

8<sup>th</sup> December, 2015

Section 52 consultation,  
Copyright Directorate,  
Intellectual Property Office,  
4 Abbey Orchard Street,  
London SW1P 2HT

Dear Sir/Madam,

**Repeal of CDPA s 52/Clause 66 of the ERR Bill**

Despite concerns having been raised by members of the Faculty of Law at the University of Cambridge as well as by various representatives of the publishing industry that produce design books in early 2013, the IPO and the Government decided to press ahead with the repeal of section 52 of the Copyright, Designs and Patents Act 1988, with it eventually receiving Royal Assent in April 2013.

As design historians, design writers and design educators, we the undersigned, urge the government to reconsider the imminent implementation of this legislation with regards the use of 2D images of designed objects in publications. The reason for this is that if the repeal goes ahead in its current form it will have a highly detrimental effect on not only illustrated publishing in this country, a culturally important export business, but also the teaching of design and ultimately the UK's creative industries as a whole. Publications on design practice and design history are vitally important teaching tools, yet the new legislation will make them economically unviable to produce, adding in some cases tens of thousands of pounds onto the production costs of certain titles. As a result, research and writing within this important subject area would be stymied.

Apropos of the repeal, it is not a question of transitional arrangements being made or extended, but rather the need for a proper "carve out" clause to be added to the legislation. Photographs of designed objects when used in publications – whether in books, magazines or online – should not, it could be reasonably argued, be subject to the same copyright rules as 3D copies. There is an enormous difference between a photograph of a design being used for review purposes and a knock-off copy of a design manufactured for commercial ends. As it stands the legislation is so lacking in clarity that at the moment photographs of any man-made object could potentially fall under the legislation's categorization of being a "2D copy" of a "work of artistic craftsmanship".

Making photographic representations of designed objects used in publications an exception to the new copyright legislation would appear to be permissible under EU law, as the extent of copyright protection may be determined by each Member State according to Article 17 of the Design Directive and Article 96(2). Given this, it is surely in the best interests of the British Government and those they serve to urgently address the concerns raised, as otherwise livelihoods will be threatened both in the UK's illustrated publishing and design teaching sectors, and ultimately design education in this country will lose its pre-eminence as a result.

Rather than protecting the interests of designers the legislation in its current form is likely to do the exact opposite because it will in the long run erode the standing of designers, as their work is less likely to be promoted and reviewed in publications. Unless a “carve out” clause relating to the use of imagery in books and journals is inserted into the legislation, the repeal will undoubtedly constitute a form of economic censorship that will have devastating consequences for the future of design in this country.

We are grateful for any help you can give in this matter.

Yours faithfully,

**Charlotte Fiell** (Design historian, author and editor)  
**Peter Fiell** (Design historian, author and editor)  
**Prof. Jeremy Aynsley** (Professor of Design History, University of Brighton and Chair of the Design History Society)  
**Dominic Bradbury** (Design journalist and writer)  
**Prof. Cheryl Buckley** (Professor of Fashion and Dress History, University of Brighton and Editorial Chair of the “Journal of Design History”)  
**Annette Carruthers** (Honorary Senior Lecturer, School of Art History, University of St Andrews and design author)  
**Alan Crawford** (Design historian and author)  
**Hywel Davies** (Course Director, Fashion Communication, Central Saint Martins, University of Arts London and fashion writer)  
**Emmanuelle Dirix** (Fashion historian and liaison tutor, Royal College of Art)  
**Prof. Clive Edwards** (Emeritus Professor of Design History, Loughborough University)  
**Prof. Adrian Forty** (Professor Emeritus of Architectural History, The Bartlett School of Architecture, UCL)  
**Mary Greensted** (Design writer and former curator of Cheltenham Art Gallery & Museum)  
**Joe Kerr** (Head of Programme, Critical & Historical Studies, Royal College of Art)  
**Perilla Kinchin** (Design author, editor and publisher)  
**Dr. Grace Lees-Maffei** (Reader in Design History, School of Creative Arts, University of Hertfordshire and Managing Editor of the “Journal of Design History”)  
**Prof. Peter Lloyd** (Professor of Design, University of Brighton and Membership Secretary of the Design Research Society)  
**Dr. Nicolas Maffei** (Senior Lecturer of Graphics, Norwich University of the Arts and design historian)  
**Prof. Jeremy Myerson** (Helen Hamlyn Professor of Design, Royal College of Art and former director of the Helen Hamlyn Centre for Design, Royal College of Art)  
**Dr. Catharine Rossi** (Senior Lecturer in Design History, Kingston University)  
**Prof. Seymour Roworth-Stokes** (Executive Dean and Professor of Design, Coventry School of Art & Design and Chair of the Design Research Society)  
**Prof. Penny Sparke** (Professor of Design History and Director of the Modern Interiors Research Centre, Kingston University)  
**Deyan Sudjic** (Director of the Design Museum, London, design historian and author)  
**Dr. Sarah Teasley** (Head of Programme, V&A/RCA History of Design, Royal College of Art)  
**Judith Watt** (Pathway Leader, Fashion Journalism, Central Saint Martins, University of Arts London, fashion historian and author)

**Dr. Ulrike Weiss** (Director of Teaching, School of Art History, University of St Andrews)

Please send all responses to Charlotte Fiell: at [REDACTED] or Fiell Publishing Limited, Barley Mow, High Street, Chipping Campden, Gloucestershire GL55 6AG.