


**Consultation on transitional arrangements
for the repeal of Section 52 of the Copyright,
Designs and Patents Act 1988**

Response on behalf of ECHO

Dated 23 December 2015

Osborne Clarke LLP

1 London Wall
London
EC2Y 5EB
Telephone 
Fax +44 20 7105 7005

RJG/1023846/27464474.1/BSG

Contents

1.	Executive summary of response	1
2.	The conduct of this consultation	3
3.	The legal framework	5
4.	Transitional period	8
5.	Depletion period for existing stock	15
6.	Provision of copyright protection for works made before 1957	18
7.	Compulsory licensing of works where copyright is revived	24
	Annex 1 – Legal assessment of Government's decision to repeal Section 52	26
	Annex 2 – Business Summary Sheets	27
	Annex 3 - UK Replica Furniture Industry Economic Impact Assessment	28
	Annex 4 – Evidence of effect of different transitional periods	29
	Annex 5 – Previous questionnaire responses	30
	Annex 6 – Oxfirst Limited Report	31
	Annex 7 – New questionnaire responses	32
	Annex 8 – Wragge Lawrence Graham & Co. Article	33
	Annex 9 – Gabby Hardwick Solicitors Article	34

1. Executive summary of response

- 1.1 This response is submitted on behalf of The Expired Copyright in Homewares Organisation ("**ECHO**"). ECHO was founded as an industry group in response to the Enterprise and Regulatory Reform Bill 2012-13, which proposed, amongst other things, the repeal of Section 52 of the Copyright, Designs and Patents Act 1988 ("**CDPA 1988**"). ECHO's membership comprises UK businesses which engage in the lawful trade of classic furniture in which any copyright has expired.
- 1.2 ECHO's main objectives are to represent its members' interests by raising awareness about the serious legal and economic consequences arising from the repeal of Section 52 and to outline the case for transitional provisions to mitigate the impact on those members.
- 1.3 In this response, ECHO makes a number of preliminary points concerning the conduct of this consultation and the legal framework in which it is being conducted, before dealing with the four issues covered by the consultation. In summary, these preliminary points are:

Conduct of the consultation

- (a) The current consultation process is taking place under an expedited timetable, which is entirely inappropriate given the devastating impact the repeal of Section 52 will have on the businesses of ECHO members. The belatedly-granted two-week extension of the timetable is wholly inadequate.
- (b) The legal proceedings that have caused the Government to revoke the previous transitional arrangements are evidently central to its thinking in putting forward these new proposals. The Government's failure to provide relevant documents from these proceedings means that ECHO members and others are not in a position to contest or challenge either the arguments raised in that legal challenge or any evidence relied upon in support, or to make informed and meaningful representations on the proposals now put forward. ECHO has done the best it can to assemble this consultation response but is fundamentally and unfairly constrained from participating properly in the consultation by the manner in which the Government has chosen to conduct it.

Legal framework

- (c) The Government appears to have adopted its current proposals on the basis of a misinterpretation of the Court of Justice's decision in *Flos SpA v Semeraro Casa e Famiglia SpA* (C-168/09) [2011] E.C.D.R. 8 (ECJ (2nd Chamber)) ("**Flos**"). In particular, the Government appears not to have taken into account that *Flos* specifies that:
 - (i) Member States can adopt transitional provisions that are necessary to enable third parties to phase out the parts of their businesses that are based on earlier use of the relevant designs; transitional provisions do not have to be limited to those that are necessary to clear stock; and
 - (ii) the legitimate expectations of third parties need to be taken into account.
- (d) ECHO members and others have, since the adoption of the Enterprise and Regulatory Reform Act 2013 (the ERR), had a legitimate expectation that a reasonably long transitional period would be adopted, and since 9 February 2015 have had a legitimate expectation that the transitional period would last until 6 April 2020.
- (e) The Court of Justice's decision in *Flos* makes it clear that a 5-year transitional period would be appropriate if it was necessary to allow third parties, acting in good faith, to

phase out the relevant parts of their businesses in a manner that safeguards their economic interests.

1.4 In terms of the four issues covered by the consultation, ECHO's position is as follows:

Transitional period

- (a) The evidence shows and the Government had previously concluded that a five-year transitional period was necessary to allow affected businesses to adapt and create viable, alternative business models. Given this, we fail to see how the Government can now have decided that a five-year transitional period is incompatible with the Court of Justice's decision in *Flos*.
- (b) In any event, the evidence clearly shows that for the majority of ECHO members the new proposed transitional period only enables them to clear existing stock and does not enable them to phase out the relevant part of their businesses.
- (c) In addition, many ECHO members have, since the earlier five-year transitional period was announced, taken steps to adapt their business models and have incurred significant expenditure on the basis of their legitimate expectations that the transitional period would end on 6 April 2020. These legitimate expectations now need to be taken into account when considering the appropriate transitional arrangements.

Depletion period

- (d) ECHO's view is that irrespective of when the transitional period ends and the depletion period starts, it would be appropriate for the depletion period to apply to all furniture made in the UK, or imported into the UK, before that date. This would enable ECHO members to use the transitional period to phase out the relevant parts of their businesses, rather than just using the period to clear stock.
- (e) If the transitional period were to remain at five years as per the original transitional arrangements, then following that five-year transition period, a six month depletion period would be acceptable. If a shorter transitional period is adopted, then it is vital that ECHO members are given a long or indefinite period to sell existing stock.

Provision of copyright protection for works made before 1957

- (f) ECHO does not agree that Paragraph 6 of Schedule 1 of the CDPA 1988 should be amended. ECHO's reasons are detailed below.

Compulsory licensing of works where copyright is revived

- (g) ECHO does not agree that Regulation 24 of the Duration of Copyright and Rights in Performance Regulations 1995 should be repealed. ECHO's reasons are detailed below.

2. The conduct of this consultation

- 2.1 ECHO and its members are extremely disappointed with the Government's decision to revoke the original transitional arrangements for the repeal of Section 52, which were set out in the Enterprise and Regulatory Reform Act 2013 (Commencement No. 8 and Saving Provisions) Order 2015 (the "**Original Transitional Arrangements**").

Expedited timetable

- 2.2 The Original Transitional Arrangements were adopted by the Government following a lengthy process of evidence gathering and consultation that arose out of the passing on 25 April 2013 of the Enterprise and Regulatory Reform Act 2013 ("**ERRA**"). Section 74 of the ERRA repealed Section 52 on a date to be appointed by a commencement order and the Government committed itself to consulting on the implementation of the repeal and appropriate transitional arrangements.
- 2.3 The entire evidence gathering and consultation process on the repeal of Section 52 took almost 22 months, with the Government announcing the transitional arrangements it would be adopting on 18 February 2015. During that period ECHO made three separate formal submissions to the Government:
- (a) 30 August 2013 - following the passing of the ERRA on 25 April 2013;
 - (b) 27 November 2013 – following the IPO's Call for Evidence which commenced on 16 October 2013; and
 - (c) 27 October 2014 – following the commencement of the previous consultation on 15 September 2014.
- 2.4 Given that the repeal of Section 52 was highly controversial and had a devastating impact on ECHO's members and others, it was entirely appropriate that the Government engaged in a thorough consultation process on its repeal. This process ensured that the transitional provisions struck a proportionate balance, objectively justified on the evidence, between the interests of rightsholders, and third parties (such as ECHO members), who had in good faith relied upon their rights to do business under the existing law.
- 2.5 In contrast, the current process was announced on 28 October 2015 and a period of only six weeks has been provided to enable interested parties to provide both evidence and submissions on the Government's new, and unexpected, reversal of policy on the appropriate transitional provisions for the repeal of Section 52. In addition, the consultation also covers two new issues, not addressed in the previous consultation process, that concern highly complex legal issues. Six weeks was a manifestly inadequate period for consultation; all the more so given the limited resources of the typically small to medium sized businesses that would suffer most from the new proposals. Indeed, the Government recognised the inadequacy of the consultation period at the eleventh hour, extending the timetable at around 4.30pm on 7 December, 48 hours before the consultation was due to close. Yet this extension (a) came much too late, since ECHO had already devoted its finite resources to assembling evidence and submissions for the expedited six-week timeframe, and (b) was too short in any event. A proper consultation would have spanned at least 12 weeks. This would have given ECHO's members sufficient time to co-ordinate their approach to the consultation and to obtain more detailed information and evidence, from the full range of ECHO members, as to the impact of the Government's current proposals on their respective businesses. It would also have enabled ECHO to consider obtaining objective expert evidence from an economist or accountant to support ECHO members' own evidence.

Failure to provide relevant documents

- 2.6 Worse still, ECHO and others are in a position where they have had to engage in the consultation process without being provided with any details of the legal challenge that the Government has received; a legal challenge that the consultation makes clear, is the reason why the Government has revoked the Original Transitional Arrangements.
- 2.7 ECHO has repeatedly requested that the Government provide it with copies of the statements of case and other relevant documentation setting out the basis of the judicial review claim it received, but this documentation has not been provided. As the Government has not made the relevant documentation available or explained precisely how and why the legal challenge has led the Government to alter its view of the proper balance between the interests of rightsholders and of third parties, ECHO and its members do not have sufficient information to enable them to understand, or to contest, challenge and make informed comments, on either the legal arguments raised in the claim, or any evidence that was relied upon in support, or indeed the basic rationale for the proposals which are now put forward.
- 2.8 The failure to provide this documentation is wholly inconsistent with the Government's own consultation principles, which state that:
- "Policy makers should bear in mind the Civil Service Reform principles of open policy making **throughout the process** and not just at set points of consultation."* [Emphasis added.]
- "Every effort should be made to make available the Government's evidence base at an early stage **to enable contestability and challenge.**"* [Emphasis added.]
- "Sufficient information should be made available to stakeholders **to enable them to make informed comments.** Relevant documentation should be posted online to enhance accessibility and opportunities for reuse."* [Emphasis added.]
- 2.9 The consultation is in consequence deeply unfair to ECHO's members. In the remainder of this document ECHO has attempted to assemble submissions and evidence to explain why the new proposals are fundamentally flawed – but ECHO has been hamstrung in its ability to engage with and challenge the rationale for the proposals because the Government has failed to explain with any degree of precision its reasons for abandoning the careful and evidence-based balance previously reached.

3. The legal framework

- 3.1 It appears from the consultation paper, that the Government's decision to revoke the Original Transitional Provisions was primarily taken on the basis of the Court of Justice's decision in *Flos*. *Flos*, of course, was central to the Government's previous proposals for transitional arrangements and to its decision to create a five-year transitional period; it is not at all clear how (if at all) the Government's interpretation of *Flos* has changed.
- 3.2 ECHO has previously explained why the Government's decision to repeal Section 52 on the basis of *Flos* was based on a misunderstanding of that decision. Whilst there is no significant value in repeating those assertions again here, for context, we set out at Annex 1 the response that was previously provided, with detailed analysis of the legal shortcomings of the Government's decision, examining why the repeal's objectives are not met, the deficient legal assumptions behind the repeal, and parallels in other jurisdictions.
- 3.3 In terms of the transitional arrangements, the current consultation document correctly notes (as did the Government's original consultations and decision) that the Court of Justice ruled in *Flos* that transitional periods are lawful and that a balance needs to be struck between the needs of rights holders and those of third parties affected by the revival or grant of copyright protection in artistic designs. The Government's proposal that a six month transitional period is appropriate, demonstrates, in ECHO's view, that the Government is disproportionately overriding the rights and interests of third parties affected by the repeal of Section 52 – even on the Government's own interpretation of *Flos*.
- 3.4 The Court of Justice held in *Flos* that:
- (a) both the acquired rights **and** the legitimate expectation of third parties concerned have to be taken into account when balancing the competing interests (paragraph 57); and
 - (b) Member States could adopt transitional periods that were necessary for third parties **to phase out** those parts of their businesses that are based on earlier use of the designs. Transitional periods were not limited to those that were necessary to enable third parties to clear stock (paragraph 59).

Legitimate expectations of third parties

- 3.5 The starting point is that ECHO members have legitimate businesses and have lawfully acquired goodwill, contracts, stock etc. These are rights with which any repeal of Section 52 interferes.
- 3.6 The Government's response to the previous consultation was published on 9 February 2015. The Government announced in that document that the repeal of Section 52 would come into force on 6 April 2020 and that following the commencement of the repeal, business and individuals trading in copies of industrially-manufactured artistic works would have an indefinite period to sell off existing copies. In accordance with that policy announcement, the Commencement Order was adopted on 10 March 2015.
- 3.7 Accordingly, since 10 March 2015, ECHO members have had a legitimate expectation that they would have until 6 April 2020 to phase out the part of their business that is based on earlier use of the designs in question, and then a further indefinite period to clear stock after that date.
- 3.8 Even prior to the Government's response to the previous consultation on 9 February 2015, ECHO members had a legitimate expectation that the repeal of Section 52 would be carried out with a relatively long commencement period. Those legitimate expectations were supported by the Government on several occasions, for example:

- (a) In its 15 May 2012 Impact Assessment on the repeal of Section 52, the Government stated that *"it is proposed to implement the repeal of section 52 with a relatively long commencement period"*;
 - (b) During the passage of the ERRA in the House of Lords, Viscount Younger stated that the transitional provisions would take into account *"the length of the existing supply contracts and leases for warehouses where products are stored"* and agreed that *"[t]he change in law needs to be introduced in a measured way, balancing the needs of the parties involved."*; and
 - (c) In the original consultation document, published on 15 September 2014, the Government proposed a transitional period of three years.
- 3.9 During the round table meeting at the UKIPO on 25 November 2015 it was made clear to representatives of ECHO that part of the Government's rationale for a short transitional period under the proposed new transitional arrangements was that the ERRA was passed in 2013, so ECHO members and others have already had two years to phase out the parts of their businesses that are based on earlier use. This approach fails to take into account that ECHO members, like any business, need certainty in order to carry out adequate business planning. They simply have not known when the changes that will turn their legal business models into illegal business models are going to take effect - 6 months? 3 years? 5 years? The mere lapse of time, without any certainty, does not mean members could have been calmly planning ahead, especially as they had been led to understand that the commencement period, when decided upon, would be relatively long. Once they had certainty, only then could they start planning properly.
- 3.10 Indeed, following the evidence and submissions that were filed in the previous consultation, the Government expressly agreed that:
- "meaningful planning for businesses adapting to the change in law would be difficult if there was no confirmation of the date the repeal would come into force"* (page 13 of the response to the previous consultations).
- 3.11 In fact, ECHO members have until recently believed that the change in the law would take place on 6 April 2020 and have been planning for the change in the law on that basis. We provide more information below on the steps that ECHO members have been taking to phase out the relevant parts of their businesses on the basis of the Original Transitional Arrangements.
- Necessary for third parties to phase out part of their business*
- 3.12 It is clear from paragraph 59 of *Flos*, that when the Court of Justice refers to a period of time that is necessary for third parties to phase out part of their business, it is not simply referring to the depletion of stock, because the two rationales for the length of the transitional period are given as alternates. Furthermore, in paragraph 62, the Court of Justice makes it clear that longer transitional periods could be justified on the grounds that they are necessary for third parties to phase out the relevant parts of the business, than could be justified on the basis that they are necessary to clear stock:
- "[it] does not appear to be justified by the need to safeguard the economic interests of third parties acting in good faith, since it is apparent that a shorter period would also allow the part of their business that is based on earlier use of those designs to be phased out and, even more so, their stock to be cleared"* (paragraph 62).
- 3.13 This reference to the *'economic interests of third parties acting in good faith'* makes it clear that appropriate transitional periods should enable them to phase out the relevant part of their

business in a way that safeguards their economic interests. This was stated clearly by Advocate General Bot in paragraph 78 of the Opinion delivered in the same case:

"In my view, the transitional period should be sufficiently long to secure the economic interests of undertakings which have invested in good faith in the production of designs".

- 3.14 It is also important to remember that *Flos* concerned transitional provisions that initially provided for a 10-year transitional period and subsequently enabled third parties who had been selling, prior to the implementation of the Term Directive into Italian law, to continue selling products to such designs indefinitely. There is nothing in the decision in *Flos* that suggests that the Court of Justice would consider a 5-year transitional period as being too long. Indeed, the Court of Justice's decision makes it clear that a 5-year transitional period would be appropriate if it was necessary to allow third parties, acting in good faith, to phase out the relevant parts of their businesses in a manner that safeguards their economic interests. That is precisely what ECHO's members have been taking steps to do since the Original Transitional Arrangements were promulgated.

4. Transitional period

4.1 ECHO provided a significant amount of evidence and submissions on the appropriate transitional period during the previous consultation, including:

- (a) Business Summary Sheets from a number of ECHO members. These Business Summary Sheets are at **Annex 2**;
- (b) UK Replica Furniture Industry Economic Impact Assessment by Arts Economics at **Annex 3**;
- (c) Evidence from its members on the effects that transitional periods of different lengths would have on them. Members were asked to consider what the differences might be for them, between the repeal taking effect in 1 year, 2 years or 5 years. The responses are set out at **Annex 4**;
- (d) Responses to survey questionnaires designed to provide the Government with further evidence on the impact of various transitional periods on ECHO members. These responses are at **Annex 5**; and
- (e) A report from Oxfirst Ltd which provided an economic analysis on the repeal of Section 52. A copy of the report is at **Annex 6**.

4.2 We believe that it was on the basis of this evidence that the Government reached the following conclusion, (emphasis added):

*"The evidence also indicated that a 5 year transition period, from the point where the Government announced its final decision on transitional provisions, is **necessary** to allow affected businesses to adapt and create viable alternative business models (such as moving to a model which introduces new British designs to the market)." (page 19)*

4.3 Given this conclusion, we fail to see how the Government can now have decided that a five-year transitional period is incompatible with the Court of Justice's decision in *Flos*. Accordingly, we would invite the Government to review again all the evidence previously provided by ECHO in the previous consultation process.

4.4 In any event, ECHO has carried out a further survey of its members to assess the impact of the Government's current proposal for a six month transitional period commencing on 28 October 2015. Copies of the responses to this survey are at **Annex 7**.

4.5 It is clear from the responses of the various surveys conducted by ECHO that the majority of ECHO's members believe that, given sufficient time, they could adapt their businesses, and may survive. Indeed, the responses to the various questionnaires show that ECHO members have not sat on their hands. There is no lack of desire on the part of most ECHO members to change their business model in response to what has happened to their industry. We learned of a multitude of new brands or businesses that are being developed and which do not involve replica classic designs.

4.6 In the submissions filed by ECHO during the previous consultation, we drew attention to the responses to question 1.3 of the questionnaires provided with ECHO's submissions of 27 October 2014, about transitional costs, (**Annex 5** to this response), as follows:

"Respondents variously provide details of the following new initiatives since the passing of the ERR: 'Blackhouse' (Respondent A), 'Boca Living' (Respondent C), a new sofa concept (Respondent E), and 'Live Iconic' (Respondent F). Not a single one of these new initiatives is profitable yet."

The following, from Respondent I, is typical:

"We have been working on 2 new furniture websites since the repeal. We have also added 40 new products each with 10 variations in colour, totalling 400 products. However, we have only sold 1 product from the new range to date. For us this is extremely worrying."

See also this comment from Respondent G:

"Despite our best efforts in marketing and actively selling our new, contemporary office range, we've had very little uptake and unfortunately a warehouse still full of these chairs and desks."

What is clear is that it takes an enormous amount of time, costs, effort, and luck, to develop a new range of furniture which is successful and profitable. Respondents H and J in particular set out (at 1.3) great detail of the typical costs and timescale involved in designing and launching new lines. Indeed, one rights owner (Vitra) is itself on record as stating that it takes up to 9 or more years to develop a new, successful product:

*"The amount of time and effort that goes into developing a new furniture design is huge. The development involves not just the initial concept, but the refining and design of each element of that concept, working with materials to get the right quality and effect and testing all the materials and the finished product. This process can take years – often **as much as eight to nine years** and sometime even longer." [Emphasis added]*

One of the somewhat baffling aspects of the latest IPO Consultation paper is that it repeatedly states that the Government recognises that it takes a long time to develop and introduce new products in this market. Yet it only proposes to give 3 years from May 2015. We would contrast these statements from the Consultation paper:

"The Government has received evidence from businesses to suggest that it takes at least 5 years on average to change their product offering... The Government consider this as reasonable timeframes given that industrially-produced goods are not generally seen as fast-moving consumer goods. The Government is aware however that it could take longer to introduce commercially successful products given the difficulties in developing a product that satisfies the market from an aesthetic and ergonomic perspective, yet is able to be manufactured on an industrial scale."

and:

"the evidence suggests that 3 years may be sufficient for business to design, develop and market their products so that they are profitable."

Apart from the fact that these statements appear to contradict each other, we question where the 'evidence' is, that three years may be sufficient. If the responses in Annex 2 are read carefully along with the data produced in the previous May 2014 ECHO submission, it is clear that in fact the evidence points towards 5 years being just about the bare minimum to enable businesses to survive. Money from selling replica furniture for that length of time will pay for new designs and the changeover. Respondent C summarises what affected businesses need:

"With a 5 year period it is likely that our company can survive without any external investment as we can use the continuous profit from replica furniture to put into the design process and into integrating off-the shelf products into

our current line of products. Although profitability of the new company might not be reached until year 7, the company will thrive and employee-wise go toward a similar point where we are now. With a 5-year transitional period we will not need to rush through the development of new product lines. This is a process which is extremely difficult to get right, even when you are not in a hurry"

Respondent J states:

"5 years is the only transition length that would enable us to find, not only suitable alternative products, but long enough time to suitably test them in the marketplace to ensure they can be commercially viable.

5 years transition is the only time frame that will enable us to provide enough designs of our own that, married with already available products, may be commercially viable and successful. 5 years may give us 40, up to 50 designs, which although optimistic, is the only level we can hope to continue.

From concept to final design, a bespoke product has a minimum 6 month process but the reality is the usually far longer. Even with increased resources (and risk) it is unlikely to be able to harbour enough during a 3-year transition."

- 4.7 On the issue of the costs of ending long term commitments / contracts early, question 1.5 of the questionnaires provided with ECHO's submissions of 27 October 2014 addressed this:

"Much data on this point was also supplied in our previous submission in May 2014, to which the reader is referred. If the TP is 6 months, one business will incur £305,000 in warehouse lease termination and £168,000 in staff redundancy costs. If the TP is 3 years, the same business will incur £205,000 in warehouse lease termination and £85,000 in staff redundancy costs. If the TP is 5 years, the same business will incur £186,000 in warehouse lease termination and £28,000 in staff redundancy costs."

- 4.8 The responses to the fresh questionnaires completed for the purposes of the current consultation demonstrate that:

- (a) many ECHO members have been taking steps to phase out the relevant parts of their businesses and to transition to alternative business models;
- (b) these steps have been taken and expenditure incurred on the basis of ECHO members' legitimate expectations that the transitional period would end on 6 April 2020; and
- (c) a 5-year transitional period continues to be necessary for ECHO members to phase out the relevant parts of their businesses.

- 4.9 Although, we would ask that the full responses are reviewed in detail, we would draw your attention in particular to the following statements:

- (a) Respondent A states:

"We have taken a risk on the [new line of] beds being popular sellers. They may prove not to be wanted by the market but the fact we could still sell our existing lines helped us to take this risk. Not being able to sell the replicas and buying new product lines that don't sell or we don't have enough time to test will result in us going out of business."

(b) Respondent B states:

"[We have i]nvested in a lot of research and development for new product designs. Taken on new staff including product designers to help us design new product lines, invested in various moulds and sample designs."

"[In reliance on the previous transitional arrangements, we have] [t]aken on a total of 8 new staff, new 5-year warehouse lease, new 3-year office lease."

(c) Respondent C states:

"Already spend significant amount on developing new product, started to launch new product, slowly moving focus on some of these new products."

