

From: [Iain Bennett](#)
To: [Section52CDPA](#)
Subject: Repeal of section 52 of the Copyright, Designs and Patents
Date: 15 December 2015 00:42:14

I am responding to this consultation

I am opposed to the repeal. The Annex demonstrates that there has been no proper cost-benefit analysis at an industry or societal level. Therefore the legislature cannot pretend that it understands what impact there may be. The case for extending copyright is based around lobbying by institutions and trade bodies who see their interest in limiting innovation and sweating their existing asset rather than investing in new creativity – this is the case for design every bit as much as in music, for example. If the product cannot return a profit to the designer within 25 years, then there is no reason to restrict competition for as much as a century more whilst they keep trying.

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

No – the idea that a photograph of a copyrighted design and its reproduction, whether in reportage, an academic monograph, an educational publication or a film should constitute a breach of copyright is wrong. It is entirely impracticable to assume that photographers, publishers and filmmakers should be expected to check the copyright of every three-dimensional item in a room before taking a 2D image. The intent here is clearly not to deprive the designer of the right to exploit the copyright in the item for the purpose for which it was made, not to pass off the photograph or filmed image as the same thing.

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

If the repeal goes ahead, there needs to be some protection for people in the supply chain who were acting in good faith. The depletion period seems too short for that end to be properly realized. The Annex suggests that there has been no real attempt to assess a realistic depletion time for stocks of articles of this time.

- 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?

Yes, individuals should not be criminalized retrospectively!

- 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?

Only insofar as it should apply to articles that would still be in copyright under the current regulation. The idea of items going back into copyright is something that should be avoided.

- If Paragraph 6 of Schedule 1 of the Copyright, Designs and Patents Act 1988 is repealed or amended, are you aware of items where copyright would be conferred which never previously had copyright protection anywhere?

No – but the fact that the question has to be asked highlights the absurdity of the proposal.

- Do you agree that Regulation 24 of the Duration of Copyright and Rights in Performances Regulations 1995 should be repealed?

No – the proposal to extend copyright to life plus 70 years in this instance is not promoting creativity and innovation but the opposite; it encourages designers to seek to exploit a single design for their entire life rather than to reinvest the profits from a successful design into further innovation. Regulation 24 provides clarity on the point at which the restriction on competition is lifted.

- 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?

No

- 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?

No

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