

E-mail: section52cdpa@ipo.gov.uk
Section 52 Consultation
Copyright Directorate
Intellectual Office
4 Abbey Orchard Street
London SW1P 2HT
Great Britain

Partnerschaftsgesellschaft mbB

Ulrich Pross Dr. iur. (-2014)
Stephan von Petersdorff-Campen
Bernward Zollner Dr. iur., LL. M.
Max von Rospatt
Thomas Musmann
Henrik Timmann Dr. iur.
Rüdiger Pansch Dr. iur., MJur. (Oxford)
Hetti Hilge LL. M.
Eike Schaper Dr. iur., Maître en droit
Miriam Büttner
Markus Lenßen Dr. iur., LL. M.
Simon Klopschinski Dr. iur.

of counsel / beratend

Horst von der Osten Dr. iur., M. C. L.

30.12.2015
06538-11/SP/AR
v. Petersdorff-Campen

Joint-Forces Datenbank (ab 2010)
Our ref.: 06538-11/SP/AR

I am writing on behalf of Thonet GmbH, Frankenberg/Germany (see www.thonet.de) and would like to thank the Government for the chance to comment on this consultation on the repeal of Section 52 of the Copyright, Design and Patents Act 1988.

Thonet is one of the most famous manufacturers of furniture and has produced design icons since the 1850s like the "Coffeehouse Chair" Michael Thonet 1850; (see www.thonet.de → products → classics → RANGE 214) and the first backlegless "Cantilever Chair" Mart Stam 1926; (see www.thonet.de → products → classics → RANGE S32/S64, RANGE S33, RANGE S43/S43k). Copies of the "Coffeehouse Chair" and the "Cantilever Chair" are attached (**attachment**). The Cantilever Chair is still protected under German copyright law.

Section 1: Transition Periods

- What will be the impact of a transitional period of six months, both costs and benefits?
- Should the six months run from the start date of this consultation or from a different date, and if different, why?
- Should a longer or shorter transitional period than six months be adopted, and if so, what are the costs and benefits?
- Are there any other issues which the guidance should cover which are not listed?

- The proposed transition period is appropriate and proportionate and we are fully supportive of it.
- Since the Enterprise and Regulatory Reform Act received Royal Assent in April 2013, businesses selling replicas have already had sufficient time – more than two years – to learn about the planned change in law and begin to make preparations for it. Those who are manufacturing products in the UK have also already had the time to phase out the relevant part of their business – if indeed there are any UK-based manufacturers (to our knowledge there are none). Others (the vast majority, if not all, of those affected by the change of law) require only enough time to clear their stock in order to phase out that part of their business – most replicas are imported from Asia. Again, they have had over two years to do this. The Government's proposal to have a short, clear transition period of six months is therefore sensible.
- This proposed transition period will also bring the UK into line with Eu-

European law in the shortest time possible. This is in light of the European Court of Justice ruling in the Case C-168/09 Flos SpA v Semeraro Case e Famiglia SpA (Flos case).

- Overly long transitional provisions, which permit new entrants to the market during the transitional period, are incompatible with Court of Justice case law.
- There is no rationale whatsoever for longer transition periods. Any longer transition periods would not only be against European law, as noted above, but also impose significant costs on designers of industrially-manufactured artistic works. The continued availability of copies of artistic design on the UK market has a devastating impact on the financial situation of design companies and on employment in the sector.
- It is also important to stress that designers of industrially-manufactured artistic works should be given the same protection for their work and efforts as other creators such as artists, composers and writers. The UK has some of the best design schools in the world. Yet, many young British designers currently have little incentive to stay and create in the UK where the law offers limited protection for the works that they produce. Ensuring that the transition period is six months from the start of this consultation will send the right message to these designers.
- Finally, we welcome the proposed guidance on helping businesses in this area following the repeal of Section 52 and look forward to further details of its release and whether we will be able to feed into its development.

Section 2: Depletion periods

- Do you agree that the Government is right not to distinguish between two- and three-dimensional copies?
- 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?
- Are there any other factors that the Government should consider for the depletion period?
- Do you agree that the period provided for depletion of stock is proportionate?
- Should a longer or shorter depletion period than six months be adopted, and if so, what are the costs and benefits?
- 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?