"We have worked with existing suppliers and made our commitment to them, and they have taken on new staff (especially product develop team of designers and architects) to develop new product, to support that we have in-house taken on a new product and marketing coordinator....Made long-time commitment to staff, to give them comfort in the future and get the team working together to work on existing business model, and work on developing the business with new product through the transitional period to make sure that the company will remain strong through the transition with new product and business model."

"If new law is actioned sooner than already agreed April 2020, then it will not give us the time for transition into new products which needs to be sourced and developed, then business will suffer huge loss because of large stock holdings, and will not be able to avoid liquidation. Sourced and developed for new product we are already working on, things that does take a long time, but with the agreed transitional period up to April 2020 we will be able to get that in place, but if the new proposed transitional arrangements comes in place it will be impossible."

(d) Respondent F states:

"We have also signed leases until 2020 and we have a full capacity of employees, many we took on this summer who will certainly not be expecting that this sudden move will leave them without employment so soon."

"The difference in transition is everything because with the period as it was before all of our contracts and leases would have naturally ended or with a position to extend past 2020. Now we are faced with loss of equity and reputation with the likely foreclosure on vehicles and rents....It is very difficult to speed up the process, especially given the consultation has offered no consultation whatsoever. "

(e) Respondent G states,:

"Started a business called Blackhouse. This is an online furniture business who have furniture made in Scotland and finished only in the finest Harris Tweed. We were in the process of establishing this fledgling brand, but will now not have time to do so."

(f) Respondent I states:

"For the financial forecasting for new investments we have relied on 5 years of income from our replica furniture business to build and/or grow other business models. On the expectation of cash in over the next 5 years we have invested heavily in non-replica furniture and new online businesses that are related to selling furniture online. We have built one mattress concept and one sofa concept, both of which are completely reliant on income from the replica business in the first few years until they can sustain

themselves. Moreover we have started sourcing new products, and hired relevant people to find non-replica furniture products that could be successful for us. We have also engaged a designer to start designing new lines for us."

"[W]e have invested heavily in transforming our business model, relying on income from the replica furniture business up until 2020... To summarize we have currently spent 2.015.000 GBP investing in transforming our business model. With the additional salaries and obligations we have made the investment becomes naturally bigger month by month. In April 2016, the total investment made would be approximately 2.795.000 GBP"

(g) Respondent L states:

"We have created and worked hard to establish a new brand called Blackhouse...this project was started 24 months ago and so far we have invested over £45,000 in sunk direct start up costs – such as: branding workshops...marketing consultant contracted...trade mark registration...designer of furniture contracted...branding company contracted...website company contracted...copywriter and photographer required....By way of further ongoing costs, the company has employed a new full time member of staff for the last 18 months to drive this forward...the sales generated by the company are not yet covering the modest ongoing costs and are certainly not making any contribution towards the initial investment. It is estimated that a significant further sum will require to be invested in order to get the brand to a level that will start to return investment. This represents a significant risk and there is still a high chance of failure at this time."

(h) Respondent M states:

"Based on a 5 year plan we had decided to invest in the current business to raise enough money to start a new business. We estimated that starting a new business would cost £400,000-£500,000..."

We have already invested £75,000 in our current website to increase turnover. We have invested heavily in our current warehouse with more space and racking to accommodate the arrival of new products. We have taken on one more member of warehouse staff to help with this transition.

We have acquired 2 new designer product ranges. They are due to be incorporated into a new website but with past experience it can take years to gain a presence in the market and rankings on google before customers will buy the product and recognise the brand..."

The issue with bringing new products to market is it can take a long time to find the right product. We have already tried one brand with 50 products and we have sold 6 pieces in 12 months."

4.10 The current consultation specifically asks what the impact of a transitional period of six months would be. The response from ECHO members is clear – **it will force them to sell off their stock as quickly as possible and close down**. This is borne out by some of the comments already listed above but we would also draw you attention to the following:

(a) Respondent B states:

"I believe we would struggle in such a short timeframe to be able to launch and market our new product range. We would see a 70% drop in sales revenue, our business would not be able to survive long enough to see us launch and market new designs. We are trying to urgently push through some new designs, but launching new

products to the market takes time, this cannot be done in the space of a few months. These are very tough and worrying times for all concerned."

(b) Respondent C states:

"This short period will effectively kill the company. It is simply not enough time to transform the company. The cost would be killing the company."

(c) Respondent D states:

"If Government proposal to shorten the transitional period for the repeal of section 52 on 28 October 2015 will come into effect, then business will suffer huge loss because of large stock holdings, and will not be able to avoid liquidation."

(d) Respondent F states:

"Clearly we are now faced with the possibility that we will have to close at the loss of all employees. There is not time now to change our entire portfolio between now and October 2016, do the necessary market research and tailor new products to the marketplace."

(e) Respondent G states:

"Quite simply, we will have to close our doors as a furniture business with the likely loss of 5 jobs. We have not had enough time to establish the new Blackhouse brand and therefore the business will likely be forced to close...We are looking at ways to discount and 'fire sale' out our existing stock and we have placed no more orders with our suppliers for fear of facing criminal proceedings if goods are not sold in time. This has meant that we are seeing far lower sales already as we are not carrying the level of normal stock to satisfy anticipated Christmas and New Year peak periods. We will have to close. It doesn't get any worse than that!"

(f) Respondent H states:

"This means that the stock needs to be sold off at any price as quick as possible to close the company asap to reduce running costs, so the company doesn't close at a loss. With the 2020 repeal I am positive that the company could have successfully made a transition, because I could have secured a loan to invest in new product lines."

(g) Respondent J states:

"There are no benefits to our business as we would not have enough time to diversify into new product lines and build up a sustainable income to replace lost revenue from designer reproduction furniture. We would not be able to continue as a viable business and therefore would cease to trade, resulting in the loss of all jobs."

(h) Respondent L states:

"we hold a high quantity of stock. Without an unlimited time to sell goods off then we might be legally forced to destroy what we have left following the [transition period]".

(i) Respondent M states:

"This announcement has put us in an extremely difficult and stressful position. Without the ability to order stock we cannot keep our turnover at a level to make the business viable. Our fast moving stock has to be replenished every month. Orders from our

factories take 8-12 weeks to arrive once the order has been placed. With this in mind we are only able to maintain our current turnover until the end of January 2016. After this date it will be in drastic decline. We are doing everything we can to bring in new products, develop a new strategy, build a new website and put together an advertising plan. However, trying to build a new business and maintain the current business under such time constraints is almost impossible. We have the additional problem that we cannot obtain any new designs for the new business new until the end of February 2016 due to the lengthy process of obtaining product from China."

- 4.11 Although the Government has described its proposals as a six month transitional period followed by an additional six months to clear pre-existing stock, it can be seen from the comments above that the reality is that a six month transitional period provides no opportunity for ECHO members to phase out the relevant part of their businesses beyond the rapid depletion of stock.
- 4.12 In addition, it is also apparent from ECHO members' responses that a six-month transitional period will likely result in the loss of some or all jobs from their respective businesses. We refer the reader generally to **Annex 3** (UK Replica Furniture Industry Economic Impact Assessment by Arts Economics, June 2012), and in particular to the following statistics:
- (a) *"The UK replica furniture industry is made up of around 60 small, knowledge intensive businesses...this sector of furniture industry employed at least 600 people in the UK in 2011...this sector supplies retailers in the furniture and wider consumer retail markets accounting for the potential equivalent of 2,600 full-time positions."*
- 4.13 It is apparent from ECHO members' responses to the new questionnaires that additional staff has been taken on to assist in transitioning their businesses, in reliance on the Original Transitional Arrangements. Therefore, the impact of the transitional arrangements currently proposed is potentially even greater than that envisaged at the time of the previous consultation.

Date of commencement of transitional period

- 4.14 The Government is proposing that the six month transitional period runs from the **start date of the consultation**. This incredibly accelerated and aggressive approach would only further exacerbate the prejudice to the legitimate expectations and the economic interests of ECHO members as it is likely to result in a transitional period of three or less months from the date any final decision is made.

5. Depletion period for existing stock

Application of depletion period only to those contracts entered into prior to the commencement of the consultation

5.1 There are several reasons why it is not appropriate for the depletion period to only apply to those contracts entered into prior to the commencement of the consultation.

5.2 First, this policy was announced with no notice and at the same time that the Government announced its new policy on the transitional provisions for the repeal of Section 52. This means that ECHO's members have literally been provided with zero time to change their business plans and adapt to the Government's new policy. On page 14 of the Impact Assessment, the Government justifies this policy on the basis that "*interested parties will be expecting the Government's revised transitional arrangements and should already be considering alternative arrangements*". However, there was no public indication from the Government that it was proposing to shorten the transitional arrangements and certainly not that it was intending to shorten them by such a drastic amount. The announcement of the Government's decision to revoke the original Commencement Order stated baldly as follows:

"Following the introduction of this Order, the Government received a claim for judicial review challenging its compatibility with EU law.

Having considered the matter carefully, the Government has revoked the Commencement Order and will not continue with the current transitional arrangements. The revocation order can be viewed on the legislation.gov.uk website.

The Government will launch a fresh consultation on revised transitional arrangements, including the date for implementing the repeal. A further announcement will be made when the new consultation is published."

5.3 Whilst some ECHO members subsequently became aware that the claim for judicial review received by the Government had been brought by parties claiming copyright ownership in various pieces of classic furniture design, this is certainly not the case for all ECHO members. ECHO has no permanent staff or budget and is not in a position to report all developments and provide legal advice to its members on a regular basis. In any event, to many ECHO members, it was not clear following the Government's announcement that the transitional arrangement would be shortened and it was certainly not clear to any ECHO members that they would be shortened by such a significant amount.

5.4 Indeed, it was unclear to many specialist intellectual property lawyers that the Government's announcement meant that the transitional arrangements were due to be shortened. Wragge Lawrence Graham & Co. published an update (a copy of which is at **Annex 8**) in which they called the Government's announcement:

"A blow for owners of iconic designs, and new designers looking for stronger protection for things that they hope will become classics, but an interim triumph for those who have built up legitimate businesses selling goods that are copies of classic older designs."

5.5 Gaby Hardwick also published an update (a copy of which is at **Annex 9**) in which they expressed the belief that:

"[b]usinesses that sell reproductions of mass-produced classic design works can breathe a little easier for now. A legislative change that threatens to hamper their ability to trade has been halted to allow for judicial review"

- 5.6 Accordingly, any suggestion that the replica furniture industry had been 'put on notice' of the significant reduction in the transitional period is without merit. (Moreover, the uncertainty experienced even by sophisticated legal commentators as to the nature and basis of the judicial review claim is a further illustration of why fairness in the present consultation required total transparency as to that claim and how and why it led the Government so radically to change its mind.)
- 5.7 ECHO members commented in the recent survey responses at **Annex 7** as follows:
- (a) Respondent K stated: *"The information has not been made public and only a few are privileged to this information. We have only today (02/12/2015) learned of this and now feel as if we have a crisis on our hands as we have just order \$70k worth of stock to cope with Chinese new year."*
 - (b) Respondent C stated: *We have made no steps [since the Government announced the shorter transitional period]. Still in shock. The loose plan is to sell off as much stock as we can and fold the company."*
 - (c) Respondent F stated: *"We were even told in a phone call to the IPO that 'we have had plenty of time already' recently. I utterly dispute this. Ultimately, the first consultation period left us waiting and waiting for result. Then we were given the 5 years we have been able to plan and plan well for the years ahead. To then have the rug swept from beneath our feet left our plans in ruins and we no longer have the time and ability to make the necessary changes before October 2016."*
- 5.8 Second, the application of the depletion period only to those contracts entered into prior to the commencement of the consultation, adopts the fiction that ECHO members and others would instantly: (a) become aware that the Government has announced its new proposals for the transitional arrangements; (b) absorb and understand their contents; (c) be in a position to take legal advice on the same; and (d) take the steps necessary to adapt their business models to ensure they did not acquire any new stock that they would not be able to sell before the end of the six month transitional period. In reality, this process takes time and for many ECHO members, which are small, family-run enterprises, a significant period of time.
- 5.9 Third, the Government's proposal means that ECHO members have not been able to utilise the short six month transitional period that the Government has proposed. This is because any stock acquired during the transitional period has to be sold within that six month period. Many ECHO members have simply not been able to take that chance and have effectively only been able to use the transitional period to clear their pre-existing stock. As explained above *Flos* explicitly states that appropriate transitional periods are not just those that enable third parties to clear stock but the Government's proposals have effectively forced ECHO members to stop any new purchases and simply deplete existing stock. See, for example:
- (a) Respondent G comments that: *"We are looking at ways to discount and 'fire sale' out our existing stock and we have placed no more orders with our suppliers for fear of facing criminal proceedings if goods are not sold in time."*
 - (b) Respondent F comments that: *"We are no longer allowed to order! We therefore now have the possibility of limited income too which will ultimately hinder our attempt to make that transition."*
- 5.10 ECHO submits that irrespective of when the transitional period ends and the depletion period starts, it would be appropriate for the depletion period to apply to all furniture made in the UK, or imported into the UK, before that date. This would enable ECHO members and others to use the transitional period to phase out the relevant part of their business in a manner in accordance with the ruling in *Flos* and then use the depletion period to clear their stock. The current approach effectively means that the transitional period will mainly be used to clear stock for the reasons discussed above.

Length of depletion period

- 5.11 ECHO explained in its previous submissions why it is necessary for its members to be given the right to sell off stock which is in the UK on the date the repeal takes effect. ECHO's members are not businesses which have high turnover of fast-moving stock, unlike fruit and vegetable traders. A good summary of the position, if the stock sell-off right were cut back, is given by Respondent G (**Annex 5**):

"we would essentially have limited time to sell off our existing stock. Selling everything within such a short time frame would prove almost impossible, regardless of investment in marketing. By the very nature of what we sell, we're required to hold certain stock levels of models and colours which perhaps aren't as popular as others. These can often take a good while to sell but it's important we hold limited quantities to keep customers happy. These would most probably end up being destroyed as it would be virtually impossible to sell them within such a short time scale."

- 5.12 Of course, the length of the transitional period is critical in assessing the impact of a limited depletion period of six months. If the transitional period were to remain at five years as per the original transitional arrangements, then a six month depletion period would be acceptable because ECHO members would have sufficient time to plan and could ensure that their stock levels as at the end of the transitional period were at a level that enabled them to clear this stock over the following six months. Conversely, the short transitional period currently proposed gives ECHO members no time to ensure that this is the case. If a short transitional period is adopted, then it is vital that ECHO members are given a long or indefinite period to sell existing stock.

6. **Provision of copyright protection for works made before 1957**

6.1 The proposed changes to Paragraph 6 of Schedule 1 of the CDPA 1988 proceed on the mistaken assumption that the UK Government is required to provide copyright protection to industrial designs/works made before 1 June 1957 the under the Term Directive (93/98 EEC). We set out in below why this is not the case.

6.2 In any event, it is clear that the proposed amendment to Paragraph 6 of Schedule 1 of the CDPA 1988 will potentially cause a large number of products that could have been protected as registered designs prior to 1957 to suddenly become entitled to copyright protection after 58 or more years. It seems inherently undesirable that such a dramatic and substantive change to UK copyright law should be made solely on the basis of a judicial review by parties poised to benefit enormously from the increased monopolies to be conferred on them, and by a consultation lasting only 6 weeks after the Government's intention to amend Paragraph 6 in this way, was announced. In particular, the proposed change could impact many industries which do not appreciate that they are affected by the repeal.

Summary of why Paragraph 6 does not need to be amended under EU law

6.3 The UK Government considers that the dis-application of copyright to industrial designs/works made before 1 June 1957 under certain conditions in national legislation (Para. 6 Sch. 1 CDPA 1988) is incompatible with the EC Term Directive (93/98 EEC and 2006/116/EC) and the Duration of Copyright and Rights in Performances Regulations 1995. The reason given for this view is that the EC Directive and UK implementing regulations are later in time to the national provisions in the CDPA 1988 and specify that works protected in an EEA state should, under certain conditions, be granted copyright protection in the UK, even where protection has expired. Reference is also made to *Sony Music Case C-240/07*, in which the CJEU stretched the remit of the Term Directive to works that were never in copyright.

6.4 We respectfully submit that the UK Government's opinion is incorrect for two reasons:

(a) First, it does not take into account specific and even later EU legislation. Art. 17 Design Directive 1998 and Art 96(2) of Design Regulation 2001 (as amended 2006) require designs to be eligible for copyright protection, but expressly also leave "[t]he extent to which, and the conditions under which, such a protection is conferred, (...) to each Member State". Para. 6 Sch. 1 CDPA 1988 is fully compliant with EU law, because the application of copyright protection to designs / industrially applied artistic works is for national legislation to determine; and

(b) Second, Art, 1 Term Directive, on which IPO places so much emphasis, itself defines the rights accruing to authors of artistic works by reference to Art. 2 Berne Convention. Art. 2(7) Berne Convention states that it shall be a matter for Contracting States to determine the extent of the application of their national laws to works of applied art and industrial designs and models, as well as the conditions under which such works, designs and models shall be protected. Art.7(4) is incorporated into Art.2(7) and, again, expressly leaves it to Contracting States to determine the term of protection for works of applied art in so far as they are protected as artistic works (provided the minimum term is 25 years — which it has been in the UK). This provides an express link between the Term Directive and the Designs legislation. Both very clearly leave the extent and conditions of the protection afforded to industrial designs/works up to EU Member States.

6.5 It follows that Para. 6 Sch. 1 CDPA 1988, which is a logical transitional provision from the Copyright Act 1956, and earlier copyright and designs legislation treating the subsistence of copyright in pre-1957 designs, is not dis-applied but affirmed by the Term Directive and later EU law. We look in greater detail at these points below.

Outline of design rights, copyrights and their intersection

- 6.6 In order to fully discuss why industrially applied artistic works made before 1 June 1957 are not protected by copyright, we will outline by way of background the reasons behind the current state of the law. To do so, we will briefly discuss the nature of design rights, copyrights and how their intersection has been dealt with both in the UK and internationally.

Designs

- 6.7 In the UK, like in many other jurisdictions, design rights (a quasi-state monopoly for, 15/25 years, for the appearance of a thing) were first implemented in the nineteenth century as a way to reward the innovation of creators of useful items, for a period long enough to cover a product life cycle, but, as a matter of policy, not so long as to stultify commercial progress and the development of ideas and competition, thus allowing the UK public to choose cheaper and perhaps better (improved) products.
- 6.8 Designs are usually embodied in drawings and photographs, but may exist in an actual article. In the case of furniture, the design is likely to be created in detailed design drawings. Since furniture designs, being created for mass production (like most designs), differ from items of so called fine art, such as paintings (e.g. by Van Gogh), they are labelled "industrial designs". This classification is important, as we shall see below. In policy terms, the UK, along with most industrialised nations, has limited the term of protection granted to holders of design rights. This limitation recognises the policy considerations just mentioned.

Copyright

- 6.9 In contrast, copyright serves a different function; it protects the intellectual creation of the author of a work, including artistic works such as paintings, but also design drawings. Since there has inherently been less need for "competition" among artistic works, copyright applies automatically (no need to register) and for a very long time (life of the author + 50/70 years). The policy behind the length is to ensure exploitation by the author during their lifetime to encourage creation (thereby benefiting society), as well as, a little more questionably, to allow the author's heirs to benefit.

Intersection

- 6.10 There is an intersection between design right and copyright. Some items such as chair design drawings may qualify for both design right and copyright protection. Here, the level of protection by copyright (life + 50/70 years) far outweighs that of design right (15, or now, 25 years). In policy terms this has not been deemed a problem, where the design drawings were treated as "only" an artistic work. However, where such works are exploited commercially by industrial multiplication, this was deemed highly undesirable, since copyright in industrial goods existing for periods longer than design rights distorts UK markets. This is why legislators limited the period of copyright for industrially applied artistic works to the same as that of design rights.
- 6.11 It has been the policy of the UK Government, as reflected in the law, to preserve the above distinctions between the two types of rights for over 100 years, by harmonising the period of protection afforded to subject matter which may be protected by both design and copyright law. It is highly regrettable that the provision guaranteeing this policy (s.52 CDPA 1988), has been repealed by the Enterprise & Regulatory Reform Act 2013.

Copyright does not still subsist in pre-1957 works of industrial application (Para. 6 Sch. 1 CDPA 1988)

- 6.12 In order to explain the situation under UK copyright law for items designed before 1 June 1957, and indeed why this date is relevant, let us consider a hypothetical chair designed in 1956, which is industrially manufactured (the "1956 chair").
- 6.13 The current relevant UK legislation is the CDPA 1988. This Act contains a provision which is a logical transitional provision from the Copyright Act 1956, and earlier copyright and designs legislation. It preserves the equal treatment of industrial designs and industrial artistic works contained in earlier legislation; in terms of duration, by conserving the previous copyright/design intersection; and, not retrospectively imposing copyright. The CDPA 1988 thus exempts itself from applying copyright to works of industrial design, where such were created before 1 June 1957, and were at the time designs capable of registration under the relevant designs legislation.
- 6.14 This means that copyright does not subsist under the CDPA 1988 if works were:
- (a) Created before 1 June 1957;
 - (b) Artistic works;
 - (c) At the time of creation constituted a design capable of registration, and
 - (d) At the time of creation were used, or intended to be used, as a model to be multiplied by an industrial process.
- 6.15 We can apply the above four points to the 1956 chair. It was: created before the 1 June 1957; an artistic work; capable of registration as a design; and industrially multiplied. Hence, it is not protected by copyright.
- 6.16 In terms of explanation as to why the current law deals with the 1956 chair in this way, this is because the two predecessor Acts of Parliament (1911 and 1956 Copyright Acts) dealt with this subject matter in the same way. A summary:
- (a) Copyright Act 1911 ("CA 1911") (commencement 1 July 1912):
 - (i) Governing legislation at the time of creation of 1956 chair;
 - (ii) Excludes automatic copyright in designs capable of registration under Patents and Designs Act 1907 ("PDA 1907") – s.22; and
 - (iii) However if the design was registered in the UK under PDA 1907 s.53 and its successor, Registered Designs Act 1949 ("RDA 1949") – s.8, then the owner was entitled to 5 years copyright (renewable for a maximum of two further terms of 5 years). This achieves harmonisation of length of term with designs.
 - (b) Copyright Act 1956 ("CA 1956") (commencement 1 June 1957):
 - (i) Exclusion of automatic copyright for works existing prior to commencement, also being designs capable of registration; and
 - (ii) If design of such works has been registered under RDA 1949, then the maximum 15-year copyright term (as above) was respected and harmonised, but no more.

