers' works, the V&A recognises that designers should be rewarded appropriately in order to incentivise design. We believe that a fundamental part of our support of the designed world is to engage in dialogue about design, promoting and sharing best practice with practitioners and their public. We also believe that designers make an important contribution to the UK economy, and that their creative rights should be protected.

One of the Museum's key goals is to continue to improve access to its collections, both physically and virtually, through its activities. In furtherance of this goal the Museum photographs its collection and makes those photographs available online and in hard copy form in a number of different ways and to a number of different communities.

Another of the V&A's purposes, set out in statute, is to educate the public on art, craft and design. In furtherance of this purpose the V&A publishes books and other material that describe and depict the best work of historic and contemporary artists, craftsmen and women and designers. These publications often include photographs of works of art, craft and design.

The Museum accepts that in consequence of the repeal of Section 52 of the Copyright, Design and Patents Act 1988 it will need to undertake an analysis of its photographic collections and publications to ensure compliance with the law. However, this will take time and the V&A had been relying on the 5 year transitional period previously offered by the Government to implement these changes.

A 6-month transition period from April 2016 is insufficient time for an institution of the V&A's size and remit to review and implement any resultant changes. Furthermore, this legislation may have significant impact on schedules, rights clearance requirements, and resource needed to progress existing projects and training, processes and policies will need to be conceived and deployed across the Museum in order to ensure that the law is complied with.

Many V&A exhibitions further the UK's research economy and influence trends in different creative market places, particularly interior design and fashion. Perhaps of most significance in recent years is *British Design 1948–2012*, which highlighted significant moments in the history of British design, and showed how the country continues to lead the creative world. Appendix 1 outlines the impact the repeal of S 52 will have on the V&A's activities, and includes examples following the success of *British Design 1948–2012*.

It is the Museum's belief that government does not intend to hinder, disproportionately, the conversations that the ongoing activities of the museum allow with the creative community. Therefore, we believe that government must, and will, give careful consideration to a fair and proportionate timeframe to enable the V&A to adapt to changes in law.

The V&A also wishes to seek further clarification as to the intention of the legislation. As we currently find no definition of 'artistic work' in the documentation or the legislation and as the case law in this field is complex and unclear, it is very difficult to assess the full impact the transition may have for the Museum. The V&A welcomes guidance on which works may be affected, and from which date they may be 'revived' as works in copyright. Of particular importance for the V&A is having clarity on whether use of two dimensional photographic reproductions of three dimensional works of artistic craftsmanship for editorial or educational use would be covered by the new quotation exception. This has not yet been confirmed by the Intellectual Property Office.

It is essential for the Museum to have time to assess the potential impact of the legislation on the V&A's commercial activities. The government's Grant-in-Aid settlement is given on the basis that the V&A will pursue ways to increase self-generated income. The V&A's commercial activities currently provide an average annual turnover of £10 million, and a £2 million contribution. This is critical to the V&A's ability to deliver its core activities which include digitising culturally important and commercially viable content, and making it accessible online. Moreover, this work furthers research into its collections and exhibition programme – allowing more people to appreciate a broader spectrum of design and thus providing a vital resource for the creative community, both in the UK and overseas.

The V&A's publishing and digital programme is central in supporting the Museum's mission of promoting the designed world. The success of this is largely dependent on photographic reproduction of work that under current legislation does not require permission to be reproduced. These projects take, normally, at least two years to plan and deliver, placing them well outside the new timeframe proposed.

It is our view that any additional financial or time restraints imposed on the Museum by this change in legislation will have a disproportionate effect on the ability to fulfil its mission, which aims to promote designers' work – rather than undermine or exploit it.

We therefore urge government to consider:

- A return to the originally agreed transitional period of 5 years
- Providing guidance on the definition of an 'artistic work'
- Confirming which uses may be covered by the new copyright exceptions.

We understand that other provisions outlined in the Enterprise and Regulatory Reform Act 2013 have required debate in the House and secondary legislation to implement this transition. We would expect that this change will follow the same procedure.

Submitted by Roxanne Peters  
Intellectual Property Manager  
The Victoria and Albert Museum, London

## Appendix 1 The impact of the repeal of S 52 on V&A activities

Area of business	Impact of repeal of S 52 for V&A
<b>Exhibition planning and research</b>	<ul style="list-style-type: none"> <li>65 % of the 300 works in the British Design 1948-2012 exhibition featured would be considered mass produced works. There is a risk that there would be a distortion of design history if alternative works needed to be sourced due to expensive rights clearance.</li> </ul>
<b>Collections Management</b>	<ul style="list-style-type: none"> <li>In 2013/14 the V&amp;A acquired over 4000 new works, and approximately 25% are works which could, potentially, be affected by this legislation.</li> <li>Photographic reproduction of many of these would require detailed legal analysis and permission from multiple rights holders, such as the manufacturer and the designer, and additional resource and funding would be required to deal with this.</li> <li>The repeal of S52 could influence the V&amp;A's collecting policy and impact on its ability to best manage its collections and fulfil its remit.</li> </ul>
<b>Publishing</b>	<ul style="list-style-type: none"> <li><i>V&amp;A Pattern</i> book series, which showcases commercially printed works created in Britain 1945–2000. Each book features 60 plus images, and is accompanied by a disc of images for personal use. These books are designed for the general market and are popular with those starting out in the creative industries. Additional permissions for these titles would amount to £4,500-£6,000 to the development cost of each title, -plus any additional costs for resource, which would render them unviable..</li> <li>On average additional rights clearance for a reprint might range from 1–36 months.</li> <li>We estimate that the financial impact of the repeal of S52 is would be an average £100k per annum to the costs of publishing. This would in turn reduce the amount covenanted to the Museum by £100k, from just one of its endeavours.</li> </ul>
<b>Retail</b>	<ul style="list-style-type: none"> <li>Product ranges were developed for sale through the V&amp;A retail stores online. The products were conceived and developed around 12 months before the exhibition opened. Production took place around five months prior to the opening. This indicates the lead time needed to clear rights prior to any merchandise concepts to be worked up – i.e. at least 12 months and as much as 18 before the delivery date. This is a standard approach for all product, and sufficient time needs to be considered for product affected by the change in law.</li> <li>The repeal will limit the scope of what may be used from the V&amp;A's collections, reduce the opportunities of working with particular licensees, and potentially reduce by up to 50% the profit generated through use of such designs. An estimate of the financial impact based on current activity is a reduction in profit of approximately £850k per year. This would further decrease the profits covenanted to the V&amp;A.</li> </ul>
<b>Licensing</b>	<ul style="list-style-type: none"> <li>New legislation may limit the scope of what can be used from the V&amp;A archives on product, reduce the opportunities to work with particular licensees and potentially reduce by up to 50% the income generated through use of such designs.</li> <li>A recent example is a pattern that was selected for 5 products. Owing to a minimum royalty fee of £5400 from a collecting society, the pattern was dropped from the range.</li> <li>Another example is that a rights holder has requested a small number of samples in lieu of a fee. The cost of providing them is approx. £350. This is not sustainable and detrimental to the V&amp;A's business model.</li> </ul>