

## **Response from the British Film Institute to Proposals for Transitional Arrangements associated with Repeal of Section 52 CDPA**

The BFI is the lead organisation for film in the UK. It is a Government arm's-length body and a distributor of Lottery funds for film.

Our mission is to ensure that film is central to our cultural life, in particular by supporting and nurturing the next generation of filmmakers and audiences. The BFI serves a public role which covers the cultural, creative and economic aspects of film in the UK.

We welcome the opportunity to respond to the consultation on the transitional arrangements for the repeal of section 52 of the CPPA 1988. This section reduced the term of protection to industrially exploited artistic works to 25 years.

We were unaware of the withdrawal of the Government's original intention to delay the repeal until 2020 and are concerned that what had seemed a timetable for orderly arrangements to be made over 5 years has become one with just 6 months to implement any changes that might be needed to our operations or those of others working in the audiovisual sector. We would ask Government to reconsider this timetable as many organisations and companies will have little awareness of its implications. We particularly commend the response by Professor Lionel Bently to this consultation on these matters.

Our main concern with these proposed transitional arrangements however is the intended repeal of Regulation 24 of the Duration Regulations. We do not comprehend why the Government has raised these issues in a consultation which relates to transitional arrangements relating to Design as they have much wider repercussions beyond Design. If the Government is considering these issues it would surely have been appropriate to have issued a separate consultation on these proposed areas of change in a less opaque way.

We are unclear why this change has been seen as a requirement in the repeal of Section 52, as this Section simply offered a defence and copyright always subsisted in the affected material and this has not changed. We agree with the Government that the proposed changes to Regulation 24 of the Duration of Copyright and Rights in Performances Regulations 1995 will apply beyond the area of design. In particular, it will have an impact on organisations like the BFI using old photographs and pre-1957 films, especially those which may only have copyright as a collection of photographs. This is wholly inappropriate, with significant wider consequences, and will affect our operations as we seek to improve accessibility to our Archive through a major programme of digitisation. The Archive seeks to

comply with every aspect of the IP regime in our objective to make collections widely accessible and we expend significant public resources in contacting rightsholders before making material available.

The consultation notes the Government's announcement in February 2015 where it acknowledged that amendments to Regulation 24 could have unintended and undesirable consequences unless further consequential amendments were made, and therefore had decided to make no change to this provision. Notwithstanding the impact on businesses seeking to use design works no longer protected by Section 52, we believe that there will be undesirable consequences in changing the conditions applying where copyright in old photographs and pre-1957 films might have been revived in 1996 and would ask the Government to seek a legislative solution which provides continuity of operation and certainty going forward for the archive sector and other organisations in dealing with these works.

We have only responded to specific questions concerning amendments to Paragraph 6, Schedule 1 CDPA and Regulation 24 of the Duration of Copyright and Rights in Performances Regulations 1995

- *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?*

No. We understand that this provision has not been implemented across all Member States and is not a requirement of the European Communities Act 1972.

While we are wholly supportive of provisions in the European single market being consistently implemented no change should be made until this has been fully agreed and a timetable for implementation set.

- *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?*

This would seem to lead to the same problems for 2D representations, and so including in films, of designs that have been legal to make as is the case where they have been made in reliance on section 52. If any artistic works are brought into copyright for the first time by this amendment, then there should be transitional provisions for those who have for a very long time been able to rely on there being no copyright in anything done with 2D representations of them. It is not acceptable that this provision should apply from April 2016 with apparently no transitional provisions. Transitional provisions for any amendment or repeal of paragraph 6 of Schedule 1 of the 1988 Act should be at least as generous as those in Regulation 23 of SI 1995/3297, which applied when copyright was revived in some works in 1996.

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

No. The consequences of its repeal need to be subject to a much wider and longer consultation. The unintended and unwelcome consequences of repeal for film and photographic archives need to be understood and, if Government still believes repeal is necessary in the field of Design, provision needs to be made through legislation for areas like film and photographic archives which would otherwise be adversely affected.

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