- 6.17 The above illustrates how the policy of ensuring harmonisation between artistic copyright and design terms was achieved before the 1988 Act. Going back to our example of the 1956 chair, copyright could only have existed if there had been registration of the chair as a design. Even if that had been done, it would have lasted only for an initial 5-year term, and would have had to be renewed, twice, for another maximum 10 years thereafter (total of 15 years, equal to design protection).
- 6.18 What does "capable of registration as a design" mean? The relevant designs legislation:
- (a) 1950 – 1957 = Registered Designs Act 1949 (s.1(3));
 - (b) 1919 – 1950 = Patents and Designs Act 1907 (s.93)) as amended by s.19 Patents and Designs Act 1919; and
 - (c) 1907 – 1919 = Patents and Designs Act 1907 (s.93)).
- 6.19 The definition is not very tightly defined but would encompass designs of patterns, or for the shape or configuration, or for the ornament of articles. For present purposes, the differences between the various pieces of design legislation do not matter greatly. A designer chair (or indeed other designer furniture) that is industrially produced has likely always been a prime example of subject matter capable of registration.
- 6.20 The definition of "multiplication by industrial process" means production of 50 or more articles, under the current legislation. The situation under the CA 1956 and CA 1911 was analogous.
- EU law supports national determination of copyright in industrial designs*
- 6.21 We have above explained why Para. 6 Sch. 1 CDPA 1988 prevents the application of copyright in the UK under the CDPA 1988 to industrially applied artistic works made before 1 June 1957. We shall now explain how and why European Union law supports, and continues to support, this national determination.
- 6.22 ECHO's legal adviser (then working for a different law firm) received a letter dated 22 November 2013 ('the IPO letter'), in which IPO set out the UK Government's views on the question of whether designs that were created before 1 June 1957 would be protected by copyright. We presume this still represents the Government's position. The IPO letter states that because a European Union Directive which deals with the term of copyright protection was made and implemented after Sch. 1 CDPA 1988, this is the reason that the UK Government believes that Para. 6 Sch. 1 CDPA 1988 is modified so as to be dis-applied. (The IPO letter however also makes it clear that as long as the current law stands, it is for the courts to ultimately determine this outcome.)
- 6.23 Whilst ECHO understands why IPO has reached this conclusion, we shall show below that this is incorrect. The European Union law the IPO cites was Directive 2006/116/EC on the term of protection of copyright and certain related rights (Term Directive) as implemented in Duration of Copyright and Rights in Performances Regulations 1995 (Term Regulations). Reg. 16 of the Terms Regulations generally applies the extension /revival of the term of copyright in the UK to existing works in which copyright expired before 31 December 1995 but which were on 1 July 1995 protected in another EEA state under legislation relating to copyright or related rights. Further IPO cites the *Sony Music* Case [C-240/07], which interprets the remit of Reg. 16 (by expanding the remit of Art. 10(2) Term Directive) to works in which copyright never existed, rather than simply having expired before 31 December 1995.
- 6.24 Whatever may be said about the Term Regulations and their interpretation in the *Sony Music* case, for present purposes, Art. 10(2) Term Directive and Reg. 16 Term Regulations must be read in the light of specific and even later EU law.

- 6.25 Articles 17 of Design Directive 1998 and 96(2) of Design Regulation 2001 (as amended 2006), require designs to be eligible for copyright protection, but expressly also leave: *"[t]he extent to which, and the conditions under which, such a protection is conferred, including the level of originality required, (...) to each Member State."* This was passed when the earlier legislation on which the IPO relies was already extant. Clearly therefore it must have been the intention of the European Parliament to preserve the right of Member States to determine the application of copyright protection to designs/industrially applied artistic works. Thus the UK provisions in Para. 6 Sch. 1 CDPA 1988 are (and always have been) fully compliant with EU law.
- 6.26 Moreover, Art. 1 Term Directive (identical in Directives 93/98 EEC, 2006/116/EC and unchanged by 2011/77/EU) refers to *"[t]he rights of an author of a literary or artistic work within the meaning of Article 2 of the Berne Convention..."* It is clear that, as will be more fully discussed in the section below, Art. 2(7) Berne Convention expressly leaves it to the Contracting States to determine the extent of the application of their national laws to works of applied art and industrial designs and models. Most importantly, Art. 7(4) Berne Convention which is incorporated into Art. 2(7) expressly leaves it to Contracting States to determine the term of protection for works of applied art in so far as they are protected as artistic works (provided the minimum term is 25 years). This provides an express link between the Term Directive and the Designs legislation — both very clearly leave the extent and conditions of the protection afforded to industrial designs/works up to EU Member States. Neither the Term Directive, nor later EU law, dis-apply Para. 6 Sch. 1 CDPA 1988, removing copyright protection from pre-1957 designs.
- 6.27 Lastly, one might add that the fact that it was recognised that copyright protection had not been harmonised across the board for all works by the Term Directive, was implicitly recognised by Recital 17 of Directive 93/98 EEC as well as the incorporation of Art. 6 on photographs.
- 6.28 EU law is clear: Member States, such as the UK, may maintain their centuries-old public policy and laws for industrially applied designs.

Berne Convention supports national determination of copyright in industrial designs

- 6.29 The UK is a member of what is known as the Berne Union, meaning those countries which have signed and ratified the Berne Convention ("Berne"). The above EU policy and legislation, as referenced above, concerning industrial artistic copyright, arguably stems from a very similar, consistent, but much older approach under Berne.
- 6.30 The object of Berne is the worldwide harmonisation of literary and artistic copyright. The Contracting States have agreed to change national laws in ways set out in the Convention. Over the years there have been many changes by the Contracting States to what exactly is agreed. The mainstay of Berne is Art. 7(1), which obliges contracting parties to provide copyright protection for artistic works for a period of [at least] 50 years. Whether this affects the treatment of artistic works applied industrially depends on the shifting definition of "artistic work" under Berne.
- 6.31 For present purposes, it suffices to note that the reigning view in 1886 was that "artistic work" was limited to what laypersons thought the term "artistic" should mean — hence there was an exclusion of industrially applied artistic works. Since the Paris Act (1971) and Art. 2(7) it is for the Contracting States to determine the extent of the application of their laws to works of applied art, industrial designs and models, as well as the conditions under which such works, designs and models should be protected, provided they were harmonised with design protection (granting a state monopoly of 25 years).
- 6.32 UK copyright laws (CDPA 1988) were in compliance with Berne, even with the previous limitation for industrially applied artistic works to 25 years (s.52 CDPA 1988), as well as its predecessor's almost identical limitations - s.10 CA 1956. Similarly, the previous regime,

whereby artistic works which were excluded from automatic copyright protection under s.22 CA 1911, but were instead permitted a shortened term of copyright harmonised with designs legislation (the DPA 1907 and later RDA 1949), provided they were registered, was in compliance with Berne.

Conclusion

- 6.33 Any industrial designs/artistic works created before 1 June 1957 will not be protected by copyright under the CDPA 1988, provided they were capable of registration as designs at the time and were, or intended to be, multiplied industrially. Even if the designs were registered, the copyright granted under the old rules will have long ago expired. This national law position reflects the nature and content of provisions going back over 100 years. The freedom of the UK to determine protection (or otherwise) for industrially applied artistic works has been expressly catered for under EU law and international agreements. Para 6 Sch. 1 CDPA 1988 which preserves the position for pre-1957 designs, is and remains, in harmony with EU and international law.
- 6.34 In any event, such a far-reaching and substantive change to UK copyright law, proposed on the basis of complicated technical arguments, should be carefully considered and discussed. It should not be sprung with no warning on those directly affected, rushed through with an extremely tight consultation period, and be brought about solely as a result of pressure from well-funded interests groups seeking to secure their already strong position even further by the amendment.

7. **Compulsory licensing of works where copyright is revived**

- 7.1 ECHO does not agree that Regulation 24 of the Duration of Copyright and Rights in Performance Regulations 1995 should be repealed. This provision is an important safeguard and its repeal could have unintended and undesired consequences as previously recognised by the Government.
- 7.2 It also seems inherently undesirable that this issue should be dealt with as part of a consultation that is of primary interest to those trading in or with interests in items that could potentially be works of artistic craftsmanship when the Government's view is that the main categories of work likely to be affected by the repeal of Regulation 24 are old photographs and possibly old sound recordings and films (page 18 of the Impact Assessment). We note that the potential impact of the repeal of Regulation 24 is not readily apparent from the name of the current consultation, the description of the consultation provided on the GOV.UK website, or the initial details provided in the consultation document itself. Indeed, the main impact of the repeal of Regulation 24 is only mentioned on page 18 (sic) of the Impact Assessment.
- 7.3 In short, if the Government's understanding of the impact of the repeal of Regulation 24 is right, then it seems to be irrelevant to the issues that are the primary focus of this consultation, namely the transitional arrangements for the repeal of Section 52. If the Government's understanding of the impact of the repeal of Regulation 24 is wrong, then clearly its repeal is likely to have unintended and undesired consequences.
- 7.4 In any event, ECHO's position continues to be that a separate compulsory licensing scheme should be adopted as part of the transitional arrangements for the repeal of Section 52. ECHO's proposal would be that after the transitional period comes to an end, there should be a further period during which a transitional compulsory licensing scheme operates for any products that are not covered by the depletion period.
- 7.5 In its original submissions to the Government on 30 August 2013, ECHO proposed a further five year period, after the transitional period, during which its members will be entitled to the grant of compulsory licences from copyright owners to reproduce specific works in return for the payment of a fair and reasonable royalty fee. ECHO continues to believe that the use of a compulsory licensing period as part of the overall transitional arrangements has the potential to strike a fair balance between rightsholders and the legitimate interests of third parties, such as ECHO. The payment of reasonable royalties would obviously benefit rightsholders, whilst the ability to obtain a licence would enable ECHO's members to phase out their business during the relevant period.
- 7.6 Aside from the guaranteed income it will generate for rightsholders, licensing agreements will promote greater dialogue between the respective parties, which will encourage cooperation between rightsholders on the one hand and ECHO members on the other, at an early stage. This may increase the likelihood that collaboration will continue once the compulsory licensing scheme has concluded.
- 7.7 In order to give effect to the above proposal, it would be necessary to amend the current framework for reasonable royalties under Regulation 24 of the Duration of Copyright and Rights in Performances Regulations 1995, to incorporate works in which copyright is revived as a result of Section 74 of the ERRa. This would then allow licensees, upon proper payment of royalties due to the rights holders, to make use of the designs now protected by copyright, for a final transitional period of two years. We propose the following text:

() Revived copyright: transitional provisions and use as of right subject to reasonable royalty

(1) Part III of the Duration of Copyright and Rights in Performance Regulations 1995 (savings and transitional provisions) are amended as follows.

(2) In Regulation 16 after paragraph (d) insert –

"(e) for the period between 5 years and 10 years from the date the Enterprise and Regulatory Reform Act 2013 was passed, to works in which copyright has been revived as a result of Section 74 of that Act."

Osborne Clarke LLP

23 December 2015

Annex 1 – Legal assessment of Government's decision to repeal Section 52

E. LEGAL ASSESSMENT OF GOVERNMENT'S DECISION TO REPEAL S. 52

What s.52 CDPA 1988 provides

1. The section is reproduced below:

52. — Effect of exploitation of design derived from artistic work²⁵.

(1) This section applies where an artistic work has been exploited, by or with the licence of the copyright owner, by—

(a) making by an industrial process articles falling to be treated for the purposes of this Part as copies of the work, and

(b) marketing such articles, in the United Kingdom or elsewhere.

(2) After the end of the period of 25 years from the end of the calendar year in which such articles are first marketed, the work may be copied by making articles of any description, or doing anything for the purpose of making articles of any description, and anything may be done in relation to articles so made, without infringing copyright in the work.

(3) Where only part of an artistic work is exploited as mentioned in subsection (1), subsection (2) applies only in relation to that part.

The stated intentions behind the repeal

2. The Government Impact Assessment dated 15 May 2012 (IA) specifies²⁶ that the rationale for intervention is to "*clarify and update UK legislation and ensure that it is in line with EU law*". The need to align UK law with EU law seems to be the key "issue" generally identified and discussed in the IA and the BIS information sheet "Enterprise and Regulatory Reform Bill: Copyright Licensing". Moreover, it appears to be accepted that the repeal of s.52 will help designers by positioning them "*to reinvest any increased profits in the promotion of innovative designs and artistic works*".
3. As we argue below, repeal of s.52 is not required by EU law, nor is it required by international law.

The policy reasons for the existence of s.52

4. S.52 was enacted in order to deal with the overlap between copyright and design law in a manner which does not prejudice designs. The result is a regime in which copyright for industrial designs is treated in the same manner as designs.
5. It has been the policy of the UK government for over 100 years to minimise the overlap of copyright and design law identified above. For example, under s.22 of the Copyright Act 1911 certain design subject matter was initially excluded from copyright, where the design was used or intended to be used as a model or pattern to be multiplied by any industrial process.²⁷ The Copyright Act 1956 continued this policy by providing an exception under s.10 of the Act, broadly speaking that an infringement of the rights given to an owner of registered designs, was not an infringement of copyright for certain designs²⁸, where the design either had been registered or used in mass-production.

²⁵ Note that the operation of s.52 CDPA 1988 is limited by Copyright (Industrial Process and Excluded Articles) (No.2) Order 1989 (SI 1989/1070), which excludes some subject matter from the exception.

²⁶ at p. 5, under 3. Rationale for Intervention

²⁷ Designs capable of being registered under the Designs and Patents Act 1907.

²⁸ Where a work was capable of registration as a design.

6. The 1952 Gregory Committee concluded that the intention behind the design regime would be violated by forcing of copyright protection on designs. The Gregory Committee Report paid special attention to the limited term of designs, and recognised this as being valuable, since it was an essential feature of the design regime.²⁹ A Private Member's Bill made certain changes to the 1956 Copyright Act, occasioning the right to assert copyright for 15 years, despite the industrial application to articles of the design. The changes were no doubt deemed acceptable, in part because they extended copyright only to the term equivalent to registered designs, and in part because the changes left intact s.10 Copyright Act 1956.
7. Thus, prior to the ERR, the state of the copyright/design intersection was one characterised by careful calibration. The CDPA 1988 and its subsequent amendments continued this by separating out different classes of rights (partly to deal with some unintended effects of the previous provisions), as follows:
- artistic works protected by copyright
 - aesthetic designs protected by registered designs (now 25 years)
 - shape and configuration protected unregistered design right (new sui generis “para”-copyright providing instant protection)
8. Since certain works could fall to be governed under more than one of the rights set out above, s.52 needed to be enacted in order to avoid duplication of protection. This was especially important given the term of copyright protection and the more limited term of protection for industrial design.
9. In our submission the law in the UK was carefully crafted, and s.52 was a necessary component thereof.³⁰ The system has functioned admirably for over 30 years in this respect.

S.52 has parallels in other jurisdictions

10. That the s 52 regime is a rational, indeed a desirable, check and balance, is demonstrated by the fact that legislation is found in several other European and common law jurisdictions, such as Australia, Ireland and Canada. The full details of the relevant provisions are set out in Annex F of this document.
11. Based on information publicly available at the time of writing, none of these jurisdictions intend to implement changes which would extend copyright into the realm of design law.

Ireland

12. The Republic of Ireland's copyright laws have an almost verbatim replica of the previous s.52 CDPA 1988: Section 89(e) Industrial Designs Act 2001 inserted s.78B into the Copyright and Related Rights Act 2000.

Canada

13. The Commonwealth of Canada's copyright laws also contain an anti-overlap provision similar to, the previous s.52: s.64 (2) Copyright Act R.S.C., 1985.³¹

Australia

²⁹ Report of the Gregory Committee (1951–2), Cmnd. 8662, p.87.

³⁰ Fellner also called s.52 CDPA 1988 'carefully-crafted' in *Fellner, Industrial Designs Law* (1995), p.290, para. 6.059.

³¹ c. C-42 (CA 1985)

14. The Commonwealth of Australia's copyright law contains provisions substantially similar, if not more generous concerning the copyright/design law intersection. Sections 77 and 77A of the Copyright Act 1968 exempt certain acts from copyright:
15. The above examples illustrate that countries across the globe recognise the need for a balanced copyright/design intersection, in particular the need to reign in copyright protection when it comes, for example, to items of replica furniture. Other European jurisdictions with similar provisions are Estonia and Romania.³²

EU law does not require the abolition of s.52

16. Not only does s.52 perform its function adequately for the past 30 years, the premise that it needed to be repealed in order to come in line with European law is itself mistaken.
17. The IA at 1 ("What is the problem under consideration?") states:

The term of copyright protection for an artistic work is life of the creator plus 70 years. However, UK copyright legislation contains an exception (section 52 of the Copyright Designs and Patents Act 1988) which effectively limits the term to 25 years if the artistic work is mass produced. A company which makes 'furniture design classics' has claimed that it loses more than EUR 250 million per year in international turnover due to copies and that a significant proportion of that loss is attributable to the UK legislation which differs from that in other EU states.

18. The IA therefore makes it clear that the problem is not that EU law requires any changes to UK legislation. Rather it states that a significant proportion of money is lost by "a manufacturer" of "furniture design classics" due to copies. With respect, if and to the extent replica furniture is legal (as it is under the s.52 regime, 25 years after initial production) any complaint about losses due to copies is analogous to a genuine infringer complaining about losses due to copyright law preventing them from counterfeiting.

- **The Flos case**

19. In terms of alignment with European law it has been said by some that the 2011 case *Flos SpA v Semararo Casa e Famiglia SpA*³³, (the *Flos* case) means that UK law needs to fall in line with the rest of Europe. Indeed, the IA at 4 ("Problem under consideration") specifically mentions the *Flos* case. While the IA does not draw any explicit conclusions from the case, it is to be inferred from the context that follows that "a company" has made representations to the State that *Flos* should be taken as authority for the repeal of s.52, and that the Government has decided to act based on these submissions. The IA goes on to say that some other undertakings are "campaigning for the law to be changed". It is to be inferred, therefore, that the impetus for repeal of s.52 has come from both the *Flos* case and from those companies (or company) campaigning for a change.
20. We set out below why we do not consider that the *Flos* case requires the law in the UK to be changed.
21. The background of the case is as follows. *Flos* had claimed that it was entitled to copyright protection in the design for the famous Arco lamp (created in 1962) and that this had been infringed by the importation of replicas into Italy by Semararo. The history of the legislation in Italy on the issue is as follows:

³² As mentioned in IA at p. 4 (2. Problem under consideration)

³³ Case C-168/09, Court of Justice of the European Union, judgment of 27 January 2011.

- Previously copyright only extended to artistic works that had been industrially applied if “*their artistic value is separable from the industrial nature of the product with which they are associated*” (this is analogous to s.52; the Arco lamp would not have been covered);
 - Changes to the law meant that “*industrial designs which possess in themselves creative character and artistic value*” were protected by copyright (equivalent to the abolition of s.52) (the Arco lamp would have been covered);
 - Transitional provisions were however applied in 2001 concerning items qualifying for copyright before 2001, so that the effect of these changes would be delayed by **10 years**;
 - Additional transitional provisions were introduced in 2007, which extended the 10 year period/delay to **perpetuity**.
22. The question posed by the referring Italian court was whether the “perpetual” provision was in line with article 17 of the EU Designs Directive.³⁴
23. The Court ruled that original designs (both registered and unregistered) must be protected by copyright, for the full term. The transitional provisions were not permissible in its view, since Member States did not have a choice whether or not to confer copyright protection on designs and allowing the transitional provision to endure in perpetuity would have the effect of denying copyright protection to those designs.
24. Article 17 Design Directive says:
- Relationship to copyright
A design protected by a design right registered in or in respect of a Member State in accordance with this Directive shall also be eligible for protection under the law of copyright of that State as from the date on which the design was created or fixed in any form. **The extent to which, and the conditions under which, such a protection is conferred, including the level of originality required, shall be determined by each Member State.** [Emphasis added]
25. The court noted that in its judgment that, while Member States could determine the “extent” of protection, this did not mean that they could; a) preclude protection entirely; or b) determine the term of copyright protection (this having been harmonised by the Term Directive).³⁵
26. In our view the *Flos* judgment has significant flaws and should not be regarded as a basis for significant changes to UK law, since it does not adequately take into account relevant legal provisions, nor the applicable legislative history.
27. The CJEU did, however, at least affirm that in the interests of protecting acquired rights, some transitional measures would be justified, if not required.³⁶ Our view is that the IA, and by extension the Government, accepts far too uncritically the proposition that the *Flos* decision requires a change in UK copyright law. Many commentators have pointed out that *Flos* omits some key legal principles which should have been taken into consideration, rendering the judgment fundamentally unsafe in itself but also particularly as a basis for a significant change to UK law.

³⁴ Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs, OJ L 289, 28/10/1998 P. 0028 – 0035.

³⁵ Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights (codified version). *Note* Directive 2011/77/EU of the European Parliament and of the Council of 27 September 2011 amending Directive 2006/116/EC on the term of protection of copyright and certain related rights.

³⁶ *Flos* [2011] E.C.D.R. 8, [50].

28. Denying the UK the right to determine the *extent and conditions* of design/copyright protection is misguided because art. 17 Design Directive is merely intended to express the intention that Member States should not *deny* copyright protection to works simply because they are registered designs.³⁷ Moreover, it was expressly confirmed by the European Commission in the negotiations leading up to the Design Directive that "*no amendment was required to UK and Irish copyright law*".³⁸ The question of the nature of protection has thus been carefully considered by the executive and legislature, and framed in certain terms. The CJEU's interpretation does not take this into account, and unjustifiably and erroneously limits the freedom of Member States to determine otherwise the extent and conditions under which protection is conferred.
29. The CJEU's reference to and reliance on the Term Directive is equally misguided. The Term Directive, refers to, and defines, rights of an author of an artistic work by reference to Art.2 Berne Convention. However, Art.2(7) Berne Convention, expressly preserves the freedom of countries to legislate on the *extent and conditions* of the protection of designs.³⁹ Indeed Art.7(4) Berne Convention (set out below) (which Art.2 is subject to) provides expressly that "extent" *includes* "term"; the only limitation in this respect is that the minimum term of copyright protection for works of applied art, is to be 25 years.

Art.7(4): "It shall be a **matter for legislation in the countries of the Union to determine the term of protection** of photographic works and that of works of applied art in so far as they are protected as artistic works; however, this term shall last at least until the end of a period of twenty-five years from the making of such a work".

30. The Court at paragraph 34 in *Flos* stated that:

It is conceivable that copyright protection for works which may be unregistered designs could arise under other directives concerning copyright, in particular Directive 2001/29 [the Information Society or "InfoSoc" Directive], if the conditions for that directive's application are met, a matter which falls to be determined by the national court.

Therefore the CJEU asserts that copyright may apply to unregistered designs by virtue of the InfoSoc Directive. This is again not the case, there being express provisions to the contrary, most obviously, Art.9 InfoSoc Directive; that the Directive is "*without prejudice to provisions concerning in particular [...] design rights*". The explicit intention behind Art.9 was to preserve room for manoeuvre as to Designs.⁴⁰ Moreover, to ignore Art.9 of the InfoSoc Directive invites completely unintended and drastic consequences. For example, the complete nullification of Art. 17 Design Directive and the application of all substantive provisions in the InfoSoc Directive to

³⁷ European Commission, Green Paper on the Legal Protection of Industrial Design, 111/F/5131/91-EN (Brussels: June 1991), para.11.3.4(a).

³⁸ See L. Bently, The Return of Industrial Copyright, E.I.P.R. 2012, 34(10), 654-672, FN 60: "[...] Memoranda sent to Peter Britton, are contained in file IPP44070, to which I have been provided access (albeit heavily redacted) under the Freedom of Information Act 2000. The report on the Council Working Party's meeting of November 21, 1994 (in a letter dated December 4), reveals that the Commission was never really very concerned about s.52, and the report relating to the meeting of March 2 and 3, 1995 (in a memorandum dated March 13, 1995) states that the Commission agreed that "no amendment was required to UK and Irish copyright law".

³⁹ Art.2(7): "Subject to the provisions of Article 7(4) of this Convention, it shall be a matter for legislation in the countries of the Union to determine the **extent** of the application of their laws to works of applied art and industrial designs and models, as well as the **conditions** under which such works, designs and models shall be protected. Works protected in the country of origin solely as designs and models shall be entitled in another country of the Union only to such special protection as is granted in that country to designs and models; however, if no such special protection is granted in that country, such works shall be protected as artistic works".