- It is not the intention of Thonet GmbH to bring action against museums, schools, film makers and libraries using 2-dimensional images of design classics. Our intention is to stop the import of illegal replicas of our products to the EU market. We simply would not consider action against the publishing of our works in magazines, catalogues etc., because such action would destroy the most important marketing platforms for furniture design classics. These platforms are also essential for public awareness of these enormously significant designs and for the ability of new generations to learn about the importance of world-class design.

- We agree that the Government should apply these depletion periods only to those contracts entered into prior to the start time and date of this consultation. The benefits of this are clear, as acknowledged in the consultation, namely that it will bring the UK into line with European law and encourage innovation in the British design sector, as young designers see their hard work properly protected.
- A depletion period any longer than the one proposed by the Government and applicable to contracts entered into after the start time and date of this consultation could potentially see copyists encouraged to build up stock, which they would sell on and so undermine the spirit of the change in the law.
- There will be costs to businesses engaging in the sale of replicas, but – as noted above – these businesses have had since April 2013 to adjust to the changed regulatory landscape and six months is enough time for them to sell through stock. If these companies have not been able to make significant changes to their business model in the two years since the law changed, and if they are then not able to sell through stock in six months, then they must bear these costs. As it is, to our knowledge very little or no manufacturing actually takes place in the UK and most of the copies of design classics are imported from Asia by businesses merely registered in the UK to benefit from Section 52 of the CPDA.
- By taking an approach that favours longer transition periods, the Government would not be supporting British industry but would instead stifle creativity and competitiveness in this country. Furthermore, as a world leader in helping to enforce intellectual property rules around the globe, the UK should ensure that its laws are in line with EU legal provisions and do not encourage intellectual property rights infringe-

ments elsewhere. The suggested depletion period is therefore proportionate.

- Finally, we agree that the sale of second-hand items purchased under S52 **so long as this product is not being sold as part of a business** is permissible and agrees that the Government should not make any legislative changes in this respect. We look forward to the guidance on helping businesses in this area on this matter that the Government will be producing.

Section 3: Provision of copyright protection for works made before 1957

- 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?
 - 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?
-
- We agree that Paragraph 6 of Schedule 1 of the CPDA should be amended. This will have significant benefits in terms of bringing the UK into line with EU law and providing legal certainty.
 - We look forward to hearing more as soon as possible about how the Government will amend the law, as there is considerable uncertainty as to how this is to be achieved.

Section 4: Compulsory licensing of works where copyright is revived

- Do you agree that Regulation 24 of the Duration of Copyright and Rights in Performances Regulations 1995 should be repealed?
 - 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?
 - 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?
-
- We agree that Regulation 24 of the Duration of Copyright and Rights in Performances Regulations 1995 should be repealed.
 - It was our understanding that “compulsory licensing provisions” (i.e. the permanent application of Regulation 24 to certain works which previously fell within S52) would deprive those works of the protection envisaged in the Berne Copyright Convention and be in breach of EU legislation. Indeed, this would amount to a failure to implement the Term Directive, Information Society Directive and Enforcement Directive. It would of course be essential that such a failure – and its consequences for all stakeholders – is avoided, and so we welcome the Government’s suggested repeal of Regulation 24.
 - As with the above, we look forward to hearing more as soon as possible about how the Government will repeal this Regulation.

Contact

For any comments or questions on this consultation response, please contact:

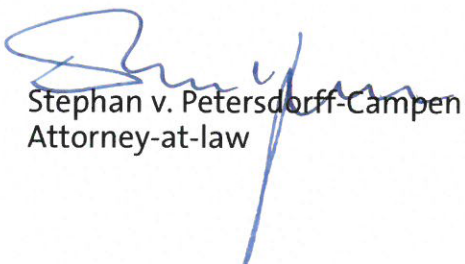
1. Stephan v. Petersdorff-Campen
Attorney-at-law
Representative of Thonet GmbH

rospatt osten pross
Intellectual Property Rechtsanwälte
Partschafsgesellschaft mbB
Kaiser-Friedrich-Ring 56
40547 Düsseldorf
Germany


www.rospatt.de

2. Thorsten Muck
General Manager of Thonet GmbH
Michael-Thonet-Str. 1
35066 Frankenberg
Germany


www.thonet.de


Stephan v. Petersdorff-Campen
Attorney-at-law



1/25

Close



1/20

Close