

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

**Response from the National Portrait Gallery, London**

**22 December 2015**

The National Portrait Gallery, London 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. With over 220,000 photographs in the Collection, in addition to hundreds of third-party images licensed for Gallery publications, this has significant time and resource implications, and the Gallery 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 the Gallery to adequately review and implement any changes. This legislation may have a significant impact on schedules and rights-clearance requirements, and on the resources required to progress existing projects. Training, processes and policies will need to be conceived and deployed across the Gallery in order to ensure compliance with the law.

It is essential for the Gallery to have time to assess the potential impact of the legislation on the Gallery's commercial activities, which support its ability to deliver core programmes, including, but not limited to, digitising the Collections and making them accessible online, and an extensive publishing programme. Commercially generated revenue also helps us continue to research the Collections, conserve the Collection items and continue to offer free access to the Collections at the Gallery and via our website.

The Gallery's publishing programme depends on our being allowed to include in our publications photographic reproductions of works that under current legislation do not require permission to be reproduced. Recent titles include images from the Gallery Collections and images licensed in from third-parties that might now require additional clearance under the new legislation. However, the current 6-month transitional period gives insufficient time to fully check our publishing backlist and make the necessary arrangements for any additional clearances that may be required, or for other measures to be implemented if additional clearances prove prohibitively expensive.

The Gallery's licensing team supply photographs from the Collections to a range of licensees, for non-commercial and commercial purposes. The new legislation will require us to check existing image licences to see if we need to inform licensees that any images licensed since 2013 might require additional image clearances. The current 6-month transition period is a very short time frame in which to fully check our image licences, and will have significant resource implications.

It is not our belief that the Government intends to hinder or negatively impact on the Gallery's core activities, but we believe that it is incumbent on the Government to give careful consideration to a fair and proportionate timeframe for the Gallery to adapt to the changes.

The Gallery also wishes to seek further clarification as to the intention and scope of the legislation. There is currently no definition of 'artistic work' in the documentation or in the legislation, and as the case law in this field is complex and unclear, it is very difficult to assess the extent to which the 6-month transition period will impact on the Gallery. We welcome guidance in identifying works that may be affected by the change in the law, and in determining the dates from which these works may be 'revived' as works in copyright.

We therefore urge Government to consider:

- A return to the originally agreed transitional period of 5 years
- Removing any retrospective implementation of the changes so that existing stock can be sold through
- Provision of guidance on the definition of an 'artistic work'
- Confirmation of uses that 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.

**Matthew Bailey**  
**Rights & Images Manager**  
**National Portrait Gallery, London**