⁴⁰ See original proposals; European Parliament Amendments [1999] OJ C150/171, 173 (InfoSoc Directive does not apply to Designs, since these are dealt with by Design Directive); see also *Amended Proposal for a European Council and Parliament Directive on the Harmonization of Certain Aspects of Copyright and Related Rights in the Information Society*, COM/1999/250/final [1999] OJ C180/6; note in particular: Common Position 48/2000 on a European Council and Parliament Directive on the Harmonization of Certain Aspects of Copyright and Related Rights in the Information Society, adopted by the Council on September 28, 2000 [2000] OJ C344/1, p.20, para.50.

designs. We further observe that the first Design Regulation⁴¹ was adopted in 2001, *after* the InfoSoc Directive, – it repeats the language in art. 17 Design Directive in Reg. 96(2) verbatim. This again highlights that had the intention been to restrict the freedom of Member States, for example in view of the putative meaning behind provisions other than Art.9 in the InfoSoc Directive, this would have been done. Lastly, this is supported by recital 32 of the first Design Regulation, which echoes recital 8 of the Design Directive, stressing both that copyright law has not been completely harmonised (in effect by InfoSoc Directive) and that therefore Member States are free to establish the extent of copyright protection and the conditions under which such protection is conferred. It follows that the assertion that copyright protection for works which may be unregistered designs *cannot* arise under other directives concerning copyright, in particular Directive 2001/29.

31. The above makes it clear that the repeal of s.52 was not required by EU law. Neither particular legal provisions nor recent jurisprudence require this.

UK in compliance with EU law concerning s.52

32. Many commentators believe that *Flos* is not the only, or even the real driver for the UK Government's eagerness to repeal s 52. They believe the Government is worried a claim may be brought against it alleging non-compliance with EU law. Were such a claim to succeed, relatively substantial damages might be imposed on the Government. Such damages would be imposed under the principle of state responsibility known as the *Francovich* principle after joined cases of the same name.⁴² The principle contains four elements which must be satisfied before a claim can succeed. We will show that a claim for non-compliance in relation to s.52 must fail.
33. The principle in *Francovich* established that European Union Member States could be liable to pay compensation to individuals who suffer a loss by reason of a Member State's failure to adequately give effect to EU law.

Four elements must be shown. We will show that in the case of s.52, none of them are satisfied. To establish State liability on the basis of the failure to implement a Directive, claimants must prove *all* of the following:

- (a) the relevant EU law provision must be “unconditional and sufficiently precise”;
- (b) the provision must confer rights on individuals, identifiable in its wording;
- (c) its contravention must be serious; and
- (d) there is a direct causality between the state's failure to implement the directive and the loss/damage sustained.

In this case, the relevant EU law would presumably be Art. 17 Design Directive or the Term Directive.

34. Art 17 Design Directive explicitly reserves the right of Member States to make provisions on the “extent” of protection of registered designs, and this freedom, no matter how narrowly construed, makes this intentionally conditional in the sense Member States may determine key aspects as they please. The same applies to the Term Directive, which also leaves the measures to be taken to the individual Member States, as outlined above. Thus the UK Government has not failed to implement EU law provisions which are “*unconditional and sufficiently precise*”.

⁴¹ Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs, OJ EC No L 3 of 5.1.2002, p. 1.

⁴² *Francovich v Italy* (C-6/90 and C-9/90) [1991] E.C.R. I-5357; [1993] 2 C.M.L.R. 66.

35. As noted, the above elements are cumulative. Hence, given that the very first element fails, the entire principle does not apply. The above shows that the UK could not have been liable for compensation for failed implementation of EU law.

Trade Mark registration gives designers strong rights in any event

36. In considering whether the extension of copyright into the design/copyright intersection was necessary, it might also have been helpful to address the wider context of rights. This is done in an admirable fashion by an independent report commissioned by the UK IPO entitled "*Design services, design rights and design life lengths in the UK*" (Design Report, May 2011).⁴³ The report illustrates the various options available to designers in the UK for protecting their intellectual property. The Design Report⁴⁴ shows that designers may choose from a menu of protection options; between design and copyright which was previously harmonised, and on the other hand, trade mark protection.⁴⁵
37. The Government appears not to have taken the fact that trade mark protection is available to rights owners into account, nor the fact that such is an even stronger right than copyright, especially since it affords protection to the names of the designer, the names of individual pieces, and, if the relevant tests can be met, to objects which amount to 'three-dimensional trade marks'. Moreover these rights continue to last indefinitely (subject to renewal). This should now be taken into account concerning the transitional provisions, discussed above.
38. It is telling that the lawyers representing Vitra has for several months prior to the date of this Report been conducting a campaign of aggressive letter-writing threatening legal action against UK replica furniture makers, not on the basis of infringement of copyright, but principally on the basis of infringement of trade marks. We accept that Vitra has a right to make such claims even if on examination of the facts of each case their claims are usually wrongly-founded. Each of these claims will be vigorously defended but this is mentioned simply to illustrate that a well-funded and aggressive entity determined to remove competition from what it sees as its turf has no lack of legal tools at its disposal, *whether or not s.52 is repealed*. Ironically Vitra is not an "original designer" but merely a licensee of other parties' designs (notably Charles and Ray Eames). It is merely asserting rights based on others' creativity rather than being creative itself.

Conclusion

39. The legal basis for repeal of s 52 was misconceived. s.52 was a calibrated and essential component, maintaining a balanced copyright/design law intersection. Several other comparable jurisdictions recognise the policy advantages of, and have provisions similar to (or more generous than) s.52. EU law did not require the repeal and the UK would not have been liable for non-implementation of EU law concerning s.52 under *Francovich* principles. In any event trade mark law offers perpetual protection to designers by allowing for the protection of the names of famous designs and designers and even as three- dimensional trade marks.

⁴³ Authored by J Haskel Imperial College Business School and CEPR, and A Pesole, Imperial College Business School.

⁴⁴ "Table of rights available to design entities in the UK"

⁴⁵ Design Report, at pp.3-4.

F. SAMPLE FOREIGN LAWS ANALOGOUS TO S. 52

• **Ireland**

78B: (1) This section applies where an artistic work has been exploited, by or with the authorisation of the copyright owner, by—

- (a) making by an industrial process products falling to be treated for the purposes of this Part as copies of the work, and
- (b) marketing such products, in the State or elsewhere.

(2) After the expiry of 25 years from the end of the calendar year in which such products are first marketed, the work may be copied by making products of any description, or doing anything for the purpose of making products of any description, and anything may be done in relation to products so made, without infringing the copyright in the work.

(3) Where only part of an artistic work is exploited as mentioned in subsection (1), subsection (2) applies only in relation to that part.

• **Canada**

Non-infringement re certain designs

(2) Where copyright subsists in a design applied to a useful article or in an artistic work from which the design is derived and, by or under the authority of any person who owns the copyright in Canada or who owns the copyright elsewhere,

- (a) the article is reproduced in a quantity of more than fifty, or
- (b) where the article is a plate, engraving or cast, the article is used for producing more than fifty useful articles,

it shall not thereafter be an infringement of the copyright or the moral rights for anyone

(c) to reproduce the design of the article or a design not differing substantially from the design of the article by

- (i) making the article, or
- (ii) making a drawing or other reproduction in any material form of the article, or
- (d) to do with an article, drawing or reproduction that is made as described in paragraph (c) anything that the owner of the copyright has the sole right to do with the design or artistic work in which the copyright subsists.

• **Australia**

77: Application of artistic works as industrial designs without registration of the designs

(1) This section applies where:

(a) copyright subsists in an artistic work [...];

(b) a corresponding design is or has been applied industrially, whether in Australia or elsewhere, and whether before or after the commencement of this section, by or with the licence of the owner of the copyright in the place of industrial application; and

(c) at any time on or after the commencement of this section, products to which the corresponding design has been so applied (the products made to the corresponding design) are sold, let for hire or offered or exposed for sale or hire, whether in Australia or elsewhere; and

(d) at that time, the corresponding design is not registrable under the Designs Act 2003 or has not been registered under that Act or under the Designs Act 1906.

[...]

(2) It is not an infringement of the copyright in the artistic work to reproduce the work, on or after the day on which:

(a) products made to the corresponding design are first sold, let for hire or offered or exposed for sale or hire; or

(b) a complete specification that discloses a product made to the corresponding design is first published in Australia; or

(c) a representation of a product made to the corresponding design and included in a design application is first published in Australia;
by embodying that, or any other, corresponding design in a product.

[...]

77A Certain reproductions of an artistic work do not infringe copyright

(1) It is not an infringement of copyright in an artistic work to reproduce the artistic work, or communicate that reproduction, if:

(a) the reproduction is derived from a three-dimensional product that embodies a corresponding design in relation to the artistic work; and

(b) the reproduction is in the course of, or incidental to:

(i) making a product (the non-infringing product), if the making of the product did not, or would not, infringe the copyright in the artistic work because of the operation of this Division; or

(ii) selling or letting for hire the non-infringing product, or offering or exposing the non-infringing product for sale or hire.

Annex 2 – Business Summary Sheets

Business A

About us

Business A is a designer furniture retailer setup in 2005. The company sells a range of reproduction classics from the 20th Century.

The business was borne out of a love for the design classics. From day one we dedicated ourselves to providing the best reproductions in the market and the best customer service.

I am particularly proud to have built up a fantastic reputation for quality and customer service. The company has a growing number of loyal individuals and commercial customers.

Where we are based

Warehouse

Hull

Showroom

Lower Peover

Our local constituency MPs.

Diana Johnson

Karl Turner

Alan Johnson.

Quick Facts

Number of employees: 4	Number of product lines: 40 plus
Turnover per year (average): £700k	Number of dependent businesses: 9
Turnover past 5 years: £2.5 million	% of sales subject to VAT: 85%
Tax contributions past 5 years: £500k	

We know our business – estimated impact of the repeal of s. 52 CDPA 1988

Estimated negative impact

Redundancies: 3

Decline in turnover: 90%

Decline in direct tax contributions: 90%

Decline in product lines: 90%

% Price increases on other product lines: Not known.

How a 7-10 year transition would ameliorate

Business A is completely dependent on selling the reproductions which are affected by the law change. A long transition period is essential to allow the company to change its product range. Alternatively the company may stop trading because it was setup solely to sell the design classics. An alternative product range does not hold the same appeal.

We would be pleased to provide additional information.

Business B

About us

Based in Loughborough, since inception in 2006 and incorporation in 2007. We have grown year on year with a successful business model. We hold a 100% positive feedback rating on eBay and rank as one of the best 50 furniture suppliers in the UK on trustpilot, the Internet 'watchdog' through our online sales. Our local MP was more interested in her own job within the department of Business than helping her local constituents. We have been long a successful company in the area that has also employed and trained countless apprentices and those in unemployment, we also support the charity Rainbows on an annual fundraising basis.

Where we are based

Loughborough

Our local constituency.

Charnwood (Nicky Morgan MP)

Quick Facts

Number of employees: 14	Number of product lines: 522
Turnover per year (average): 3.4 Million	Number of dependent businesses: 44
Turnover past 5 years: 15.3 Million	% of sales subject to VAT: 75%
Tax contributions past 5 years:	£1 Million

We know our business – estimated impact of the repeal of s. 52 CDPA 1988

Estimated negative impact

How a 7-10 year transition would ameliorate

Redundancies:	All (approximately 20)
Decline in turnover:	All 100%
Decline in direct tax contributions:	100%
Decline in product lines:	95% enough to close business
% Price increases on other product lines:	Wouldn't be viable with the 5% left

We would be pleased to provide additional information.

Business C

About us

Business C is an internet-based, family-run, independent business and we pride ourselves in creating a memorable shopping experience for all of our valued customers.

The business was set up in 2008. Following 2 brain surgeries I decided to set up my business from home. Originally it was set up on eBay and we did really well it progressed to creating a website. I run the business with my husband he mainly does the financial side and I source all the products and publish all the items as well as looking after my 3 children. It would be very upsetting if this business was lost as we have put such a lot of time and money into getting it to the level it should be.

Where we are based

Swinton, Manchester

Our local constituency.

Hazel Blears MP – Salford Labour

Quick Facts

Number of employees: 2	Number of product lines: 465
Turnover per year (average): £100,000	Number of dependent businesses: 1
Turnover past 5 years: £100,000	% of sales subject to VAT: 100%
Tax contributions past 5 years: £60,000	

We know our business – estimated impact of the repeal of s. 52 CDPA 1988

Estimated negative impact

How a 7-10 year transition would ameliorate

Redundancies:	Yes
Decline in turnover:	Yes
Decline in direct tax contributions:	Yes
Decline in product lines:	Yes
% Price increases on other product lines:	Yes

We would be pleased to provide additional information.

BUSINESS SUMMARY SHEET

Business D

About us

Business D was born in 2006 and has traded steadily over the last 7 years increasing its turnover and reach over that time. We have built a good reputation for unique and designer classic reproductions both here in the UK, but more so in the EU.

In fact 70% of our products are sold to EU countries making a positive impact to our export figures.

Everyone here shares the same passion for good quality products at affordable prices, the same ethos as Eames and his counterparts had when they first designed them

Where we are based

Birstal, Leicester

Our local constituency.

Keith Vaz

Quick Facts

Number of employees: 23	Number of product lines: over 2,000
Turnover per year (average): £6,000,000	Number of dependent businesses: unknown
Turnover past 5 years: over 12,500,000	% of sales subject to VAT: 90%
Tax contributions past 5 years: over £750,000	

We know our business – estimated impact of the repeal of s. 52 CDPA 1988

<i>Estimated negative impact</i>	<i>How a 7-10 year transition would ameliorate</i>
Redundancies: 23	0
Decline in turnover: all of it	-20%
Decline in direct tax contributions: All of it	-20%
Decline in product lines: all of it	-20%
% Price increases on other product lines:	unsure
	Anything but a 5 yr transition will mean the business will close

We would be pleased to provide additional information.

BUSINESS SUMMARY SHEET

Business E

About us

Business E was established 2 years ago when I was searching for furniture for one of my restaurants and either could not find it or the costs were way beyond what I could afford to furnish my new place.

Business E has grown over 2 years and employs 7 staff in the office. We are committed to providing an excellent customer service and providing customers with good quality designer furniture that otherwise would be out of the reach for the average income person.

Where we are based

Battersea, London

Our local constituency.

Kate Hoey

Quick Facts

Number of employees: 7	Number of product lines: 100
Turnover per year (average): £2 million	Number of dependent businesses: 8
Turnover past 5 years: £3.5 million	% of sales subject to VAT: 90%
Tax contributions past 5 years: £200,000	

We know our business – estimated impact of the repeal of s. 52 CDPA 1988

Estimated negative impact

How a 7-10 year transition would ameliorate

Redundancies: 4-5	1-2
Decline in turnover: 60%	Allow time to find new products
Decline in direct tax contributions: £120,000	Hopefully sustain turnover with new products and tax contributions remain the same
Decline in product lines: 40	Hopefully increase with new research and new products
% Price increases on other product lines: 30%	N/A

We would be pleased to provide additional information.

BUSINESS SUMMARY SHEET

Business F

About us

We started the business three years ago.

We identified a gap in the market for high quality reproduction iconic classics for both personal and corporate use.

We now run a number of websites selling our products to the UK, Europe and further afield.

We buy from UK based trade suppliers and import a small quantity of stock ourselves from China for which we have a Cheshire based warehouse facility.

Where we are based

Congleton
Cheshire

Our local constituency.

Fiona Bruce MP Congleton

Quick Facts

Number of employees: 2	Number of product lines: 20
Turnover per year (average): £750,000.00	Number of dependent businesses: 1
Turnover past 3 years: £2,250,000	% of sales subject to VAT: 95%
Tax contributions past 5 years: £120,000	

We know our business – estimated impact of the repeal of s. 52 CDPA 1988

<i>Estimated negative impact</i>	<i>How a 7-10 year transition would ameliorate</i>
Redundancies: 2	No redundancies if we can continue
Decline in turnover: 100% decline	None – turnover may increase year on year
Decline in direct tax contributions: 100% decline	None – we would continue to pay tax and possibly even increase contributions
Decline in product lines: lose all 20	We could continue & add new products
% Price increases on other product lines: we only sell iconic furniture	We could introduce new products to the market
[anything else] this will close us down totally	It would give us time to adapt and try other products

We would be pleased to provide additional information.

BUSINESS SUMMARY SHEET

Business G

About us

Founded in 2005, Business G is run by a knowledgeable, dynamic and passionate team who believe that good design should be a compliment to any living space. Our furniture range has been carefully sourced and quality controlled to be of the highest standard and material quality available within the UK marketplace. At our Bath sited retail showroom we proudly display our full range. We have a strong local and national reputation as a leader in reproduction furniture available from a large stock holding. Our customers range from individuals to blue chip companies and everybody receives the same level

Where we are based

Bath

Our local constituency.

Don Foster MP
Duncan Hames MP

Quick Facts

Number of employees: 9	Number of product lines: 200
Turnover per year (average): £750,000.00	Number of dependent businesses:
Turnover past 5 years: £4m	% of sales subject to VAT: 90%
Tax contributions past 5 years: tbc	

We know our business – estimated impact of the repeal of s. 52 CDPA 1988

Estimated negative impact

How a 7-10 year transition would ameliorate

Redundancies: 9	Allow time to diversify and keep staff
Decline in turnover: 100%	Allow time to promote new designs, market differently, maintain market share with existing customer base targeted for future product lines.
Decline in direct tax contributions: 100%	Tax contributions could stay in line or increase
Decline in product lines: 100%	Implement new lines, and aim to increase products offered.
% Price increases on other product lines: we are specialist, we have no other lines, need time to diversify	UK Furniture is a huge marketplace, with a longer transitional period we could re-grow without the need to lose what has taken so much to achieve to date.

BUSINESS SUMMARY SHEET

Business H

About us

Selling modern classic designer items on the internet

We are proposing all this items in a large choice of colours and on special orders. We have very personal customer care and service as within the years we sourced out to reliable logistic partners and seafreight agents in the UK

Where we are based

London SE1

Our local constituency.

Quick Facts

Number of employees:	Number of product lines:
Turnover per year (average): £1.500.000	Number of dependent businesses:
Turnover past 5 years: £6.5 million	70 % of sales subject to VAT:
Tax contributions past 5 years: £200.000	

We know our business – estimated impact of the repeal of s. 52 CDPA 1988

Estimated negative impact

How a 7-10 year transition would ameliorate

Redundancies:	
Decline in turnover: 95 %	Could source out other items with time
Decline in direct tax contributions: 95%	
Decline in product lines:	
% Price increases on other product lines:	

We would be pleased to provide additional information.

BUSINESS SUMMARY SHEET

Business I

About us

We are a retail and online store based in East London, primarily on line based, with large store presence.

We sell reproduction and contemporary furniture and lighting around Europe. Turnover increasing nearly 80% year on year until recently (2013).

Passionate about design and customer service we have built up a considerable reputation over the years, which is priceless. The new law will seriously put a strain on our business; redundancies will have to be made immediately unless a long transitional period is achieved.

Where we are based

London E1

Our local constituency.

rushanara.ali.mp@parliament.uk

Quick Facts

Number of employees: 15	Number of product lines: 800
Turnover per year (average): £4,000,000	Number of dependent businesses: 24 + 3 Part time
Turnover past 5 years: 3 years only £12,000,000	% of sales subject to VAT: 100%
Tax contributions past 5 years: 3 only £240,000	

We know our business – estimated impact of the repeal of s. 52 CDPA 1988

Estimated negative impact

How a 7-10 year transition would ameliorate

Redundancies: 10	None if given time to set up UK manufacturing of new lines, and sourcing
Decline in turnover: 80%	
Decline in direct tax contributions: 80%	
Decline in product lines: 90%	
20% Price increases on other product lines:	
[anything else]	
We would be pleased to provide additional information.	

BUSINESS SUMMARY SHEET

Business J

About us

Since Business J was founded in 2007 we have delivered the very best in style, quality and service to a long list of discerning clientele. We are passionate about contemporary and luxury design and we know that this lifestyle is a passion shared by our enthusiastic clients. Business J is a web based retail business that specialises in high quality reproductions, new designer furniture and inspired home furnishings. The philosophy of Business J is to offer the best reproduction designs at the most competitive prices. We achieve this by dealing directly with the manufacturers. We only work with manufacturers that we have personally inspected to ensure that the quality control and ethical treatment of staff is exemplary.

Where we are based

Office: Brighton

Warehousing: Newhaven

Our local constituency.

Mike Weatherley MP
Simon Kirby MP – Kemp Town
Norman Lamp MP - Newhaven

Quick Facts

Number of employees: 3 full and 4 part time	Number of product lines: 200+
Turnover per year (average): Present £1.6m	Number of dependent businesses: 15+
Turnover past 5 years: £5.5m	% of sales subject to VAT: 95%
Tax contributions past 5 years: £938K	

We know our business – estimated impact of the repeal of s. 52 CDPA 1988

Estimated negative impact

How a 7-10 year transition would ameliorate

Redundancies: All staff	Allow the business to restructure and likely employ more staff as a result
Decline in turnover: 100%	Investment in new design ranges
Decline in direct tax contributions: 100%	Allow an orderly exit of existing operations resulting in no loss of tax receipts
Decline in product lines: uncertain poss 100%	
% Price increases on other product lines:	
We would be pleased to provide additional information.	

Annex 3 - UK Replica Furniture Industry Economic Impact Assessment

UK Replica Furniture Industry



Arts Economics

Economic Impact Assessment

June 2012

Arts Economics
7 Stephen's Lane, Dublin 2, Ireland
E-Mail: clare@artseconomics.com
Web: www.artseconomics.com

Key Findings

Key Figures		
Direct Employment: 600 Supported Employment: 3,000	Direct Contribution to GDP: £136 million Ancillary and Related Contribution: £597million	Number of Businesses in the UK: 60 Related Retailers: 605

- The UK replica furniture industry is made up around 60 small, knowledge intensive businesses employing a gender-balanced mix of well-educated individuals.
- This sector of furniture industry employed at least 600 people in the UK in 2011 and contributed £135.7 million in revenues to GDP.
- In direct contributions alone, the sector added a conservatively estimated £22 million to the Exchequer in taxes and levies.
- Although these businesses are small and local in operation, many have an international export focus for sales, with an average of 45% of sales exported to countries outside the UK.
- Companies in this sector spent over £77 million on ancillary and support services, generating indirect employment of a further 400.
- This sector supplies retailers in the furniture and wider consumer retail markets with an estimated £520 million in sales, accounting for the potential equivalent of 2,600 full-time positions.
- While the furniture industry as a whole has suffered continued declines in consumption spending in the fallout from the global recession, this niche sector has grown steadily over the last three years, with sales increasing by 97% from 2009 through 2011.

1. Furniture Industry

The UK Furniture Industry

The UK furniture industry is a major component of the national economy, directly contributing a reported £8.3 billion directly to the country's GDP, which equates to almost 2 % of manufacturing output, and employing over 112,000 people within 8,360 companies.¹ It is estimated that there are at least 18,800 self-employed individuals in the industry and the majority of businesses are small businesses, with just over 80% turning over less than £500,000 annually. Companies are predominantly small in employment terms also, with 86% employing less than 10 people and only 60 companies employing more than 250. The economic importance of the industry is much greater however, as many other sectors of the UK economy benefit from and are supported by the activities of the furniture sector resulting in an even greater economic impact.

