

From: [John Walmsley](#)
To: [Section52CDPA](#)
Subject: Submission from John Walmsley, a professional self-employed photographer.
Date: 23 December 2015 09:23:10

Submission from John Walmsley, a professional self-employed photographer for 40 years.

You have said you will put submissions online. Good, but please do not edit mine or select only parts. To be properly understood it must be read in its entirety.

The consultation is aimed at:

Creators of works of artistic craftsmanship, rights holders in those works, publishers and others. I am a creator, a rights holder and a publisher (in a small way).

You have asked for submissions from artistic creators and have produced a 36 page document on this consultation. I fully accept this is a complex subject dealing with legal issues which are each complex. No getting away from that. However, have you ever stopped for a moment to ask yourselves if artistic folk would be able to understand what you have provided to them? By that I mean, do you expect them to understand what your document says? We artistic folk are not good at admin, almost by definition. We are certainly not good at reading and understanding the meanings and true significance of legal wordings. Why would we be. With a great deal of effort and help from others, I am able to grasp some of it, enough to enable me to submit forms to the Intellectual Property & Enterprise Court (IPEC) and take cases through to judgement. My sense is that a tiny percentage of artists are able to do this. And it's no good saying we should consult a lawyer (at £250 to £350 per hour, come on) or our professional bodies (A huge number don't belong to any). So, I would like to propose that, when you do future consultations aimed at artists, you take this into account and, alongside the formal documents, you also send a summary in plain English. At the moment, what you're doing is like sending a document in one language to a group of people who you know do not speak that language. I think that has to change if your consultations and expectations are to be taken seriously. Otherwise it looks as if you're saying, "Here's the consultation document, but we really don't expect or want to hear from you".

In this submission I am concerned with photographs because that is what I produce. But, for the most part, what I feel about my photographs could easily apply to all other forms of visual art. They provide my only source of income. The copyright I hold in all my photographs is crucial to my being able to earn a living by charging fees when someone wishes to use my work. Equally important are elements within the Copyright, Designs & Patents Act 1988 (CDPA) which allow me to make claims against anyone who has infringed my copyright. I am also very grateful for the introduction of the IPEC which specialises in copyright infringement claims. Unfortunately, I think all recent changes to copyright law in the UK have been detrimental to photographers' interests and I view the repeal of s.52, in its present form (and if I have understood it properly), in the same way.

CDPA exclusions for 2D and 3D copyrighted objects.

At present, the CDPA has an exception which allows the editorial use of photographs containing either two dimensional (2D) or three dimensional (3D) copyrighted objects. There is another exception which also allows the inclusion of 2D and/or 3D objects in photographs provided that inclusion is incidental. The repeal of s.52 would fundamentally change that, if I've understood correctly, by removing the exception for 3D objects. So, after the repeal of s.52, anyone wishing to photograph a copyrighted 3D object for any purpose would have to obtain permission in advance from the rights holder, even if that inclusion were incidental. To photograph it without prior permission would be unlawful. Saying the photo was only for my blog, my church newspaper, my private website or whatever, would count for nothing. It would be unlawful, period.

The repeal would also bring back into copyright many objects presently out of copyright: broadly speaking, those older than 25 years. At a stroke, this would make all photos containing such objects unsaleable in any practical sense. They would become unlawful so who would use them?

My reading tells me the intention of copyright for three dimensional objects (3D) is to prevent anyone but the rights holder from making 3D copies without permission. No problem with that. But I see nothing in the proposed changes which would allow photographs (2D copies) to be taken of those objects. Why not? 2D representations would not conflict with the rights holder's interests at all. They would have no effect on sales of 3D objects because they are obviously entirely different. It is, and will continue to be, lawful to photograph 2D objects so why not 3D objects? It makes no sense at all.

If I have misunderstood, please correct me (in plain English).

How would this work in practice?

All my photographs are used editorially. Each one containing any 3D objects would become unusable because it clearly would be impractical for me to negotiate a licence from the rights holder of each object.

Any photographs taken in the street would be unusable if they showed any street furniture. Same for vehicles, people wearing clothes, people carrying bags, umbrellas etc. so, basically, that means all of them. And, remember, this law would apply to everyone, professionals, amateurs, kids, anyone with a mobile phone camera. I see no exceptions which would allow CCTV footage or for the police to be exempt. As proposed it seems to include anyone making an image of a copyrighted 3D object.

There seems to be no exception for news reporting therefore the vast majority of news photos would be unusable, unlawful.

Then think of government. Each Crown department has invested significant sums to build up their photo libraries. There are over 3,000 Crown Department/Agency websites all using imagery. Consider how this change would affect them. Any photo containing a 3D object would be unusable. Photos of schoolrooms contain so many 3D objects it would be impractical to pay for licences for them all. The vast majority of that investment would be lost. How would that be explained to the public in these austere times?

