

23 December 2015

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

By email to: section52cdpa@ipo.gov.uk

Dear Sirs,

The Association of Photographers' (AOP) response to the Government's consultation on transitional arrangements for the repeal of section 52 of the Copyright, Designs & Patents Act 1988.

(Consultation questions appear in blue, AOP responses in black.)

• **What will be the impact of a transitional period of six months, both costs and benefits?**

The AOP is extremely concerned that the Government has decided to reverse its original decision for the period of transition for the repeal of Section 52 from a position of 5 years, to a much, much shorter time period of 6 months.

There will be no benefits at all to photographers from this reduction to what will effectively be 4 months from the close of the consultation. It is not clear why the decision has been made to warrant this change and why it was decided that such little advance warning of this change was appropriate.

The reduction in time will no doubt have a huge impact on photographers, particularly for those who have been commissioned for work that now can no longer go ahead. They will have planned future business around the Government's original implementation plan of 5 years. This change will render a great deal of work potentially useless and unsaleable. The Government must realise that while this is high on impossible to quantify, there is significant anecdotal evidence from the photographic community that the repeal of Section 52 creates an unstable marketplace. This uncertainty requires as long a period of transition as possible in order to mitigate the economic impact on our members and on the photographic community as a whole.

We hope that the Government will reconsider their decision and reinstate the original 5-year period that was decided upon at the previous consultation. Three

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years is the least amount of time that could be successfully managed by those photographers affected.

The Government's own original decision following its findings from the previous consultation was that 5 years would have "the least economic impact", therefore a move to 4 months using the Government's own assessment must therefore inevitably have a huge and detrimental impact. It is this impact that we ask that the Government consider; contracts will have to be terminated and individual photographers will suffer financially.

- Should the six months run from the start date of this consultation or from a different date, and if different, why?

The AOP believes that a much longer transition period is needed. We state again that six months is not long enough to allow those photographers affected enough time to make the necessary adjustments to their businesses.

- Should a longer or shorter transitional period than six months be adopted, and if so, what are the costs and benefits?

A longer transitional period needs to be adopted, one that is proportional to the impact of the repeal of section 52. It is important to realise that the majority of photography businesses are very small, employing often only one or two people, and that the time required to adjust and accommodate the requirements of the effect of the repeal is currently disproportionate.

- Are there any other issues which the guidance should cover which are not listed?

Proper and comprehensive guidance for all those affected should be created in consultation with all the appropriate industry sectors in order that those individual businesses affected can respond to the repeal of Section 52 with the minimum of economic disruption.

- Do you agree that the Government is right not to distinguish between two- and three-dimensional copies?

No. There needs to be much clearer guidance and a separation between the approach to two- and three-dimensional work.

- 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?

The new term for the depletion of stock is also of great concern as it potentially renders works that have already been produced in good faith, useless and

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potentially illegal. Six months is not long enough to effectively address this change as it will mean that photographers will have to immediately reassess their work to check compliance and if required, begin the process of withdrawing it, and/or contacting any other rights-holders who, as a result of the repeal of Section 52, are now included within the scope of the works already made.

It is also concerning, and it may be argued that the Government has not been thorough in explaining to individuals affected, that images that have been produced or contracted after October 2015 are only viable without such licensing until April 2016. A much smaller time period to exploit commercially when it was the Government's original intention that they could do so indefinitely if that image had been produced with the original 5 year transitional period. This is an important change that has enormous impact as photographers whether retrospectively obtain a licence or withdraw/destroy the work.

There is also a cultural impact of this as works that had been in the public domain are withdrawn depriving future generations of access to important historical visual documentation which were once public.

- Do you agree that the period provided for depletion of stock is proportionate?

No.

- Should a longer or shorter depletion period than six months be adopted, and if so, what are the costs and benefits?

The AOP would like to see a longer depletion period, an additional 6 months minimum would be proportionate to the additional (unpaid) work that will be created by the repeal of section 52.

- 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?

Yes. The AOP believes that there should be no legislative change to works that have been purchased, sold or created on the basis that the copyright in any 3D work had expired, previous to the repeal of section 52.

- 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?

Any amendment of Paragraph 6, Schedule 1 of the CDPA 1988 should not compromise creators of two-dimensional works, where the inclusion of any other work was deemed to have no prior copyright or licensing issues.

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- 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?

The AOP cannot comment in this area.

- Do you agree that Regulation 24 of the Duration of Copyright and Rights in Performances Regulations 1995 should be repealed?

In principle the AOP believes that rights-holders should be able to control their own work and issue licenses as and when appropriate or desirable. It should be noted that any repeal of Regulation 24 should not have unintended or undesirable consequences for works and their creators, that had previously been made in good faith. The Government mentions that this repeal would have "limited scope" but does not explain the parameters of this fully.

- 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?

The AOP cannot comment in this area.

Should you require further information please do not hesitate to contact me.

Yours sincerely,

Seamus McGibbon
General Manager

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