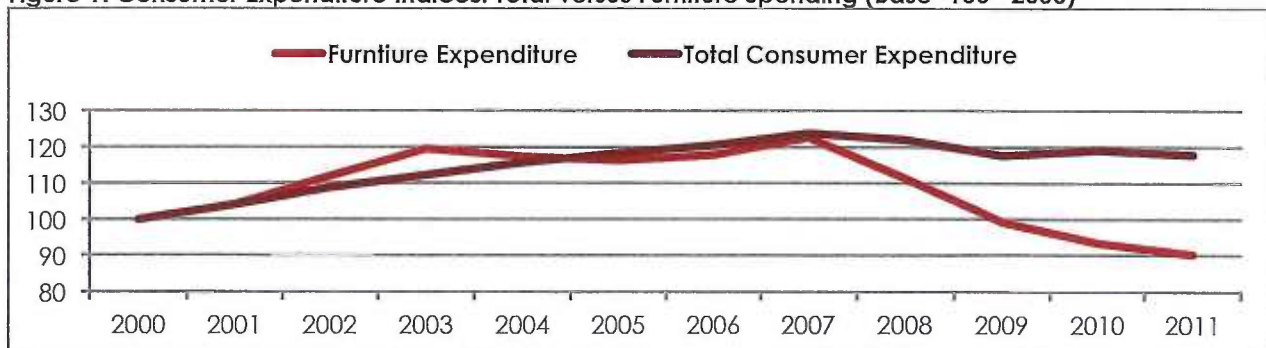
Furniture, like many other manufacturing sectors, has faced challenging market conditions in recent years and ever increasing global competition, particularly from low wages economies (such as China, by far the largest global producer of furniture worldwide) due to the labour intensity of the industry. UK manufacturers have however retained some important competitive advantages over their global counterparts with a focus on quality, skill in design and innovation among the key attributes. Some niche areas of the industry have thrived despite the challenging economic context and represent the key areas for future growth.

Spending on Furniture

It is estimated that in 2011, total consumer expenditure on furniture and furnishings totalled £13.3 billion, representing some 1.6% of total consumer expenditure in the UK.² The share of spending on furniture in total consumption has been in decline since 2003, when it peaked at 2.2%, with £17.6 billion spent on furniture that year.

The industry witnessed substantial contraction during the financial crisis in 2008 and 2009, with consumption dropping -9% and -11% respectively each year. The economic downturn strongly affected incomes and wealth in the UK and consumer confidence was at one of its lowest-ever recorded levels with total consumer spending dropping -1% over 2008 and a further -4% in 2009. However, while total spending showed signs of recovery in 2010 (increasing by 1%), the furniture sector on aggregate has continued to decline with spending dropping -6% in 2010 and a further -3% over 2011.

Figure 1. Consumer Expenditure Indices: Total versus Furniture Spending (Base=100= 2000)



©Arts Economics, 2012 using data from the ONS

¹ Statistics from the British Furniture Confederation (2012).

² Statistics from Consumer Trends 2011/2012, from the Office of National Statistics.

Imports and Exports

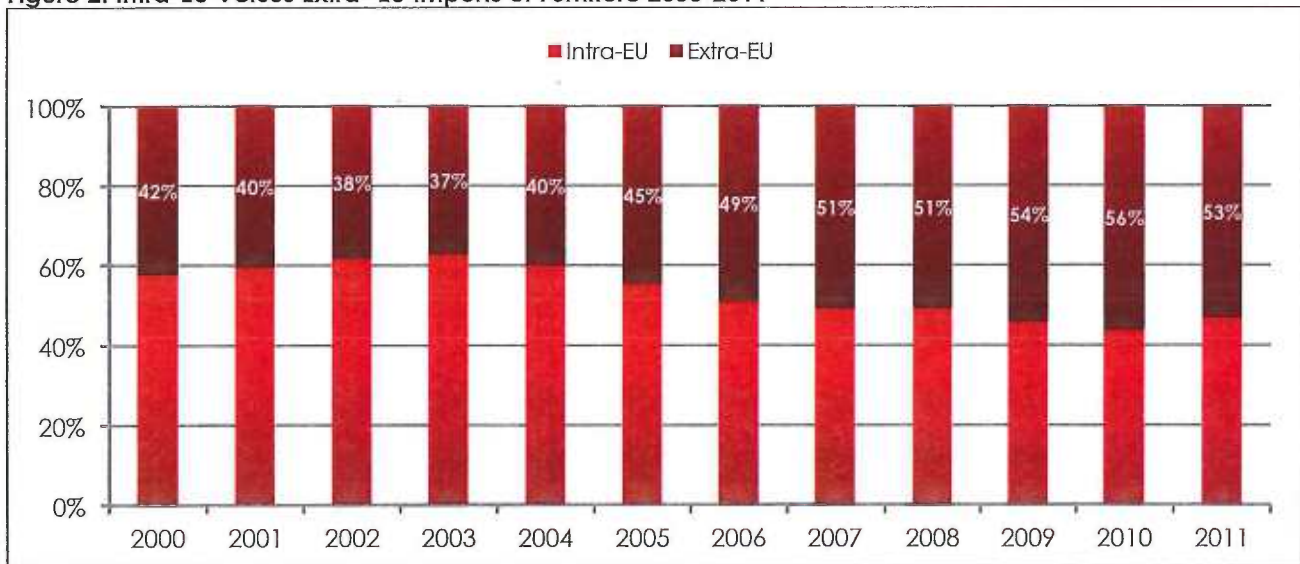
The industry produced in excess of £1.3 billion in exports in 2011, up 16% year on year, and a rise of 33% from the bottom of the market in 2009. Of those exports, some 51% by value are to destinations within the EU and 49% to those outside (primarily to the US, China the UAE and Switzerland). The UK is a net importer of furniture with imports exceeding exports of the last ten years. Imports of furniture were £4.6 billion in 2011 leaving a trade deficit of £3.3 billion. Just over one third of all furniture imported to the UK comes from China.

Table 1. UK Furniture Imports, Exports and Net Exports (Million GBP)

	Exports	Imports	Net Exports
2000	£1,019.9	£2,377.2	-£1,357.4
2001	£991.7	£2,577.1	-£1,585.4
2002	£883.0	£3,069.9	-£2,187.0
2003	£881.8	£3,492.9	-£2,611.1
2004	£969.0	£3,958.1	-£2,989.1
2005	£998.1	£3,988.8	-£2,990.8
2006	£1,085.7	£4,271.0	-£3,185.3
2007	£1,190.5	£4,723.7	-£3,533.1
2008	£1,182.4	£4,879.4	-£3,697.0
2009	£979.0	£4,261.3	-£3,282.3
2010	£1,120.6	£4,731.6	-£3,611.0
2011	£1,304.6	£4,582.3	-£3,277.7

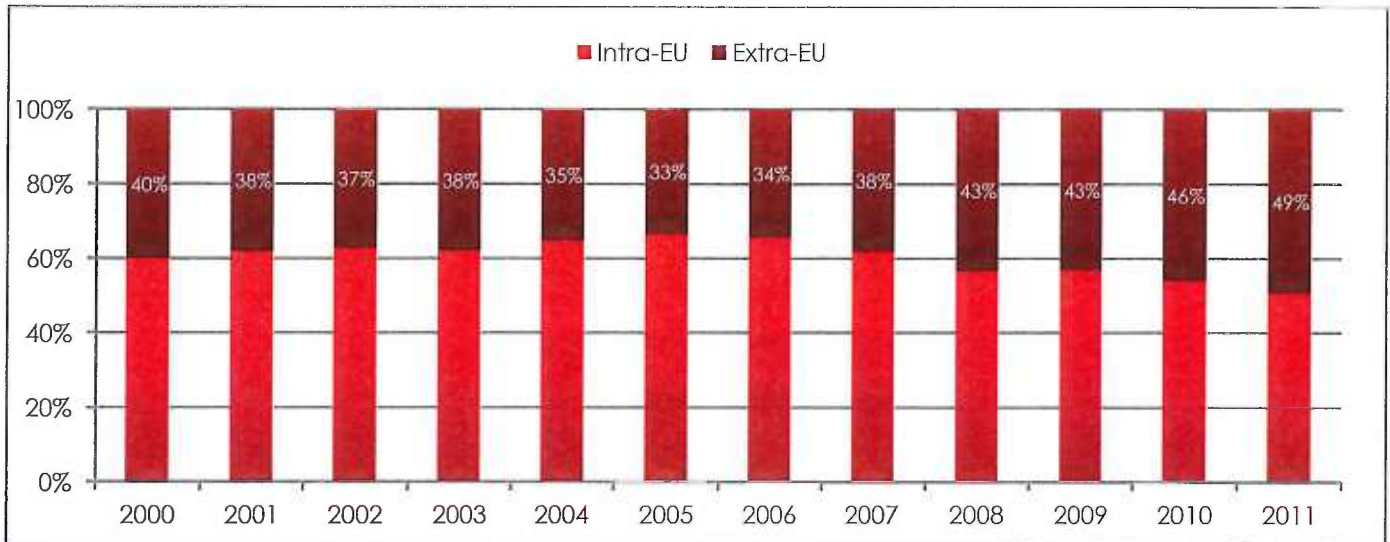
© Arts Economics 2012 with data from Eurostat

Figure 2. Intra-EU Versus Extra- EU Imports of Furniture 2000-2011



© Arts Economics 2012 with data from Eurostat

Figure 3. Intra-EU Versus Extra- EU Exports of Furniture 2000-2011



© Arts Economics 2012 with data from Eurostat

2. The Replica Furniture Sector

Reproduction and replica furniture is a thriving niche sector of the UK furniture industry. In 2012, there was a conservatively estimated 60 UK companies that solely manufacture, design and sell replica furniture in the UK as their sole product line. In addition, there are over 600 specialty furniture stores that regularly sell a significant proportion of replica furniture as part of their product lines, and at least five major corporations that include it in a larger portfolio of home furnishings and other products.

All of these companies will be affected by the potential repeal of Section 52 of the Copyright Act Designs and Patents Act of 1988, with varying impact. The most immediate threat is to the 60 core companies that centre their businesses on this sector of the market, most of which would be put out of business. However the 600 or more specialty stores could effectively lose or displace a significant portion of their sales and larger corporations such as Next, Asda and TK Maxx, would also be forced to abandon these product lines, all also at the expense of reducing consumer utility and choice.

To assess the economic impact of this sector, the top 40 companies in the sector were surveyed by Arts Economics in June 2012, with response rates of 60%. This survey provides some key evidence on this specialised area of the furniture market in terms of its revenues, employment and other economic contributions.

Replica Design Businesses

In the UK in 2012, there were a conservatively estimated 60 companies whose sold or primary income comes from the design and sale of replica design furniture. Based on the survey evidence, on average these businesses employ ten people (ranging from two to 40), or some 600 people in total in the UK.

These companies are relatively gender balanced with on average 44% female employment (marginally below with the mainstream labour force of 46%)³. In terms of employment status, the sector averages 87% of its

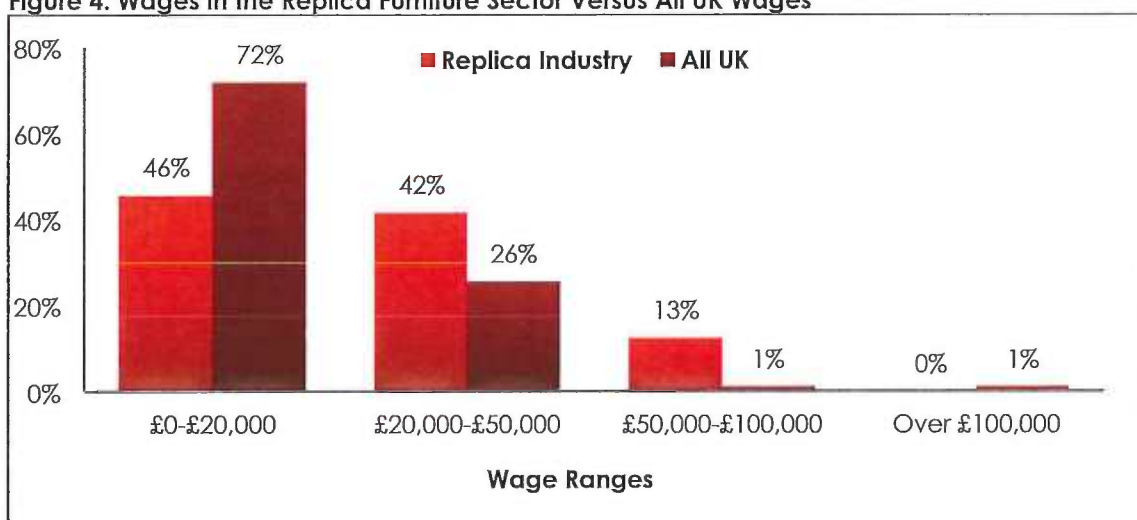
³ All statistics for the mainstream UK Labour Force are from the Office for National Statistics (2012) Labour Market Statistics 2012. From www.ons.gov.uk.

employees in full-time positions with only 13% in part-time, significantly lower than the UK labour forces aggregate part-time rate which has risen to 27% in 2012.

In general, workers within this sector are well-educated with a higher level of formal, third level qualifications compared to the general labour force: 42% of workers in the sector had university or third level qualifications versus 38% in UK's wider working population. In around 40% of the companies surveyed, more than half of the employees had third level degrees, while in 17% of companies, all those employed in the business had completed university education.

Like the overall UK labour force, the majority of employees (88%) earn less than £50,000, although a significant portion (13%) earned in the higher range of between £50,000 and £100,000. Based on the results of the survey, the sector adds potentially up to £25.5 million in wages and salaries directly into the economy in 2012.

Figure 4. Wages in the Replica Furniture Sector Versus All UK Wages



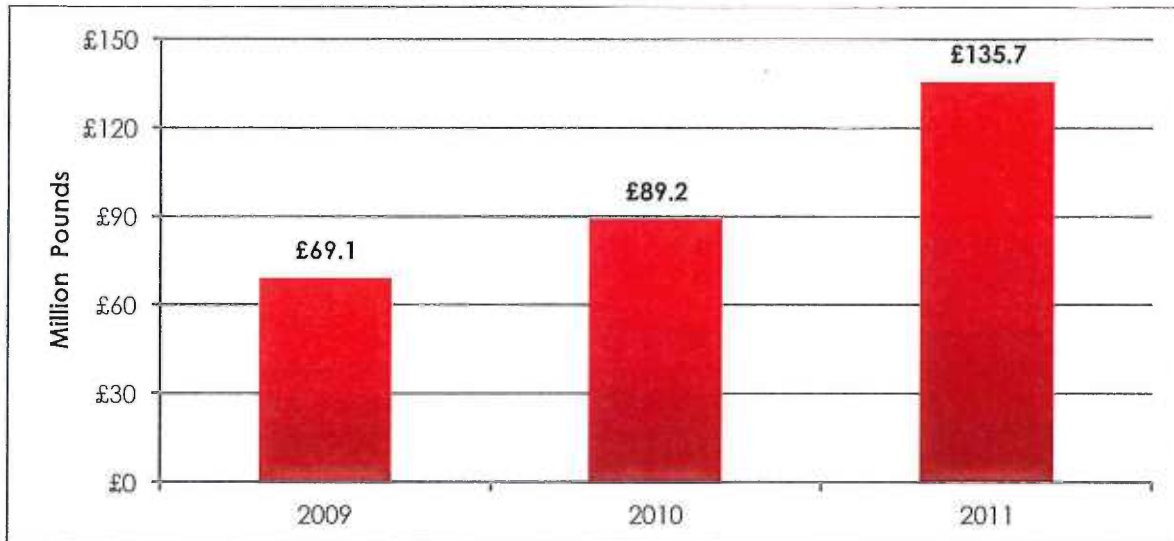
© Arts Economics 2012 with data from the ONS

Sector Sales

Although businesses in this sector vary significantly in terms of sales, most are small business (earning less than €10 million according to EU standard classifications) and the average gross turnover in the sector in 2011 per business was £2.3 million. Total sales in the sector were therefore conservatively estimated at £135.7 million in 2011. Unlike the declines witnessed in the aggregate furniture industry, the replica design sector grew 52% year-on-year and a substantial 97% since 2009. The volume of units sold also rose 15% over 2011 alone, and has risen over 80% since 2009.

Although these businesses are small and local in operation, many have an international export focus for sales. On average a substantial 45% of sales of businesses in the sector are exported to countries outside the UK, and around one third of businesses reported that 70% or more of their sales were to overseas buyers.

Figure 5. Sales Turnover in Million GBP 2009 to 2011



© Arts Economics 2012

Ancillary Spending

The UK replica furniture sector also creates substantial revenues and jobs through a range of ancillary businesses and support services used by these 60 businesses. It is (conservatively) estimated that these core businesses spent at least £77.2 million on ancillary services and products in 2011, directly supporting an additional 400 full-time equivalent jobs in their provision⁴. These ancillary businesses include specialty furniture packaging and shipping (16% of the total ancillary spend), couriers and transportation (8%) some of which are niche businesses based around this specialist area and which would not be able to thrive without it.

Fiscal Impact

Another significant way in which the sector contributes to the UK economy is via the taxes and levies it pays directly to the Exchequer on sale, incomes, and profits. Highly conservative estimates for these contributions in 2011 amounted to £22.2 million which was made up of:

- a) Just under £6 million in corporation taxes⁵
- b) £2.7 million in income taxes
- c) £13.6 million in net VAT.⁶

3 Other Affected Sectors

Besides the core of 60 businesses that make up this specialty sector, there are a large number of retailers throughout the UK that sell the products made by these companies.

It is estimated that there are at least 600 specialty retailers of furniture in the UK, which include replica and reproduction furniture as a significant part of their sales. These range from smaller, specialty furniture and

⁴ Employment in ancillary and related sectors is based on an average sales per employee for retail of 1:£200,000. As many of these ancillary services are service based and more highly labour intensive, this is likely to be a very conservative measure of employment generated.

⁵ Corporation taxes are based on the small profits tax rates of 20%.

⁶ Estimates are based on VAT rates of 20% and estimate VAT on sales less VAT on purchases in the sector.

design stores, most of which are small businesses turning over anywhere between £500,000 to £10 million, and larger UK-wide operations, specialising in furniture, and often maintaining a significant online presence such as Cargo Home Shop or Dwell which are medium sized companies turning over in the region of £10 million to £50 million annually. Using a conservative estimate of sales for these companies, and assuming that replica furniture only accounts for only 5% of their output by value, sales attributable to the sector from these companies amount to £170 million, accounting for a potential of 850 full-time equivalent jobs.

Another layer of links also exists from the sector to a smaller number of very large corporations in the UK that also stock replica furniture as a consistent and successful product line in a wider portfolio of home furnishings and other consumer products. These large companies such as Next and Asda turnover in the region of £3.5 billion in sales in recent years. Again assuming there are five of these companies that relate to the sector and that replica furniture is only 1% of their sales turnover, this indirect contribution equates to sales of £350 million attributable to the sector and 1,750 jobs supported. Although these stores can undoubtedly stock alternative products besides furniture (or alternative furniture), there are serious concerns that this will significantly damage a sector of the furniture industry that has shown to be a resilient and growing, despite the aggregate negative trend. The effects on consumer choice are not quantified here, but also warrant consideration as an important external cost from removal of this significant part of the market.

Finally, besides being a high value direct employer and indirectly supporting a number of jobs in ancillary industries, when the employees of the replica furniture sector and the indirect industries they use spend their earnings (wages, salaries, profits, rent and dividends) in goods and services in the UK, this also generates revenue and employment in a range of industries throughout the country.

These positive ramifications throughout the economy work via a ripple or "multiplier" effect. That is, a result of the direct and indirect impact of the replica furniture trade is increased income throughout the economy (from increased employment), and a proportion of this increased income will be re-spent on other goods and services, many unrelated to the trade. So for every £1 of output from the furniture trade, more than £1 is generated in the economy.

The appropriate size of a multiplier applied to calculate indirect or induced effects depends on the extent of linkages between the event and its supply chain, and the greater the linkages, the larger the multiplier will be. Estimates of the size of the multiplier vary in input – output analysis studies from two to three in the home furnishings sector to over 10 for the high value tourism sector. Using a multiplier of two for example, would imply that including the second-round or 'ripple' effects through the economy in wages alone in the core sector, a further £50 million could be generated in direct spending. The same analysis can also be applied to the ancillary services and other businesses that are linked to this sector, again significantly magnifying its real impact in the economy in terms of revenues, employment and fiscal contributions.

Annex 4 – Evidence of effect of different transitional periods

2.4. ECHO Member (1):

Current turnover: £4.8m.

Current staff: 18.

Ancillary UK businesses supported: 355 (estimated impact on these: At least £10m loss, plus a very significant number of jobs).

If repealed after 1 year: Closure of business, loss of £4.8m turnover, 18 staff jobs, plus the knock-on effects on ancillary businesses.

¹ For more information about ECHO, see section 2 of the First Submission

If repealed after 3 years: 30% loss of turnover and staff across each transitional year.

If repealed after 5 years: Unless we achieve an acceptable licensing deal or can develop new lines in this time, we will close.

Comments:

The 10% of lines that are not 'modern classics' took a long time to develop. In one case 8 months for one product (design to prototype to sample to finished article) and another was 14 months due to problems in the process. With this in mind it is unlikely that, as it stands, we will survive the law change at all.

In terms of turnover we are already seeing some changes to the business. The impending law changes appear to have been publicly announced in all media channels available in most EU countries including France, Germany, Belgium, Netherlands and Denmark. This I can only assume was a deliberate press release by the big companies to begin the process of damping down what we do even before the law is even in practice. I believe this will be a factor that the big companies will use, as they are already. Once the law date is announced I expect more and more 'bad press' and even greater 'bad press' once the transition arrives.

2.5. ECHO Member (2):

If repealed after 1 year: Business will close immediately with loss of £100,000 turnover, plus employment for 2 owners and 1 member of staff.

If repealed after 2 years: Turnover reduced to £65,000, staff reduced to 2 owning partners. Business is unsustainable at this level.

Comments:

My husband and I have both worked hard to get this business moving. We have spent a lot of time in the reproduction market gaining experience and making great contacts. We feel that if the transition is cut short that the 5 years we have spent building our business into a lucrative business has all been for nothing. If we could push the transition longer this would definitely give us chance to hopefully pull in back some of the money we will lose in the long run.

2.6. ECHO Member (3):

Current turnover: £6m.

Current staff: 23.

Comments:

Any repeal before five years will mean the business will close.

2.7. ECHO Member (4):

Current turnover: £2m.

Current staff: 7.

Number of dependent businesses: 8.

If repealed after 1 year: Closure of business, loss of £2m turnover, 7 staff jobs and loss of revenue and staff from dependent businesses.

If repealed after 3 years: Loss of £1.2m in turnover and 5 staff jobs, plus effects on dependent businesses.

If repealed after 5 years: Loss of £1m in turnover and 4 staff jobs, plus effects on dependent businesses.

2.8. ECHO Member (5):

Current turnover £700,000.

Direct staff: 2.

Ancillary UK business spend £500,000

If repealed after 1 year: Immediate closure as the business is predicated solely upon selling reproductions of designs which this legislation would then prohibit.

If repealed after 3 years: Closure unless new product lines can be found.

If repealed after 5 years: Closure unless new product lines can be found.

2.9. ECHO Member (6):

Current turnover £12m.

Ancillary UK business spend (including British furniture manufacturer): £3m+.

Current staffing: 50+

If repealed after 1 year: Closure of business, loss of £12m in turnover, more than 50 jobs, plus liquidation of ancillary businesses dependent on us with significant further job losses. We would also not be able to honour our current significant lease commitments.

If repealed after 3 years: Turnover down to £5.8m, 25 jobs lost.

If repealed after 5 years: Turnover down to £1.75m, 35 jobs lost

2.10. ECHO Member (7):

If repealed after 1 year: 80% of turnover lost, leaving 20% that can be sold from stock. Loss of 80% of staff. However, the other 20% would be lost once the stock was depleted.

If repealed after 2 years: 90% of turnover lost, as permissible stock depletes. No chance of recovery. All staff lost.

Comments:

I do find it hard to see how long we can keep running in the UK after the new law comes in to effect.

2.11. ECHO Member (8):

Current turnover: £4m. **Direct staff:** 15.

Dependent businesses: 24.

If repealed after 1 year: 50% lost revenue after six months (as nobody would invest much in marketing etc); 100% lost revenue after 12 months.

If repealed after 3 years: 25% lost revenue after two years, 75% lost after 3 years.

If repealed after 5 years: 25% lost revenue after 4 years, 75% lost revenue after 5 years.

