

FOI Release
Information released under the Freedom of Information Act

Title: Legal challenge to IPO re. transitional provisions for repeal of s.52 CDPA

Date of release: 9 December 2015

Information request:

All internal and external correspondence relating to the legal challenge Government received in May 2015 challenging the length of the transitional period before the repeal of section 52 takes effect (para 8 of the Consultation on transitional arrangements for the repeal of section 52 of the Copyright, Designs and Patents Act 1988). In particular we would be interested in the details of the Judicial Review referred to in Para 2 of aforementioned consultation.

Information released:

We are releasing 6 documents to you. They are attached. For ease of reference we have also attached a spreadsheet with a list of documents released and the reasons why some of the information has been redacted.

We will be withholding other documents in scope of the request using the exemptions contained in the Freedom of Information Act. The exemptions we have applied are:

Section 32: Court records

As you are aware the Government received a claim for judicial review into the transitional provisions for the repeal of section 52 of the CDPA. The court reference is C0/2222/2015. The claimants in this case are Vitra Collections AG, Cassina SpA and Knoll Inc. The defendant is the Secretary of State for Business, Innovation and Skills. This exemption applies to the information held within documents that have been filed with the courts. In particular, this includes statements of the case, witness statements or documents created for the purposes of court proceedings.

Section 35: Government policy

We have considered the public interest test. As you are aware, the transitional provisions for the repeal of section 52 CDPA is currently under claim for judicial review and a live Government consultation. This is a live policy process where detailed policy options are being assessed and debated, and no final decisions have been made in respect to transitional provisions for the repeal. As such we believe that releasing documents on this matter would be damaging to the formulation and development of a live policy issue as it would not preserve a safe space for Government to debate issues. We have also withheld documents containing communications between Government ministers. We consider there is a public interest to protect the views of individual ministers in the collective decision making process.

Section 40: Data protection

We have withheld other's personal data as the release of such information would breach personal data principles, including our view that it would not be fair to disclose private data. This includes names, email addresses and names of businesses that have been in contact with the Government on this matter, and those in industry who may not be in public facing roles. It is the Government's policy not to release the names and emails of those civil servants that are not Senior Civil Servants.

Section 42: Legal professional privilege

We have considered the public interest test. We are of the view that because of ongoing legal proceedings all recent and live communications (including notes and correspondence that seek and provide advice) between the Government and its lawyers acting in a professional capacity should be protected to ensure future full and frank legal advice. Further, we understand that some parties are contemplating legal action in this area and we believe there is a real prospect of further litigation in relation to this matter. We consider that disclosure of legal advice on this matter would not be in the public interest as releasing the substance of the advice or request for advice could prejudice the Government's position in any future litigation.

Section 43: Trade secrets and prejudice to commercial interests

We have considered the public interest test. We believe there is a likelihood that releasing information about businesses that are likely to be affected by this change in law would lead to commercial detriment to these third parties. The reason is that one sector which could benefit from the change in law could use such disclosure of information for their own commercial and legal purposes. We believe this to be the case given the underlying issue of a lack of clarity as to what particular articles would be affected by the change in law. We have been previously told by a number of third parties that releasing information about them could potentially prejudice their commercial interests. We do not believe that releasing details about affected businesses will further the understanding of the issues on this matter or allow individuals to understand or challenge decisions made by public authorities on this matter.

If you are dissatisfied with the handling of your request you have the right to ask for an internal review. Internal review requests should be submitted within two months and you may request a review by emailing foi@ipo.gov.uk . If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.