 <b>Regulatory Policy Committee</b>	<b>Opinion</b>	
<b>Impact Assessment (IA)</b>	Timing of the repeal of section 52 of the Copyright, Designs and Patents Act 1988	
<b>Lead Department/Agency</b>	Department for Business, Innovation & Skills	
<b>Stage</b>	Consultation	
<b>IA Number</b>	BISIPO009	
<b>Origin</b>	EU	
<b>Expected date of implementation</b>	April 2018	
<b>Date submitted to RPC</b>	11 July 2014	
<b>RPC Opinion date and reference</b>	20 August 2014	RPC14-BIS-2155
<b>Overall Assessment</b>	<b>AMBER</b>	
<b>RPC comments</b>		
<p>The IA will be fit for purpose, provided the Department improves the IA before consultation so that it discusses the position in other EU countries more clearly. This is because the extent to which other EU countries allow the unlicensed copying of works will affect the choice of preferred option and the expected impacts of the proposal. The Department should also amend the IA so that it provides a clearer rationale for the Government’s preferred option, as it does not currently appear to be fully supported by the evidence presented.</p> <p>If the preferred option is taken forward and it imposes net costs to business compared with the alternatives, the final stage IA will need to include a small and micro business assessment and ensure the ‘One-in, Two-out’ assessment is correct.</p>		
<b>Background (extracts from IA)</b>		
<b>What is the problem under consideration? Why is government intervention necessary?</b>		
<p>“Section 52 of the Copyright, Designs and Patents Act 1988 (“CDPA”) contains an exception (a permitted use of copyright works) which limits copyright protection for certain artistic works when they have been industrially manufactured. When more than 50 copies of an artistic work are made then the current period of protection is limited to 25 years, compared to other artistic works which are protected by copyright for the lifetime of the creator plus 70 years.</p> <p><i>Section 52 of the Copyright, Designs and Patents Act 1988 (“CDPA”) has been repealed by section 74 of the Enterprise and Regulatory Reform Act 2013 on a date to be appointed by a commencement order. The repeal has not yet been put into effect, and the Government must take a decision on how and when to implement the repeal so as to ensure that UK legislation is updated in line with EU law.”</i></p>		
<b>What are the policy objectives and the intended effects?</b>		
<p><i>“The Government wishes to implement the repeal of section 52 of the CDPA in a</i></p>		

*manner which is fair and proportionate. It seeks to enact a change in law in a timely way with the following intended effects:*

- remove a permitted act in law that reduces the term of copyright protection for artistic works which are produced through an industrial process; and*
- minimise negative impacts on those British businesses that have been operating legitimately using the permitted act contained in section 52 of the CDPA.*

*The options considered include:*

- Option 0: Do nothing*
- Option 1: Six month transition period (commencement on 1 October 2015)*
- Option 2: 5 year transition period (commencement on 6 April 2020)*
- Option 3: 3 year transition period (commencement on 6 April 2018)*

*Option 3 is the preferred option as it, so far as possible, balances the costs between affected parties.”*

### **Identification of costs and benefits, and the impacts on business, civil society organisations, the public sector and individuals, and reflection of these in the choice of options**

Section 52 of the Copyright, Designs and Patents Act 1988 (“CDPA”) currently contains an exception which reduces the length of the term of copyright protection from the lifetime of the creator plus 70 years to 25 years for some items (such as furniture), that qualify as works of artistic craftsmanship or that are produced through an industrial process. The proposal will remove this exception, meaning that any artistic work, whether 2-dimensional or 3-dimensional, that qualifies for copyright protection will enjoy the full term of copyright protection. As such, some works that are currently reproduced will return to being within copyright following the repeal of domestic regulation. The change to the length of term will align domestic requirements with EU law on copyright.

Designers and copyright holders will potentially benefit from greater protection of their rights. Businesses that currently reproduce works will face costs from redesigning product lines and other transitional costs (such as obtaining licences).

*Rationale for intervention and practice in other EU countries.* Prior to publication, the IA should describe the position in other EU countries more clearly. The extent to which other countries allow the unlicensed copying of works affects the choice of preferred option and the expected impacts of the proposal. The IA should provide further detail supporting the statements within the IA and explain how that information has been used to inform the analysis. For example, the IA states “*the majority of EU member states provide for the full term of copyright protection for industrially manufactured works*” (page 7) and “*other EU countries also lawfully allow the copying of artistic works that have been industrially manufactured*” (page 7). The IA should more clearly set out the extent to which other countries allow unlicensed copies to be produced.

*Option choice.* The IA sets out concerns that the EU requirements may not result in benefits to the UK, for example “*current information on benefits to copyrights holders is from rights holders outside the UK ... the consultation will gather evidence on*

*benefits to UK copyright owners*" (page 9) and, of the businesses seeking change sooner, "*many of them [are] based outside the UK*" (page 9). The IA states that there is not sufficient evidence at this stage to assess accurately the expected costs and benefits. Due to the expected higher costs to manufacturers of implementing in 2018, instead of 2020, and uncertainty in relation to the potential benefits to rights holders, the IA should explain more clearly why the Department prefers earlier implementation, based on the currently available evidence. The Committee recognises that the Department will use the consultation to gather more information. The Department will need to use the additional information to strengthen the justification for the preferred option at final stage.

*Reduced sales.* The IA states that the lack of information on the scale of the market that would be affected means it is not possible to quantify the total expected costs to business. In addition to developing the evidence on the likely transitional costs for the different options, the Department should use the consultation to develop an estimate of the likely costs of reduced sales for businesses that manufacture, assemble, import or sell unlicensed copies. While these costs are a result of the EU legislation and are out of scope of 'One-in, Two-out', the final stage IA should provide an estimate of the likely impacts.

#### **Comments on the robustness of the Small & Micro Business Assessment (SaMBA)**

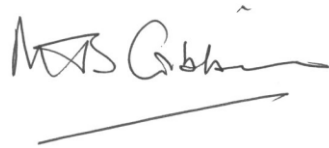
The proposals are EU in origin. The IA explains that an exemption for micro-businesses would not be permitted under EU law. If the preferred option imposes additional costs compared with the alternatives, the final stage IA should assess whether there are any disproportionate impacts on small and micro businesses as a result of early implementation.

#### **Comments on the robustness of the OITO assessment.**

The IA states that the proposal is of European origin and should be considered out of scope of 'One-in, Two-out'. However, based on the evidence presented, it appears that the preferred option would impose additional net costs on business, compared with the alternatives. The IA states that the "*the costs are likely to be greater under Option 3 [preferred option] than under Option 2 as there will be less time for costs of transition to be spread over a longer period of time*" (page 20). As the potential benefits of the proposal are uncertain at this stage, it may be that the proposed transition date is the least net costly and as such could be out of scope of 'One-in, Two-out'. However, if the proposal imposes additional net costs, this may be in scope of 'One-in, Two-out'. The Department should amend the consultation stage IA to reflect this, and the final stage IA will need to justify more clearly why the Department considers that the preferred option introduces the minimum net burdens required to implement the EU requirements.

The RPC is unable to validate the measure as out of scope of 'One-in, Two-out'. The final stage IA will need to provide further evidence of any costs that are a result of going beyond EU minimum requirements.

**Signed**

A handwritten signature in black ink, appearing to read "Michael Gibbons", with a long horizontal flourish extending to the right.

**Michael Gibbons, Chairman**