2.12. ECHO Member (9):

If repealed after 1 year: £25 million loss, 100 jobs lost
If repealed after 3 years: £12.5 million loss, 30 jobs lost
If repealed after 5 years: £4 million loss, 0 jobs lost (as we will have adapted by then)

2.13. ECHO Member (10):

Current turnover: £240,000.
Current staff: 5.
Number of dependent businesses: 25.
If repealed after 1 year: Closure of business, with loss of all turnover and staff.
If repealed after 3 years: Closure of business, with loss of all turnover and staff.
If repealed after 5 years: Uncertain, but hopefully we would be able to cover our set-up costs and honour leases and possibly adapt.

2.14. ECHO Member (11):

Current turnover: £500k
Full time staff - 2.
Part time staff - 3.
Ancillary UK business spend - Approx £120,000
If legislative changes were applied in 6/9 months, the effects would be:
In 1 years' time:
 Turnover - £200k
 Full time staff - 2.
 Part time staff - 1.
 Ancillary UK business spend - Approx £55,000
In 2 years' time:
 Turnover - £0.
 Full time staff - 0.
 Part time staff - 0.
 Ancillary UK business spend - Approx £0

Comments:

We have been building our business up over the past 5 years and are now starting to make a profit. We are keen to continue running our own business and so, as a result of the potential legislative change being implemented are actively looking at diversifying into different markets. We are therefore investing a lot of time and money into setting up new websites and sampling new products. Our biggest concern with a short transitional period is that new growth will not be achieved quick enough to sustain our current overheads and commitments, therefore as a result will mean the loss of jobs and the potential closure of the company.

Without the profit of our core business (high quality reproduction classics) we will not have the capital to continue investment into our new ventures and this will hamper our efforts severely and give us little chance of survival.

Also, as a knock on result, several further UK business' will be affected by the loss of our business.

Annex 5 – Previous questionnaire responses

Annex 2

Responses to Questionnaire

RESPONDENT A

IPO CONSULTATION ON S 52 CDPA REPEAL:

SUPPLEMENTAL QUESTIONNAIRE FOR ECHO MEMBERS

1. EVIDENCE OF KEY COSTS OF THE REPEAL AND THE VARIOUS TRANSITIONAL PERIOD OPTIONS TO YOUR BUSINESS

1.1 Legal costs of advice on implications of s52 repeal on the business and on any perceived legal uncertainties?

- Already spent since ERR reform announced: £6000.00
- If 6 month TP: further £1500
- If 3 year TP: £1000
- If 5 year TP: £500
- Comments, case studies, examples:

Already spent a considerable sum in legal advice and this could potentially increase, although we do not have the appetite or deep pockets required for lengthy court battles.

1.2 Legal costs of defending against infringement claims?

- Already spent since ERR reform announced: £0
- If 6 month TP: £5,000
- If 3 year TP:
- If 5 year TP:
- Comments, case studies, examples:

As above, our business does not wish to engage in court, although I foresee some extremely aggressive posturing from the brand owners if they are awarded a swift TP, which we would have to defend.

1.3 Transitional Costs of complying with repeal of s52?

- Already spent since ERR reform announced: £45,000
- If 6 month TP: £25,000
- If 3 year TP: £10,000
- If 5 year TP: £3,000
- Comments, case studies, examples:

Our company has worked hard to get a new furniture business started since the ERR reform was first discussed.

We have created and worked hard to establish a new brand called Blackhouse [REDACTED] which is dedicated to retailing high quality furniture which is designed by us, manufactured in Scotland and covered exclusively in luxury Harris Tweed fabric. This project was started around 24 months ago and so far we have invested over £45,000 in sunk direct start up costs – such as:

- Branding workshops set up with target audience to establish a need and refine what people are looking for.
- Marketing consultant contracted to refine target market and product offering and then produce strategy to address them
- Trade Mark registration
- Designer of furniture contracted to create our range
- Branding company contracted to create strong brand image
- Website company contracted to create beautiful e-commerce site
- Copywriter and photographer required to get website populated
- Swing tags, brochure and all sales collateral produced
- Over 8 trips and counting to the Isles of Harris and Lewis to establish relationships with suppliers of cloth.
- Complete range of sample furniture made to test designs
- PR company used to convey brand to wide audience

By way of further ongoing costs, the company has employed a new full time member of staff for the last 18 months to drive this forward. We also invest in some modest advertising and Google adwords to maintain our company profile. This has meant that as of today, the sales generated by the company are not yet covering the modest ongoing costs and are certainly not making any contribution towards the initial investment. It is estimated that a significant further sum will require to be invested in order to get the brand to a level that will start to return investment. This represents a significant risk and there is still a high chance of failure at this time.

1.4 New licences from rights owners?

- Since ERR reform announced:£0
- If 6 month TP:£0
- If 3 year TP:£0
- If 5 year TP:£0
- Comments, case studies, examples:

I just can't see this being a viable option as the rights holders have been nothing but hostile and aggressive towards our business since we legitimately started.

1.5 Costs of ending long term commitments / contracts early?

- Already spent since ERR reform announced:£0
- If 6 month TP: We have 2 years to run on our warehouse lease, meaning a potential 12 month plus period of paying unnecessarily – likely around £15,000
- If 3 year TP:£0

- If 5 year TP:£0
- Comments, case studies, examples:

As above.

1.6 Impact on competition for consumers?

- Since ERR reform announced:£0
- If 6 month TP:
- If 3 year TP:
- If 5 year TP:
- Comments, case studies, examples:

Difficult to quantify, but there is no doubt that consumers will lose out. High design is going to be the exclusive domain of the elite.

2. EVIDENCE OF KEY BENEFITS OF THE VARIOUS TRANSITIONAL PERIOD OPTIONS

NB many of the benefits of longer transitional periods for ECHO members are the converse of the costs discussed in Section 1, so only additional questions are asked here.

2.1 What benefits would a period to sell off existing stock after the repeal takes effect have on your business?

- If 6 month TP: £140,000 loss
- If 3 year TP: £50,000 loss
- If 5 year TP: £20,000 loss
- Comments, case studies, examples:

The large headline figure is that we hold a high quantity of stock. Without an unlimited time to sell goods off then we might be legally forced to destroy what we have left following the TP.

2.2 Benefits to British Designers (including ECHO members)?

- If 6 month TP: £0
- If 3 year TP: £0
- If 5 year TP: £0
- Comments, case studies, examples:

I see no British designers benefitting from this legislation, regardless of when it is introduced.

3 OTHER QUESTIONS ARISING FROM THE CONSULTATION

3.1 Would your business find it helpful if the Government provided non-statutory guidance on what items are likely to attract copyright as 'artistic works'? If so, what factors should be considered in this

guidance?

Yes – absolutely essential to know which designs qualify. None of us wish to go through court and so a definitive list is important.

3.2 The Government proposes to evaluate the impact to all affected businesses 3 years after the change in law has commenced, to enable the Government to assess whether the transitional period was proportionate and fair, and the impact on the UK design industry. Do you have any comments or suggestions on this?

Happy to participate, although can see very little positive impact – even for brand owners.

3.3 Do you have any other comments or suggestions to enable the Government to make a fair and evidence-based assessment of how best to structure the transitional period in respect of the repeal of s52 CDPA?

RESPONDENT B

IPO CONSULTATION ON S 52 CDPA REPEAL:

SUPPLEMENTAL QUESTIONNAIRE FOR ECHO MEMBERS

1. EVIDENCE OF KEY COSTS OF THE REPEAL AND THE VARIOUS TRANSITIONAL PERIOD OPTIONS TO YOUR BUSINESS

1.1 Legal costs of advice on implications of s52 repeal on the business and on any perceived legal uncertainties?

- Already spent since ERR reform announced: £1000
- If 6 month TP: ?
- If 3 year TP: ?
- If 5 year TP: ?

• Comments, case studies, examples:

Receiving more legal threats from Vitra via ECHO members to stop my small business closing down

•

1.2 Legal costs of defending against infringement claims?

- Already spent since ERR reform announced: £0
- If 6 month TP: ?
- If 3 year TP: ?
- If 5 year TP: ?
- Comments, case studies, examples:

Not received any letters yet.

1.3 Transitional Costs of complying with repeal of s52?

- Already spent since ERR reform announced: £0k
- If 6 month TP: Will close the business when law comes into effect.
- If 3 year TP: Will close the business when law comes into effect.
- If 5 year TP: Will close the business when law comes into effect.
- Comments, case studies, examples:

Once the law comes into force, it will for certain force me to close my business down. I do not have the extra income to invest into implementing new designs. I just can't compete with the major players, especially the ones that they do grant the licences to.

1.4 New licences from rights owners?

- Since ERR reform announced:
- If 6 month TP:
- If 3 year TP:
- If 5 year TP:
- Comments, case studies, examples:

No experience of this and not prepared to go down this route with the business.

1.5 Costs of ending long term commitments / contracts early?

- Already spent since ERR reform announced:
- If 6 month TP:
- If 3 year TP:
- If 5 year TP:
- Comments, case studies, examples:

1.6 Impact on competition for consumers?

- Since ERR reform announced:
- If 6 month TP:
- If 3 year TP:
- If 5 year TP:
- Comments, case studies, examples:

2. EVIDENCE OF KEY BENEFITS OF THE VARIOUS TRANSITIONAL PERIOD OPTIONS

NB many of the benefits of longer transitional periods for ECHO members are the converse of the costs discussed in Section 1, so only additional questions are asked here.

2.1 What benefits would a period to sell off existing stock after the repeal takes effect have on your business?

- If 6 month TP
- If 3 year TP:
- If 5 year TP:

This period is the most preferable, we feel we can carry on as normal for as long as possible.

2.2 Benefits to British Designers (including ECHO members)?

- If 6 month TP
- If 3 year TP:
- If 5 year TP:.
- Comments, case studies, examples:

3 OTHER QUESTIONS ARISING FROM THE CONSULTATION

3.1 Would your business find it helpful if the Government provided non-statutory guidance on what items are likely to attract copyright as 'artistic works'? If so, what factors should

be considered in this guidance?

3.2 The Government proposes to evaluate the impact to all affected businesses 3 years after the change in law has commenced, to enable the Government to assess whether the transitional period was proportionate and fair, and the impact on the UK design industry. Do you have any comments or suggestions on this?

Compensation would be beneficial, I set up my business 6 years ago and it was surviving in the market, it has since dropped for me. I believe it is all due to the price wars from the other reproduction markets as they are needing to sell of their stock before it's too late.

3.3 Do you have any other comments or suggestions to enable the Government to make a fair and evidence-based assessment of how best to structure the transitional period in respect of the repeal of s52 CDPA?

I set up my business in good faith selling reproduction furniture. It is a shame to have it closed down due to bullying tactics from one larger player Vitra. This is very unfair and the only way to rectify the situation is to honour the 5-year transition period.

RESPONDENT C

1.1 AND 1.2:

Since the ERR reform was announced, we have mainly contributed to the collective ECHO fund to the tune of around £8000 in total, however we have also pursued other legal advice regarding the effects of the ERR may have on our company should it come into force. This legal advice has cost us around £7000 which we paid before we were contacted by ECHO, as we did not know it existed.

Should however the repeal come into force we would need to seek legal advice regarding the copyright of each of the items we sell, and whether they fall under the artistic works category. This would need to be done very quickly if a 6 month period was enacted, and the cost would be very high as in the past we have been charged fees of around £1000 per item for lawyers to perform copyright research on the item. Because the majority of our products fall under this category, the cost would be overwhelming and impossible for us to meet over such a short period of time. We would be scared that if selling the items after the 6 month period, we would be sued left right and centre on all our products and this would be impossible for a small company like ours to combat. So far we have received letters from KNOLL and VITRA regarding the sale of our goods, we have received legal advice via ECHO and our own lawyers costing us around £3000

3 year TP: this would allow us more time, to stagger the legal advice costs, but it is still such short notice, as so many of our items could potentially fall under the infringing category.

5 year TP: this would allow us a manageable amount of time to stagger the costs relating to legal advice and adjust our product catalogue accordingly giving us enough time to do so without affecting our overall business.

1.3 Already spent on Transition:

We know that we will need to move away from the copyright designs, and in our opinion the idea of getting licences to the original designs is not attainable as our customer base is at the lower price range and they will be unwilling to pay the higher costs

We are moving towards buying new items from our suppliers and as of yet we have started to purchase 30 new products which could potentially fill the gap. In total we have 45 product lines out of a total of 68 lines which probably will be made illegal once the repeal comes into force. Sadly the 45 products represent 80% of our company revenue so it will be difficult fill this gap quickly. The new products have only had very moderate success with a sale rate of the best 3 selling new items selling a total of 17 items since July 2014, compared to 480 items that will probably be affected by the repeal.

We also have begun investing in our own designs, and have incurred increased costs by hiring a new team member to help with product design, £28000 per annum. To date we have invested in 9 of our own designs, the cost of design and prototyping for us is around £3300 per product, we then spend around £1000 for product advertisement costs. In total we have spent in excess of £29700 to bring the products to market, and a further £9000 in advertising fees. Out of all 9 designs, 2 have had moderate success selling a total of £8500 worth of stock since June 2014 and the other 7 sales have been very weak.

If we had only a 6 month TP, it would be impossible for us to build up enough new items that were popular enough to replace the lost sales after the repeal,

A 3 year repeal would give us time to begin creating the market for our new items and allow us to advertise less aggressively saving us profits to re-invest in new products. The key here is the more time we have, the best chance we have for the sales from existing products affected by the repeal, to fund new designs in order to relinquish the reliance we currently have on our products ranges that bring in the majority of our revenues.

We have already begun, and have launched into several of our own sofa designs, home furnishings etc...

The majority of the data that is available to us shows that 83% of customers visit our website seeking famous iconic items which we produce replicas of. It is these items that bring our traffic to us, only for them to discover our new items that we offer. Sadly I believe without this inward traffic, it would be very difficult for us to communicate our products to potential customers, as they simply will not find us.

We would need as long as possible to develop our new lines, and build up our brand away from our existing product base and in our opinion, 3 years will be a very difficult task.

1.4

We have never been approached and believe we are too small for them to even care.

1.5

6 month TP:

It is unlikely our business would survive, and I would need to end all my contracted commitments:

Lease on 2 warehouse's – Rental deposit £35000, and the potential for them to claim the remainder of the lease of 3 years @ £64000 per year.

Lease on office and showroom – Deposit _ £24200

Remainder of lease 3 years @ £46500 per year

Total cost potentially: £169700

3 year TP

We would have to reduce capacity, and therefore move to a smaller office and move out of one of our warehouses to downsize.

Cost of ending 1 warehouse lease early: deposit loss: £17500 and payment of lease off: £32000

We would also need to downsize office so the cost of ending our lease agreement would be around £19500

Total cost approximately £51500

5 year TP. We should have been able to successfully adapted to a new product range that can support our existing commitments, so there will be no need for any additional costs of ending commitments early

1.6

Our customers buy from us because of the price compared to an original. The average person resides in this country is unable to pay thousands of pounds for a single chair. Countless number of times our customers have told us, they saw the chair but were shocked by the price of an original.

To verify this statement, we asked 172 customers who visited our showroom between April 2014 and July to answer a short questionnaire regarding various questions, of which one of the questions was: Replica furniture is currently sold at a considerably lower price than original designs currently offered. If you were unable to buy replica furniture in the future, would you:

- A – Purchase the original at a higher market price. (10 selected = 5.8%)
- B - Find a similar/alternative item – (144 people 83.7%)
- C – Don't know (18 people – 10.5%)

From the above figures you can see that the majority of our customers would not be prepared to purchase the originals if they remained at the same high cost as they are compared to the price we sell our versions.

2.1

An indefinite stock sell off period is important, otherwise if we are forced to sell off all items within a short period of time, all our competitors will also need to do the same, so we would all need to heavily discount our items to undercut our competitors to attract the customers to us.

Our long term profits are held in our stock value, and if forced to sell this all at greatly reduced prices, we would lose all our hard earned profits that were invested over time.

Another aspect is what will happen to unsold existing stock if it is then made illegal to sell. It is a waste of good resources and material which would then need to be

disposed of, which in our opinion is not a very environmentally friendly after all the resources that went into producing a perfectly useful item.

2.2

If anything it helps British designers to allow the sale of pre 25 year design items, as the profits from these items, allow us to invest in new designs and employ designers to produce new designs,

3.

It would be highly beneficial for us, especially in the planning stages to prepare for the law change. In my view it would be ideal if the government could select the most popular iconic items which we vote for, and they could provide their own opinion of whether they are likely to attract copyright as artistic works. This could then set a basis of other items and let us form an understanding of how the law will be interpreted. Otherwise it will become a very costly process of having to have each product pass through the courts to see if they fall under the scope of the new law. The government could also help ECHO financially with one or two test cases after the law comes into effect, so we are not left with the full financial burden.

3.2

I endorse this stance of evaluation

3.3

In all I formed my company like many other ECHO members selling a perfectly legal product with no insight that the law was would change for something that is so commonplace. We invested countless hours, took financial risks and developed sound and successful businesses. We all contributed to the UK economy by paying taxes, and employing people of all skills within our companies.

I believe that as we have all been genuinely positively contributing to this country, we should be given as much support and assistance to allow us to adapt our businesses into something new. Individually we are all quite small businesses but collectively we represent a hefty slice of British entrepreneurship, and with the enough time, we can adapt ourselves into a new and exciting segment of business and continue to contribute both our skills and financially to this country, but it's left for the government to give us the chance.

RESPONDENT D

IPO CONSULTATION ON S 52 CDPA REPEAL:

SUPPLEMENTAL QUESTIONNAIRE FOR ECHO MEMBERS

1. EVIDENCE OF KEY COSTS OF THE REPEAL AND THE VARIOUS TRANSITIONAL PERIOD OPTIONS TO YOUR BUSINESS

1.1 Legal costs of advice on implications of s52 repeal on the business and on any perceived legal uncertainties?

- Already spent since ERR reform announced: £ 18.000.-
- If 6 month TP: £ 3.000.-
- If 3 year TP: £ 1.000.-
- If 5 year TP: £ 500.-
- Comments, case studies, examples:

We already have spent a lot of time and money in legal advice, and would expect this still can be a lot more for the future, (although we do not have unlimited funds and time to spend for any lengthy court battles).

1.2 Legal costs of defending against infringement claims?

- Already spent since ERR reform announced: approximately £ 32.000.-
- If 6 month TP: £ 3.000.-
- If 3 year TP: £ 2.000.-
- If 5 year TP: £ 1.000.-
- Comments, case studies, examples:

We attempt at all times to avoid any lengthy battles and try to adapt our business so that we are as far as possible avoid any provocations to the brand owners, though we have seen some extremely aggressive posturing from the license holders which we will need to defend.

1.3 Transitional Costs of complying with repeal of s52?

- Already spent since ERR reform announced: £ 30.000.-
- If 6 month TP: £ 30.000.-
- If 3 year TP: £ 15.000.-
- If 5 year TP: £ 5.000.-
- Comments, case studies, examples:

We have worked hard since the ERR trying to establish another shop/business, with other product that can take over our existing company, and to make sure to keep the jobs for our staff and that can take over the leases and etc.

We have established a new brand call Boca Living - boca-living.com. This is again for the high and mid end customers that want something affordable and exclusive for their home. So far we have spent more than £ 30.000, however unfortunately we still haven't been able to get this company up to the speed we need to take over what we might be losing from our existing business, it will take 3-5 years before we get Boca Living up to the same brand and turnover/profit.

1.4 New licences from rights owners?

- Since ERR reform announced:
- If 6 month TP: £ 0.-
- If 3 year TP: £ 0.-
- If 5 year TP: £ 0.-
- Comments, case studies, examples:

We find it hard to see how this will be possible, we don't believe that the brand holders will work with us, so far they have only hounded us and have been particularly aggressive towards our business since we legitimately started.

1.5 Costs of ending long term commitments / contracts early?

- Already spent since ERR reform announced: £ 0.-
- If 6 month TP: £ 45.000.-
- If 3 year TP: £ 10.000.-
- If 5 year TP: £ 0.-
- Comments, case studies, examples:

Warehouse lease and obligations to staff.

1.6 Impact on competition for consumers?

- Since ERR reform announced: £ 0.-
- If 6 month TP:
- If 3 year TP:
- If 5 year TP:
- Comments, case studies, examples:

Hard to predict, but for sure the end customers are going to be the big losers - the license holders are going to have the right to set the prices at huge margins, and only the wealthiest people will be able to afford to buy classic design for the future.

We give our customers 5 years warranties on the product, if TP period is only 6 month we might be forced to go in to liquidation and will not be able to fulfil the obligations to our customers.

2. EVIDENCE OF KEY BENEFITS OF THE VARIOUS TRANSITIONAL PERIOD OPTIONS

NB many of the benefits of longer transitional periods for ECHO members are the converse of the costs discussed in Section 1, so only additional questions are asked here.

2.1 What benefits would a period to sell off existing stock after the repeal takes effect have on your business?

- If 6 month TP: £ 120.000.-
- If 3 year TP: £ 20.000.-
- If 5 year TP: £ 10.000.-
- Comments, case studies, examples:

As of today we hold a much larger stock to supply in a reasonable delivery time. It will take lot more than 6 months to sell.

2.2 Benefits to British Designers (including ECHO members)?

- If 6 month TP: £ 0.-
- If 3 year TP: £ 0.-
- If 5 year TP: £ 0.-
- Comments, case studies, examples:

Unfortunately we don't see any British designers benefiting from this legislation, more the reverse we believe it will remove an interest for designer product, because it will only be license holders marketing established product at inflated prices affordable only by wealthy customers. Younger and new British designers need access to the sell their new designs alongside the volume quality retailers we represent today.

3 OTHER QUESTIONS ARISING FROM THE CONSULTATION

3.1 Would your business find it helpful if the Government provided non-statutory guidance on what items are likely to attract copyright as 'artistic works'? If so, what factors should be considered in this guidance?

Absolutely, it is important to know which design and product quality copyright as 'artistic works' this will eliminate a lot of legal battles and time and money for the courts, company's and license holders.

3.2 The Government proposes to evaluate the impact to all affected businesses 3 years after the change in law has commenced, to enable the Government to assess whether the transitional period was proportionate and fair, and the impact on the UK design industry. Do

you have any comments or suggestions on this?

Not a problem for us, but can't see the benefit in it. The TP need to be fair to the companies that have been running their business legally for many years, establish it, spent a lot of time and money to set it up, many of them are family companies, and when a law like this needs to come into effect, the Government should give a fair TP which should be not less than 5-7 years.

3.3 Do you have any other comments or suggestions to enable the Government to make a fair and evidence-based assessment of how best to structure the transitional period in respect of the repeal of s52 CDPA?

RESPONDENT E

IPO CONSULTATION ON S 52 CDPA REPEAL:

SUPPLEMENTAL QUESTIONNAIRE FOR ECHO MEMBERS

1. EVIDENCE OF KEY COSTS OF THE REPEAL AND THE VARIOUS TRANSITIONAL PERIOD OPTIONS TO YOUR BUSINESS

1.1 Legal costs of advice on implications of s52 repeal on the business and on any perceived legal uncertainties?

- Already spent since ERR reform announced: £10500 as part of Consortium
- If 6 month TP: £15,000+
- If 3 year TP: £30,000+
- If 5 year TP: £5,000
- Comments, case studies, examples:
 - Much work has already been undertaken by our legal representatives in relation to copyright, arguments for an equitable transition and compliance with existing legislation. From our perspective these costs will significantly increase for the following three years before subsiding as the business model morphs away from its reliance on 'iconic classics' into new generic designs.
 - As it is highly likely rights holders will assume all classics are protected, it will be necessary to contest each product on an individual basis until there is established case law to define what is likely to be permitted under the new legislation. Front loaded costs will be significant.
 - If the transition is of a too short nature then legal advice will need to be sought to review existing contracts and leases alongside staff redundancy costs and winding up.