MPs are keen to use photos on their blogs and websites. How could they after this repeal?

In fact, how could anyone use photos of anything without breaking the law?

“No-one would mind, the courts would see sense and sort it out”.

Lawyers and judges tell me they interpret the law as it is written. Politicians write the laws, with their advisors. So, if the law as written says it is unlawful to photograph this chair, this desk, that car, without the rights holder's permission, the judges have no leeway to rule otherwise. If it is decided to repeal s.52 without allowing the normal and sensible exceptions for editorial and incidental use for photographs containing 3D objects, it would kill off a sizable part of business activities. It would also cost government a huge sum in lost investment. Is this what you want? It will be there for everyone to see this was proposed by IPO.

Timescale for the repeal.

Consider the huge number of textbooks in existence. Any containing photos of 3D objects would have to be replaced at a huge cost to the taxpayer. If this really has to happen, then there must be a period of at least 5 years. Anything less and you would have to explain to the public why so much public money has to be wasted in this way.

Continuing erosion of artists' rights.

The repeal of s.52 must be seen in context of other copyright problems for individual artists. It is not an isolated incident but part of a pattern.

From what I've heard, I am fairly typical of individual artists. I've worked a long time and seen my income reduce each year. Seen the rates paid for photos reduce each year. Seen the unlawful publication of my work increase each year. Seen parliament view our work as of little value and erode the rights we had. On one of our forums, I asked for a list of benefits we have been given by government. The IPEC was held up as a definite benefit. But no-one could think of any others. A list of ... one.

I found one or two Crown Departments/Agencies had published some of my photos without my knowledge and wrote to the Minister for Intellectual Property about my concerns. She replied saying the government definitely supported the creative industries, which was good to hear. But I continued to find Crown infringements. To date I have settled infringement claims against 18 Crown Departments/Agencies. Not one or two, which could have been seen as unfortunate, but 18, which I view as a systemic problem. The first few were settled reasonably quickly but later ones were passed to government lawyers and, from then on, it became much more difficult. There were delays, obfuscations, an insistence that proof be supplied way beyond anything required by IPEC. Cases which IPEC would have settled in an hour or two were taking months. The last claim was for less than £300, was as open and shut as they come, but took 10 months and involved the time of the Permanent Secretary, two departmental staff and three government lawyers. What did that lot cost the public purse, four figures, five? Who made the decisions, the departmental staff or the government lawyers. How could they justify the cost to public funds? They paid the claim in the end anyway. I doubt that was the sort of support the Minister for IP was thinking of.

IPO and government, in my view, must understand that any changes to copyright law, including the repeal of s.52, do have real detrimental effects on individual artists. Personally, my income was never as much as the national average and, about 4 years ago, had dropped to £10k pa before I started fighting back against the tide of infringements. Unless artists can afford to create, the buyers and sellers of imagery will

have nothing to trade. Government must stop breaking the very laws they have written. It's a complete nonsense to have government saying they support us when so many departments just nick our stuff and then make life very difficult indeed when found out. It's appalling and shameful.

Who will IPO listen to?

Having taken part in previous IPO consultations, I doubt very much indeed that IPO will take much notice of we artists. I expect they will take more notice of the bigger players, the ones with more clout. I expect, going on past experience of all things copyright, that the result of this consultation will be no exceptions for photography of 3D objects and a 6 month transition period. All of that to the benefit of the bigger players and the detriment of individual artists. I would like to hope otherwise but I see nothing on which to base such hope. If there is any, would someone please show me.

Who am I?

Freelance professional photographer my whole working life. My final year project at Art School was published by Penguin Books in 1969 as "Neill & Summerhill: a man and his work", a pictorial study of A.S.Neill's democratic school, Summerhill. For seven years, a part-time lecturer at the Architectural Association School of Architecture in London. My work is held in the Permanent Collections of the National Portrait Gallery, London and La Bibliothèque Nationale de France, Paris. I've received many grants from arts bodies including the Arts Council of GB and the Scottish Arts Council. For 4 years I lived and worked in an Arts Centre with potters, weavers, film makers etc., where I built a public darkroom and ran courses. For over 30 years I worked with the writer, Leila Berg, on a variety of books on children and social issues. I'm a member of the Society of Authors and the NUJ. www.walmsleyblackandwhite.com.

What do I tell student photographers?

Early next term I'm booked to talk to a group of student photographers looking forward to going out to work and making a living. What on earth can I tell them? What sort of encouragement can I give them when there is no realistic way for them to make a living or even come close and when every change to copyright law will make their lives harder? What on earth do I tell them?

IPO, it would help if you were to support individual artists for once. We're at crunch time and now would be a good time.