1.2 Legal costs of defending against infringement claims?

- Already spent since ERR reform announced: £0-00
- If 6 month TP: £40,000
- If 3 year TP: £25,000
- If 5 year TP: £5,000
- Comments, case studies, examples:
 - If the momentum of the right holders magnify in relation to their actions prior to the repeal coming into force, we would expect a significant sum of working capital to be set aside to defend ourselves against the many additional rights holders who are likely to come forward. This is a certainty, as the intentions of right holders to litigate is clearly detailed in the Government's Consultation document. These figures are hard to

quantify as some rights holders are more aggressive than others. Some rights holders however, from our experience to date, have never written or commenced any legal action against UK companies for copyright infringements. There does however remains risk that this could change and the above costs could rise significantly.

- Should significant legal action(s) occur against us where the litigation costs would be considerable, we could easily find ourselves in a situation to cease and desist our operations, (even whilst carrying out lawful activities) for fear of tipping the company into liquidation. This is a very real threat.

1.3 Transitional Costs of complying with repeal of s52?

- Already spent since ERR reform announced: £160,000
- If 6 month TP: £300,000+
- If 3 year TP: £200,000+
- If 5 year TP: £100,000+
- Comments, case studies, examples:
 - We have already started diversifying our business activities in anticipation of the repeal of S 52 coming in force, and currently have investments in four areas. Two operations away from 'furniture and design' namely the transport and financial sectors.
 - The other two are the design sector with diversification away from iconic designs. One of these is a generally passive role of investment in a new brand, owned by the respondent D.
 - We have ourselves conducted similar trials with some generic furniture offerings to gauge feedback and a likely success: Earlier in 2014 we studied latest trends in generic sofas. We chose two designs that could be purchased off the peg and produced within the EU. We spent £5K on 'trial' advertising, including two advertising campaigns in national broadsheets.
 - The result was the sale of 4 units in the first month, despite the product being specifically discounted to cost to offer the consumer a true bargain. We had anticipated sales of at least 30+ units.
 - The sofas are still advertised on our websites, but since April when the national advertising ceased we have sold none. We would anticipate a necessary budget of £10-£20K per product to incorporate these within a 'brand' to derive meaningful sales.

1.4 New licences from rights owners?

- Since ERR reform announced: None
- If 6 month TP: See below
- If 3 year TP:
- If 5 year TP:

- **Comments, case studies, examples:**
 - Through our legal representatives a meeting was held in London between ECHO and Vitra AS to discuss possible remedies going forward. This exercise to a large degree proved fruitless as we were unable to ascertain with any clarity what Vitra would propose and upon what terms.
 - We were offered individual meetings ‘off record’ with the head of Vitra UK, but we declined this opportunity as the scope of what had been advised by Vitra’s lawyers looked limited at that point in time.
 - Despite the above, we would welcome the opportunity for the compulsory licences to be available during the transitional period should we so decide. However, from my understanding and knowledge these ‘licences’ are not necessarily a route to commercial success. Here is an actual example:

- THE LOLLIPOP SHOPPE LIMITED – Company Registration – 06518540 – EST. 02/2008
- THE LOLLIPOP SHOPPE LONDON LIMITED – Company Registration- Company Registration 07084878 – EST. 11/2009

The 'Lollipop Shoppe' was a Brighton business which opened in 2008 and had licences from all the large rights holders of design classics inter alia, Vitra, Fritz Hansen, Flos, Carl Wagner.

After a few years it relocated to a prime central location in the city.

It announced unexpectedly in The Evening Argus on 26th February 2013: “Brighton was a waste of time for us. There’s not enough money in the city, to be honest”

The Brighton shop was closed and relocated to London.

This London venture has subsequently closed.

According to Companies House, both businesses entered administration, the first with liabilities of £504,328 and the second £437,844.

Subsequently the business has again returned to Brighton this time without all the ‘licences’ it once had – including notably without one from Vitra.

Consequently, this does not inspire us to rush out at the first opportunity to grab a ‘compulsory licence’ as the above clearly demonstrates that holding them does not guarantee wealth creation, they can be revoked; and indeed trying to be an authorised licensee of the high-priced ‘original’ goods can be potentially ruinous for your business.

1.5 Costs of ending long term commitments / contracts early

Already spent since ERR reform announced: None

- If 6 month TP: £33K
- If 3 year TP: £35K – could be minimised if freeholder were to offer an 18 month variable term or offer a break clause on a longer lease, which we have abstained from until there is certainty of when the repeal will take effect.
- If 5 year TP: None
- **Comments, case studies, examples:**

- We have a 12 month renewable warehouse lease with our freeholders at £50K per annum.
- We have various vehicle leases that are renewed on a 24 month basis.
- There would be staff redundancy costs if it is necessary to close the operations within 6 months. Longer transitions would allow this to be budget for.
- These leases are rolling contracts that could potentially be renegotiated to satisfy both parties with appropriate due notice.
- A too short a transition will lead to the inability to generate cash flows for the continuation of the new ventures highlighted in 1.3 above.

1.6 Impact on competition for consumers?

- Since ERR reform announced: FAR REACHING
- If 6 month TP:
- If 3 year TP:
- If 5 year TP:
- Comments, case studies, examples:

There were several public comments to a presumably Vitra-sponsored article published in *De Zeen* magazine, titled 'Design Brands attack Government over copyright law delay': See: <http://www.dezeen.com/2014/09/22/design-brands-vitra-artek-flos-attack-uk-government-over-copyright-law-delay/>

Not all comments supported ECHO's position, but here are some examples of unsolicited comments from the public which do (some, for reasons of space, are excerpts):

- 'Factor' • a month ago

Most of the furniture that gets copied are the ones designed by designers who are dead already. All these company CEOs are just crying that they can't be the only ones profiting from them. Personally, I think they are threatened by the replicas because it shows how ridiculous their mark-ups are.

- 'Bart' • Angry • a month ago

This whole thing is not about protecting the original designers - who in most cases are long dead or not even British - but it is about protecting the companies and their CEO's. It's about wealth and greed.

- 'Bart' • a month ago

Vitra and others charge ridiculously high prices for their furniture, which only a happy few can afford. Most of their furniture is designed by people who are long dead. The original designers are not harmed in any way. If they started to charge more reasonable prices, more people would get their products. Their current customers who can afford 4000EUR for a lamp are choosing them anyway. By changing the law their business will not increase all of a sudden.

- Bart • a month ago

'For example, Vitra sells Eames furniture at exorbitantly high prices, which the average consumer cannot afford. Charles and Ray Eames had a philosophy which is the absolute opposite of what Vitra is doing today. Early in their careers together, Charles and Ray identified the need for affordable, yet high-quality furniture for the average consumer. THAT was their vision, their idea behind good design. Not the greedy practices we see with these big design companies today.'

• [design bastard](#) • 25 days ago

'We shouldn't confuse the issue here. Although this is a UK law and will protect UK designers, the vast majority of companies who will benefit are not UK-based.

I may be wrong but doesn't an imported, unlicensed Eames chair offer the exact same economic benefits to the UK as an imported, licensed Eames chair? Both are manufactured outside the UK and any royalty paid by Vitra will be paid to the Eames estate, which is a US registered company. That goes for Fritz Hansen, Cassina, Artemide, Thonet, Flos, Artek too. (I.e. pretty much everyone mentioned in this article). Surely it only comes into play when the designer is UK registered?

Another thing worth remembering is that taking the 'fakes' out of circulation also removes another element of competition for the 'design brands'. Can't help but find this 'coalition' a little worrying. Monopoly?'

• [Cantolivre](#) • 24 days ago

'Hard not to agree with those that criticise the price of many mid-century and Modernist designs. The idea behind much of these designs - Eames & Bauhaus especially - was mass-produced objects, not collectors pieces costing thousands of dollars.

Look at the Eames shell chairs, "real" examples sell at around US\$500 a piece, which is an utterly ridiculous mark up on what was supposed to be a cheap, mass-produced product.

Many of the now dead designers will be turning in their graves at what their work turned into.'

2. EVIDENCE OF KEY BENEFITS OF THE VARIOUS TRANSITIONAL PERIOD OPTIONS

NB many of the benefits of longer transitional periods for ECHO members are the converse of the costs discussed in Section 1, so only additional questions are asked here.

2.1 What benefits would a period to sell off existing stock after the

repeal takes effect have on your business?

- If 6 month TP: Loss £300K+ if no stock sell off
- If 3 year TP: Loss £400K+ if no stock sell off
- If 5 year TP:
- Comments, case studies, examples:
 - Our understanding is that the government have already committed to an indefinite stock sell-off when the repeal comes into force. Should this now not be honoured, the impact and financial consequences would be disastrous. When importing goods it is by the container load and anything from 20-50% of products on that container will be presold. The rest of the stock accumulates as the business grows and should hold it 'landed costs'.
 - We hold stocks of some £300K+ which would have to be disposed of or sold potentially in a fire sale if this commitment is not followed. Coupled with the fact there will be many companies undertaking the same exercise, the stock would become greatly diminished in value, potentially underachieving its purchase price significantly.
 - Bearing in mind that imported products attract VAT and import duties immediately on arrival to the UK, it would be unjust for us not to have the ability to sell our stocks in a measured fashion to maximise returns. These products after all were acquired in a lawful manner.
 - With the current diverse offerings of replica lines that we sell, it is paramount for disposal to continue in an orderly fashion to liquidate this inventory.
 - The majority of consumers are not interesting in long lead times and require the products in a timely manner hence the need to hold such levels. We foresee until the repeal takes effect that our inventory will only increase for this reason.
 - We fully support the governments' suggestion of a voluntary inventory system at the conclusion of the transitional provisions to ensure no further replicas enter the UK which as highlighted, would allow us to unwind our lawful stock investment.
 - Many replica companies until 2012 had profitable businesses with an enterprise value to sell them. This was effectively eliminated on the announcement of the ERR Bill.
 - Accordingly, we are in a position where we must maximise every last penny from our investment of what are now defunct businesses. It would be an insult to destroy the last remnants of our businesses if we were faced with the inability of an unhindered stock sell-off.

2.2 Benefits to British Designers (including ECHO members)?

- If 6 month TP: None
- If 3 year TP: None

- If 5 year TP: None
- Comments, case studies, examples:
 - As a business we have for several years sponsored and promoted several Artists and Designers in a small way to get recognition in the public domain. They are fully aware of the inherent difficulties of making a name and achieving any commercial success. Hence I presently fail to see any immediate benefits to their or our business with the impending law change.
 - In fact, with new up and coming designers, their focus I understand would be firmly on creating a catalogue of blue prints and products to become the next 'famous' name – and benefit in their lifetime from revenues generated. I would consider it unlikely designers are considering two generations ahead of their time, who will be spending their hard earned royalties.
 - We feel therefore, NO recent British designers will personally benefit from the changes in law. One reason being that the replica business has generally focussed its attention on old and expired designs, some being 100+ years old – and second, replica businesses would not plagiarise a new design which would (a) automatically be covered for at least 25 years in theory, allowing the designer a long period of revenues / royalties; and (b) it has never been the nature or intention of our industry to be infringers, counterfeiters or involved in any illegal activity.

3 OTHER QUESTIONS ARISING FROM THE CONSULTATION

3.1 Would your business find it helpful if the Government provided non-statutory guidance on what items are likely to attract copyright as 'artistic works'? If so, what factors should be considered in this guidance?

Guidance indeed would be welcomed from the government, however I suspect such 'non-statutory' guidance would at best be exceptionally vague and will be subject to legal interpretation and ultimately for the courts to decide.

If the guidance could, for example, focus upon a handful of iconic classic furniture designs (as this is the focus of the repeal), with their reasoning behind them – this may then allow us to objectively apply this to other designs, past and present.

3.2 The Government proposes to evaluate the impact to all affected businesses 3 years after the change in law has commenced, to enable the Government to assess whether the transitional period was proportionate and fair, and the impact on the UK design industry. Do you have any comments or suggestions on this?

It would be appropriate with such a significant law change that the government commits to a thorough review after three years. Not just for the benefit of replica furniture industry, but as a whole, to consider the many anomalies that will undoubtedly have surfaced from this legislative change.

We would consider within three years that we will be able to offer clear evidence as to whether our restructured business is likely to succeed or implode and thereby evaluate ongoing investment needs for the business if favourable. If it transpires however, that there has been insufficient time to adapt the business going forward, and failure is likely to be to our detriment we may have to consider actions to seek redress.

We also welcome with interest an investigation of the benefits or otherwise of this change in the law to the UK design industry / UK economy, for which this entire process was supposedly aimed at.

3.3 Do you have any other comments or suggestions to enable the Government to make a fair and evidence-based assessment of how best to structure the transitional period in respect of the repeal of s52 CDPA?

We feel the government should undertake one final thorough review of all the evidence it has received since this process started.

The change in law, (partly EU harmonisation), was instigated by a Swiss right holder claiming it was losing revenues of 250m Euros per annum – a loss so significant it held back on its design investment. Having achieved their goal, they have now restated the figure at barely 2% of their original claim, namely, 4.4mEuros.

With such an overstatement, it does raise questions over their integrity.

On the other hand, ECHO represents many small SME businesses that contribute hugely to the UK economy in terms of employment, ancillary employment and tax revenues etc. – is a five year wait really disproportionate and unfair to a licence holder who will benefit for decades?

RESPONDENT F

IPO CONSULTATION ON S 52 CDPA REPEAL:

SUPPLEMENTAL QUESTIONNAIRE FOR ECHO MEMBERS

1. EVIDENCE OF KEY COSTS OF THE REPEAL AND THE VARIOUS TRANSITIONAL PERIOD OPTIONS TO YOUR BUSINESS

1.1 Legal costs of advice on implications of s52 repeal on the business and on any perceived legal uncertainties?

Legal costs in specialised areas is quite expensive - e.g. so far the cost of fighting this particular cause is been **£ 12,000** over 2 years, and this is just part of the shared cost between 15 members. We have taken some advice on our own accord as well in the same matter, spending about **£5000**.

Now if we get six months' time we will not have any time to take any legal advice. Or time to generate enough funds to take any legal advice.

In 5 years' time, we can absorb our legal costs and develop new lines.

1.2 Legal costs of defending against infringement claims?

We also had a court case in Denmark with regards to design rights. The cost of fighting that case was approximately **£31000** over two years. I can provide if necessary sample invoices of our Danish lawyers to give an idea about the legal costs involved.

In total we have spent about **£45000** on legal advice or court cases in last three years. Now 6 months' time is really not enough. We will not be able to recover this high a cost.

In three years' time we might be able to recover some of the costs. However, to really absorb the costs, we need at least 5 years.

1.3 Transitional Costs of complying with repeal of s52?

We understand that in long run we should be moving away from infringing products to licenced products or own design products. But this is also about giving a small company some transitioning time to move away from unlicensed products and moving to original or licensed products.

We would like to share our experience at this stage.

We launched a new brand called "Live Iconic" in 2012.

[REDACTED]

Live Iconic was set up in 2012 as [Respondent F]'s first UK manufacturing base. Design is inspired by classic mid-century Scandinavian design, but is given a contemporary twist and driven by CNC manufacturing methods. This ensures lean manufacture and was a direct response to the difficulties of matching the cost and speed of manufacturing abroad. By not holding stock, and designing to the limitations of the machinery, maximum output can be achieved from the six full-time staff employed allowing Live Iconic to compete alongside the Chinese operation.

Although Live Iconic never existed to fully replace manufacture abroad, a huge amount of time and resources have been put into manufacturing in the UK, not only for the marketing potential of locally produced products, but also the stricter quality control it allows, and the speed such a close manufacturing base can react to an ever changing market.

Live Iconic however again perfectly displays the difficulties in changing the business model. Having now been trading for over a year, Live Iconic is still struggling to become profitable despite selling over 100 items. This is for a number of reasons, chiefly again the time required for developing and refining designs. The very nature of the lean production method means no errors can occur in machining, as these dramatically affect the assembly/finishing stages, cutting into tight margins. The development time also restricts the quantity of designs that can be produced and is severely restricted by machine availability which can only be alleviated by further investment of £50,000+, impossible to justify in the early stages of the business. Development time can of course vary dramatically depending on product, complexity of design, machine availability, labour availability and many other reasons. Vitra noted this with talking about the introduction of the Vitra edition pieces in 1987 'an object that was developed within just a few months attracted more attention than an office chair that had taken years to develop'⁽¹⁾. The Panton chair is another good example of the time good design can take to progress through to full production. Despite first being designed in 1957, it wasn't until 1968 that the chair went into full production (2).

In first three months we invested approximately £ 150,000 on basic machinery, warehouse lease, staff training and designer's salaries.

After initial capital investments, in 1 years' time we could launch 30 products. And in the next six months we launched 6 more products.

Now each product takes about 3-4 weeks to design. Then developing the prototype takes at least 4 weeks' time – identifying right materials, sourcing them, developing the product on the machine and doing it again if first attempt does not work. And then the process of developing samples, adjusting machines to get them ready for commercial production etc start. That means each product costs approximately 1 month worth designer's wages (£ 2500) and wages of one month for 2 people in factory (£ 2500 + £ 1500) and 30% of machine time in a month. That is approximately £ 8000. And this is just the starting. We have to invest heavily into Online Web Marketing to get noticed in this web jungle. And after all the efforts 70% products fail and only 30% succeed. So, 5 years is a bare

minimum time line for a business to establish itself reasonably in this market place.

Examples of new designs by Live Iconic:



Currently this factory employs 7 people. We are working round the clock since last one and a half year and have managed to launch a new range of British designed and British made products. This product currently achieves turnover of about £ 20,000 per month. But still as a project, it makes a loss of about £ 20,000 a month.

So far we have invested about £ 400,000 in the project. The plan we have is to invest further £ 500,000 over a period of 4 years. And get a full range ready. By then we will have all relevant trade mark and design protections and brand would be known to customer enough that reliance on online marketing will reduce, increasing margins and making venture profitable.

But as we mentioned earlier, the project makes a loss of about £ 20,000 per month. Important thing needed for it is time. Without time this business can't take off.

If we are given 6 months, we will have to close down this project immediately. That would mean a loss of 7 jobs, empty warehouse / production facility and an investment of £ 400,000 down the drain. And that is just for live Iconic. Impact on [Respondent F] would be even worse.

Currently [Respondent F] employs about 60 staff. Our average VAT payment is around £ 50,000 per quarter. If we are not given enough time we will be forced to downsize. That would affect employment, our profitability and will threaten overall existence of business. Also, we offer 5 year guarantee on all our products. But if we are shut down suddenly we will not be able to honour that guarantee, leading to loss to end customers.

Even with three years' time, we see very limited possibility of launching a great brand. But 5 years' time may give us enough.

1.5 Costs of ending long term commitments / contracts early?

Currently we have following long term commitments:

1. Lease on current retail premises
2. Lease of warehouse
3. Responsibility of approx. 60 staff members
4. 2 year commitment to buy from our current suppliers in China
5. Development of Live Iconic project

If we are given a six months' time period we will not be able to honour any of these commitments. And most likely we will have to downsize if any of these commitments are enforced; we will have to go into administration. However, if we get three years' time we will try to honour most of our commitments. However, there will be a possibility of downsizing, letting some of the staff go and downsizing on live iconic projects. But if we get 5 years' time, we will be able to retain our staff, meet our long term commitments in full and remodel our business.

1.6 Impact on competition for consumers?

As per a small customer satisfaction survey we did we asked our customers if our products were not available, will they buy original licensed version (approximately 10 times more expensive)? Not a single customer said that they will buy a product. What we want to say here is clientele that we serve is completely different from Vitra. And we don't share common customers. And we are not taking away any sale of licensed products. We have our own customer segment.

2.1 What benefits would a period to sell off existing stock after the repeal takes effect have on your business?

It is important that we can operate business as a going concern. But we can't do it if we are constantly under threat that we will not be able to sell our stock. Customer is unpredictable. We can stock 10 items in 10 different colours and customer will want only 2 colours and rest can remain in stock. But there is always this uncertainty. And to counter that uncertainty we need to have right to sell off remaining stock in due time. That is the best way we can serve our customer's needs. And we can operate business as a going concern.

2.2 Benefits to British Designers (including ECHO members)?

We are working really hard on developing new designs. We already employ two designers and we have launched about 36 new designs under Live Iconic Brand. And we have further 10 designs under development. But it is important that we are given a right to exist so that we can continue these developments and can move from unlicensed products to branded owned designed products in 5 years' time. However, as mentioned earlier this change does not happen overnight. Designing the product, launching it successfully and educating customer about it and eventually turning it into profitable designs can take some time.

3.1 Would your business find it helpful if the Government provided non-statutory guidance on what items are likely to attract copyright as 'artistic works'? If so, what factors should be considered in this guidance?

A guidance becomes a semi-official guideline from government (even though not legally binding) and then it is open to interpretation by lawyers, courts etc. And it can open floodgates of legal suits, claims & counter claims etc. We don't know how European courts will interpret this. We understand that guidance is not legally binding but we have doubts whether it would be helpful or not.

3.2 The Government proposes to evaluate the impact to all affected businesses 3 years after the change in law has commenced, to enable the Government to assess whether the transitional period was proportionate and fair, and the impact on the UK design industry. Do you have any comments or suggestions on this?

There should be a commitment on the side of Government to evaluate the impact on all businesses. Currently government is assuming that three years' time is enough without any substantial proof / research and against advice from all involved

businesses who are suggesting that any period below 5 years is not enough. There should be a provision for compensation for businesses that get adversely affected by sudden policy change or instead of having a blanket rule of closing down after three or five years, there should be a review towards the end of fifth year.

3.3 Do you have any other comments or suggestions to enable the Government to make a fair and evidence-based assessment of how best to structure the transitional period in respect of the repeal of s52 CDPA?

We request government to accept at least 5 year of transition period and right to sell stock in UK after that to keep this transition smooth for the businesses involved. And there should be a review of this towards end of 5th year instead of shutting down businesses completely. This will protect the customers, employment and encourage new developments in the meantime.

RESPONDENT G

IPO CONSULTATION ON S 52 CDPA REPEAL: SUPPLEMENTAL QUESTIONNAIRE FOR ECHO MEMBERS

1. EVIDENCE OF KEY COSTS OF THE REPEAL AND THE VARIOUS TRANSITIONAL PERIOD OPTIONS TO YOUR BUSINESS

1.1 Legal costs of advice on implications of s52 repeal on the business and on any perceived legal uncertainties?

- Already spent since ERR reform announced: £8,000
- If 6 month TP: £5000 +
- If 3 year TP: £4000
- If 5 year TP: £2000
- Comments, case studies, examples:

We've already invested a considerable sum seeking legal advice, both as individuals and as contributions to the consortium. A shorter transition period would inevitably require more extensive investment in analysing our legal position so as to maximise the remaining trade period available to us. Battling the transition period is draining from an emotional and financial perspective. Resources we simply can't keep setting aside for this fight.

1.2 Legal costs of defending against infringement claims?

- Already spent since ERR reform announced: £3000
- If 6 month TP: £7000
- If 3 year TP: £5000
- If 5 year TP: £3000
- Comments, case studies, examples:

Vitra seem intent on targeting members of the consortium, citing the *Donner* case to highlight where they stand legally on us exporting our products. As they are aware we're being awarded a transition period, they've so far refrained from insisting we stop selling in the UK. I fully believe the shorter the transition the more aggressive their legal stance on insisting we stop trading. This would become time consuming and financially draining to defend. As a small business we simply don't have those resources.

1.3 Transitional Costs of complying with repeal of s52?

- Already spent since ERR reform announced: £15000
- If 6 month TP: £30,000

- If 3 year TP: £15,000
- If 5 year TP: £10,000
- Comments, case studies, examples:

Since the government first announced the repeal we've obviously assigned time and resources in looking at ways to adapt the company or indeed other investments open to us, in the hope we can amend our business model.

We started to import, market and sell generic office and reception furniture alongside our iconic range.

Having imported two containers full of tub and office chairs I'm disappointed to say these have not sold as expected. There is a genuine consumer appetite for good quality reproduction furniture. Sadly this does not extend to non-specific office chairs. Architects and interior designers want high end replica pieces. Despite our best efforts in marketing and actively selling our new, contemporary office range we've had very little uptake and unfortunately a warehouse still full of these chairs and desks.

The shorter the transition the more we would need to invest in trialling various, additional ranges. We've need to do so quickly and that would require a certain element of 'trial and error' to see what works. Heavy investment in stock and marketing, much of which could end up being sat in the warehouse unsold for a lengthy time period.

1.4 New licences from rights owners?

- Since ERR reform announced: NA
- If 6 month TP: NA
- If 3 year TP: NA
- If 5 year TP: NA
- Comments, case studies, examples:

I'm not sure how this will be a viable option. The rights holders have shown no intention of working with us to ensure a favourable future for all. We approached Vitra when we first started trading and asked to discuss licensing options back then. As we don't have a physical storefront as such, they were not interested. I can't see this suddenly changing regardless of the offered transition period.

If the rights holders are forced to discuss licenses with us I can only imagine they'd make the terms so impossible for us to work to it simply would not be an option.

1.5 Costs of ending long term commitments / contracts early?

- Already spent since ERR reform announced:
- If 6 month TP: £10,000

- If 3 year TP: £0
- If 5 year TP: £0
- Comments, case studies, examples:

We have existing supplier contracts, warehousing and web costs which we would be expected to continue paying, regardless of our profit margins. A short transitional period would mean limited money coming in to the business whilst we're still expected to meet overheads. We would have to continue paying storage costs as we begin to find ways to adapt the business model. A short transition would make this a costly exercise with no guarantee of success in remoulding the business.

1.6 Impact on competition for consumers?

- Since ERR reform announced:
- If 6 month TP:
- If 3 year TP:
- If 5 year TP:
- Comments, case studies, examples:

It's virtually impossible to put a cost on this. Aside from potentially creating an underground black market for what will become illegal copies, many consumers would no longer have the opportunity to own an iconic piece of furniture. Realistically, the customer who purchase a £400 office chair from us are never going to pay the £3000 price tag attached by the license holders. There isn't just a small price difference, the gap is huge.

2. EVIDENCE OF KEY BENEFITS OF THE VARIOUS TRANSITIONAL PERIOD OPTIONS

NB many of the benefits of longer transitional periods for ECHO members are the converse of the costs discussed in Section 1, so only additional questions are asked here.

2.1 What benefits would a period to sell off existing stock after the repeal takes effect have on your business?

- If 6 month TP: £50,000
- If 3 year TP: £20,000
- If 5 year TP: £10,000
- Comments, case studies, examples:

We would essentially have limited time to sell off our existing stock. Selling everything within such a short time frame would prove almost impossible, regardless of

investment in marketing. By the very nature of what we sell, we're required to hold certain stock levels of models and colours which perhaps aren't as popular as others. These can often take a good while to sell but it's important we hold limited quantities to keep consumers happy. These would most probably end up being destroyed as it would be virtually impossible to sell them within such a short time scale. Even the extended transition would require we keep rolling stock - that includes models which sell less well than others. We believe there would undoubtedly be some furniture remaining once the law change comes in which would need to be disposed of.

2.2 Benefits to British Designers (including ECHO members)?

- If 6 month TP: NA
- If 3 year TP: NA
- If 5 year TP: NA
- Comments, case studies, examples:

I see absolutely no benefits whatsoever to British designers. It's impossible to see how this law change will impact favourably on UK furniture designs let alone quantify that with a cost.

3 OTHER QUESTIONS ARISING FROM THE CONSULTATION

3.1 Would your business find it helpful if the Government provided non-statutory guidance on what items are likely to attract copyright as 'artistic works'? If so, what factors should be considered in this guidance?

Yes, without doubt. Providing us with a list of what is and isn't classed as 'artistic works' will ensure we know what we're working to. For the avoidance of doubt, and any further legal implications, it's essential to have a list detailing what is and isn't covered by the law change.

3.2 The Government proposes to evaluate the impact to all affected businesses 3 years after the change in law has commenced, to enable the Government to assess whether the transitional period was proportionate and fair, and the impact on the UK design industry. Do you have any comments or suggestions on this?

It will sadly be too little too late. My personal opinion is that it will have a huge negative impact on UK business and very little, if any, positive impact on the UK design industry. I doubt the license holders will see any great upturn in business either. As

previously stated, the majority of our customers who spend £1000 on a high end reproduction, simply don't have £6000 to spend on the licensed version of the chair. This feels a little like shutting the door after the horse has bolted.

3.3 Do you have any other comments or suggestions to enable the Government to make a fair and evidence-based assessment of how best to structure the transitional period in respect of the repeal of s52 CDPA?

To keep assessments fair, honest and open. To talk to and continue to offer a platform for discussion to reproduction retailers, all of whom began our businesses in good faith. To resist bowing down to pressure from lobbying groups employed by rights holders. We're simply asking for a fair transition.

RESPONDENT H

IPO CONSULTATION ON S 52 CDPA REPEAL:

SUPPLEMENTAL QUESTIONNAIRE FOR ECHO MEMBERS

1. EVIDENCE OF KEY COSTS OF THE REPEAL AND THE VARIOUS TRANSITIONAL PERIOD OPTIONS TO YOUR BUSINESS

1.1 Legal costs of advice on implications of s52 repeal on the business and on any perceived legal uncertainties?

- **Already spent since ERR reform announced:**

Besides the money spent on ECHO, we have spent significant amounts to understand the following points:

1. *How different from a copyright protected piece of furniture must a new design be for it not to potentially infringe on the copyright of the original?*

Cases have been sought to be drawn upon to attempt to give a clear answer to this. A clear answer is however impossible to get. Cases like ones on the Trip Trap chair show that similarities and/or differences will be judged on a case by case basis. The concern here is that, with the aggressive behaviour of license holders, we might get new cases against us when new designs are fully developed. We seek to maintain our brand image and sell furniture, which is minimalistic and timeless. The shapes of such are however often relatively simplistic and many simple chairs look alike. Understanding exactly where the line of copyright protection is, is vital for us when we start producing our own lines. This is an expertise that we do not have in the business currently but that we have already spent a lot of money understanding. **Cost so far 15K.**

2. *Advice on how to potentially deal with claims from customers (who have a 5 year warranty on the product) if a 3 year transitional period is implemented.* Now the process is that customers send us pictures of the faulty product. After a full repeal the opening of a customer picture of a replica product on a computer in the UK, would constitute a copyright infringement. **Cost 10K.**

- **If 6 month TP:**

1. How and if we can legally dispose on vast amounts of stock in case it needs to be done within a 6 month period. Cost estimate: **7K**
2. Understand if there is a risk of further losses from customers who can make claims against us on the basis of a 5 year warranty. **7K**
3. How to quickly get out of relationships and agreements with suppliers, partners and dependant businesses. As from last round of questioning we have 63 UK companies that can be defined as being suppliers and or dependant businesses. **Cost estimate: 10K**

4. Advice on how to deal with closing down the company in the best possible way. This will be the consequence unless external investment is required as per last questionnaire. If external investment is required, we will need advice on making 55 of 60 people redundant from our company. **Cost estimate: 10K**

- **If 3 year TP:**

1. As per above, advice on how to deal with significant redundancies. With a 3 year transitional period we will have to make 25-35 of 60 people redundant. The remaining and new employees will focus their efforts on new designs and off the shelf furniture which to a large extent is a different beast from what we are dealing with now, meaning that redundancy numbers will be high. Focusing on off the shelf furniture and own design with a 3 year transitional period is only possible if external investment is required, otherwise we will be forced to close down. **Cost estimate 5K**
2. Advice on what legal obligations we have to customers that have bought products from us with a 5 year warranty (if investment is required and company is transformed to own designs business model). **Cost estimate 5K**

- **If 5 year TP:**

1. A 5 year transitional period will allow us to focus on own designs. As per what had already been spent we will continuously need to understand and evaluate if our new products could potentially infringe any copyright. **Cost estimate over 5 year period: 50-60K**

1.2 Legal costs of defending against infringement claims?
--

- **Already spent since ERR reform announced:**

1. Advice from IP specialist on letters from Vitra as received 2 months ago. **Cost 10K.**

- **If 6 month TP:**

Company will close down.

- **If 3 year TP:**

1. If company has acquired investment and is transforming into an "own design company", we might have to defend ourselves against infringement claims on new designs. **Estimated cost 10K annually**
2. If license holders remain as aggressive as they are now, we will have to defend ourselves against claims or groundless threats on a regular basis. Each defence will have to delve in deep into the exact similarities. This is very time-consuming and complex. **Estimated cost 100K annually**

- **If 5 year TP:**

If license holders remain as aggressive as they are now, we will have to defend ourselves against claims or groundless threats on a regular basis. **Estimated cost 25K annually**

- **Comments, case studies, examples:**

1.3 Transitional Costs of complying with repeal of s52?

For us complying with the repeal of section 52 would mean transforming into a business that designs and produces its own furniture and in parallel sources off the shelf furniture that completes the lines of the new company. Not in our wildest dreams can we see the original license holders agreeing to license to a brand that has sold replica furniture. This is therefore not an option for us.

Below an expanded explanation of costs and time required to reach profitability can be found. For us as a company a 6 months transitional period will mean closing down, which will result in a loss of jobs and taxes. With a 3 year period significant investment is required. Moreover, with a 3 year transitional period new design lines cannot be finished and the company will have to rely on off the shelf furniture and thereby compete with the likes of IKEA, John Lewis, Made.com. With a 5 year period it is likely that our company can survive without any external investment as we can use the continuous profit from replica furniture to put into the design process and into integrating off-the shelf products into our current line of products. Although profitability of the new company might not be reached until year 7, the company will thrive and employee-wise go toward a similar point where we are now. With a 5 year transitional period we will not need to rush through the development of new product lines. This is a process which is extremely difficult to get right, even when you are not in a hurry. **Myfab.com** can be taken as an example. They built a company based on own designs and off-the-shelf furniture. After being widely unprofitable for a number of years they were acquired by Fab.com. In the meantime their only widely successful product was a beanbag. In spite of extensive consumer testing they had difficulties choosing bestselling products. This can be because of a preference in tastes, preferences, bad merchandising, bad marketing etc, but is definitely an indicator towards the difficulty of choosing/designing a bestselling product. See Exhibit immediately following Respondent C's submission.

Another good case to look at, in terms of how difficult it is to be a pure play online shop and have success, is **Made.com**. Made have spent a lot of time and money on sourcing products and own designs and still made a 5 million pound loss, this in spite of a massive influx of investment. Made have now had to change their business model and have decided upon opening physical showrooms. The case of Made just shows how difficult it is to choose winners and to make it big, selling furniture that is of your own design. For us being forced to open showrooms to be successful it would move us even further away from the core of what we are now: E-Commerce and Digital specialists. Therefore the cost of £750,000 on new salaries of new recruits in the table below as the transformation of our business takes place, might need to be higher, especially if we only have 3 years to adjust. (Read about made.com here: <http://www.retail-week.com/sectors/home-and-diy/madecom-s-sales-surge-68-as-international-roll-out-gathers-pace/5064675.article?blocktitle=Latest-news-&-analysis&contentID=13145>).

All is summarized in the table on the next page and the transitional costs of each TP are summarized below:

- **Already spent since ERR reform announced:** As per the explanation above our company will need external investment to survive. The company is currently privately owned and to prepare to potentially go for investment. The company needs to be geared to be a perceived attractive

investment partner. Because of this we have recently appointed a Head of Process Excellence to really transform our company into a system that is traditionally seen as investment-worthy and a Finance Director who has experience of attracting investment. Recruitment cost has been **20K** and total salaries of the two together is **180K/annually**

- **If a 6 month TP:** The strong likelihood is that the business would need to cease trading in this scenario which would result in the loss of 60-70 jobs resulting in lost Corporation Tax revenue, net VAT payments and Employers Tax and NI at a **Total of 1.04 million pounds**
- **If 3 year TP:** In this scenario the business would not cease trading but would need to make 35 redundancies. Estimated lost revenue for the UK Government would therefore not be as large as the lost revenue in the 6 month TP scenario as there would be less lost jobs with an estimated **Total of 791.000 pounds**
- **If 5 year TP:** In this scenario we forecast redundancies will be approximately 25-30 whilst hires will be 20 new people. Estimated lost revenue for the UK Government would be not therefore be as high as the other two scenarios an annualised, as we are now making profit from our made to order segments **Total: 156.000-256.000 pounds**

Further costs connected to the business transformation can be seen in the table on the next page.

Description of stage of process	Estimated costs of this stage (£)	Time required (months)	
Acquiring External Investment: Depending on length of transitional period (if 1 - 2 years external investment is required)	30.000	6	Off the shelf sourcing
Hiring Head of Design and Trend, hiring Art Director, hiring designer	20.000	4	
Training up new staff and simultaneously acquiring new suppliers and partners for off-the-shelf products. Ex annual salaries.	40.000	12	
Consumer validation of first off-the-shelf lines	40.000	3	
Pictures and content creation of new off-the-shelf lines	50.000	3	
Re-building the website (currently it is based on "famous designer" categories - something which will have to be changed)	150.000	3	
Salary costs for new recruits for duration until full product range is completed (5 years, see details below)	750.000		
Continuous sourcing of off-the-shelf products to complete new [Respondent H] collection, including consumer validation of all lines	100.000		
TOTAL	1.180.000	31	
Initial design of full range of own products (including sourcing of materials)	0 (own designers)	36 (from when investment acquired if 1 or 2-year transition)	Creating own line
Building prototypes of furniture (including iterations to product, changing possible new factories that aren't living up to quality demands, etc)	200.000	12	
Consumer validation of new [Respondent H] lines	50.000	6	
Pictures and content creation of new [Respondent H] lines	100.000	6	
TOTAL	350.000	60	
Creating and communicating new brand identity (similarly to MADE.com efforts)	1.000.000	72 (done continuously but can only be properly initiated when new product lines are online)	New brand identity
Reaching profitability after brand identity		12	Profit
Reaching profitability Total		84	Profit

1.4 New licences from rights owners?

- Since ERR reform announced: none
- If 6 month TP: none
- If 3 year TP: none
- If 5 year TP: none
- Comments, case studies, examples:

None, as previously mentioned, license holders would not allow us as a company and a brand sell original furniture. Continuously they brand us as mere thieves, and state that our customers should be ashamed of buying our furniture (Guardian 2014, <http://www.thetimes.co.uk/tto/arts/visualarts/architecture/article3369985.ece>)

1.5 Costs of ending long term commitments / contracts early?

- **If 6 month TP:** Loss to the 63 UK businesses that have long-term contracts with us have invested in partnerships with us: **300K+ lost revenue (to the UK Government as well as some partner companies closing down).** E.g our warehouse provider where 9 people are employed full-time would lose their jobs.
- **If 3 year TP:** Cost increases on products as a consequence of lost strength in negotiation: **1.5 million pounds.** This is based on cost prices now versus prices a company without any long-term leverage would pay. Just last year we made cost savings of 1.5 million USD by negotiating down prices with suppliers. Our leverage will completely disappear with a shorter transitional period.
- Brand identity would be seriously distorted as we would need to hurry a change from replica furniture to non-replica furniture. There would not be time to transform the brand identity. Brand distorted and identity lost (as an intangible asset), **value: 1 million pounds**
- **If 5 year TP:** Obviously this will also affect us if the period is 5 years. However less so as we will have managed to make deals and transformed our business on new products which we could continue selling. At the same time we could start transforming the brand with our current customers when we get off-the shelf-furniture live. 2 years to transform our brand identity would be extremely valuable. 2 years less would be a massive loss and a massive driver to why we might not succeed with our new business model.

2. EVIDENCE OF KEY BENEFITS OF THE VARIOUS TRANSITIONAL PERIOD OPTIONS

NB many of the benefits of longer transitional periods for ECHO members are the converse of the costs discussed in Section 1, so only additional questions are asked here.

2.1 What benefits would a period to sell off existing stock after the repeal takes effect have on your business?

- **If 6 month TP:** Imperative to cut our losses and pay our partners and suppliers when the company closes
- **If 3 year TP:** Imperative for survival of the company and for being seen as a business that at least has some income, which would make us more attractive to investors.
- **If 5 year TP:** Extremely important for the development of successful new lines. Would be troublesome to estimate the exact amount of stock to order before the 5 year ends. All earnings of stock will go into the company transformation. All losses in terms of stock that would need to be destroyed would similarly affect the success of the new business model.

2.2 Benefits to British Designers (including ECHO members)?

- **If 6 month TP:**
- **If 3 year TP:**
- **If 5 year TP:** See below
- **Comments, case studies, examples:**

I am not aware of a single designer who has voiced that he would not design furniture in the UK because of the 25 year copyright protection period. Nor am I aware of any companies not willing to invest in designers because they only have a copyright protection period of 25 years. For us as company we have already started looking at young talented designers that we could take on if a long enough TP will allow us to transform our business into one that designs its own lines. In this sense a longer TP would pave way for young British designers being successful together with us.

3 OTHER QUESTIONS ARISING FROM THE CONSULTATION

3.1 Would your business find it helpful if the Government provided non-statutory guidance on what items are likely to attract copyright as 'artistic works'? If so, what factors should be considered in this guidance?

We support this.

3.2 The Government proposes to evaluate the impact to all affected businesses 3 years after the change in law has commenced, to enable the Government to assess whether the transitional period was proportionate and fair, and the impact on the UK design industry. Do you have any comments or suggestions on this?

This would be very relevant to do. A suggestion on how to evaluate the impact is to look at how much license holders have grown, without the disturbance of what they themselves define as companies that destroy their brands and steal market share. Their growth should be seen comparatively against growth from the previous years. Similarly one could look at the growth in numbers of new British designers 3 years after the repeal versus 3 years against the repeal. If the argument that the current copyright law hinders new designers in being successful, a repeal should have created an increase in the number of new successful designers.

3.3 Do you have any other comments or suggestions to enable the Government to make a fair and evidence-based assessment of how best to structure the transitional period in respect of the repeal of s52 CDPA?

One of the most important arguments here is, please consider that this will affect UK companies and UK jobs whilst the license holders which at best have UK entities of companies based somewhere else in Europe will be the companies benefitting from the change.

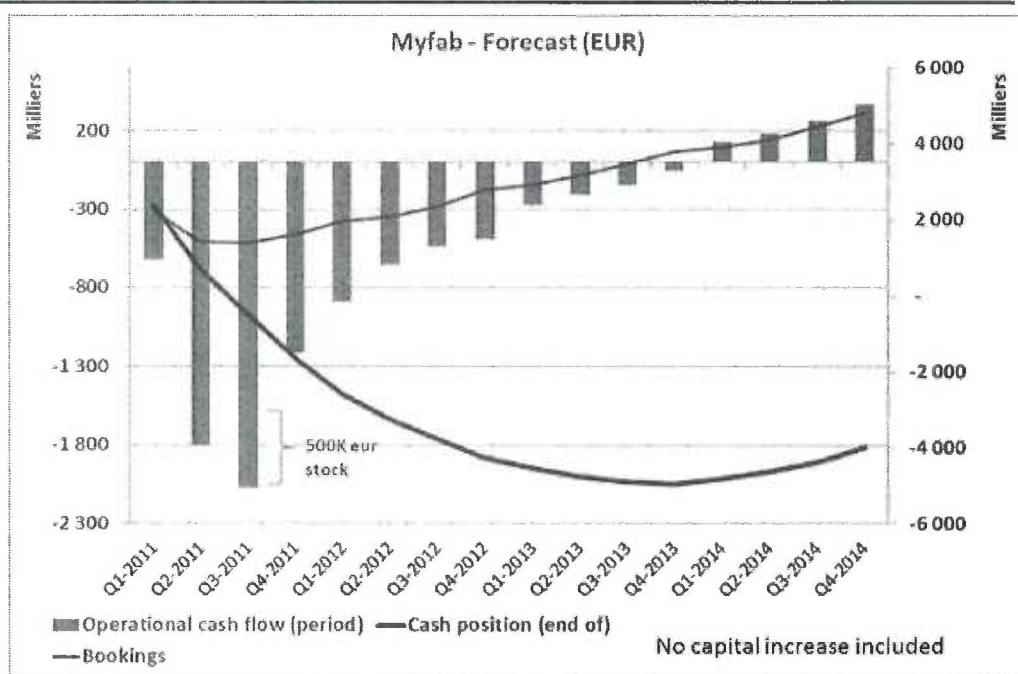
RESPONDENT H – EXHIBIT

Myfab.com, founded 2008. Evidence that it is hard and takes a lot of time to build a profitable company, that there is the risk that certain lines will not be successful and that significant investment is required in building a new online company that sells furniture.

Myfab financial plan (forecasted)



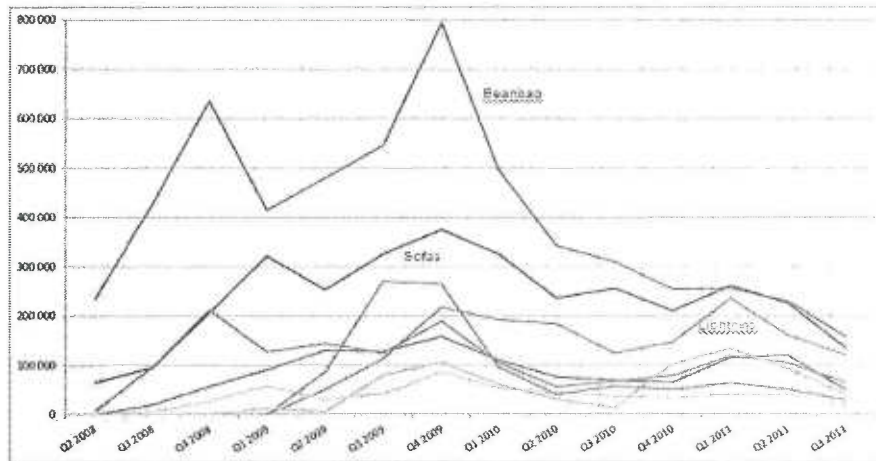
myfab | 2012-2014 Financing Plan



(Myfab June 2011)

The Beanbag product line was immensely successful. After the beanbag stopped being popular it was difficult to find the right sales driver, proving that it can be very difficult to choose the right pieces of furniture - the winners. See chart on next page.

Beanbag Sales



- Beanbag category has been a huge sale driver and has never been replaced.

(Myfab June 2011)

RESPONDENT I

IPO CONSULTATION ON S 52 CDPA REPEAL:

SUPPLEMENTAL QUESTIONNAIRE FOR ECHO MEMBERS

1. EVIDENCE OF KEY COSTS OF THE REPEAL AND THE VARIOUS TRANSITIONAL PERIOD OPTIONS TO YOUR BUSINESS

1.1 Legal costs of advice on implications of s52 repeal on the business and on any perceived legal uncertainties?

- **Already spent since ERR reform announced: £12000**
- **If 6 month TP: + £100,000**

Extensive fees in researching how to dispose of stock, legal issues in not being able to full fill warranty periods, legal costs in cancelling leases, costs in cancelling advanced stock orders, costs in looking at how to cancel employee contracts, legal fees on how to sue the Government. Cost of looking into whether design rights before 1957 qualify for copyright. Costs for looking into which chairs qualify as pieces of art, costs of insuring new products do not infringe on current rights holders designs.

- **If 3 year TP: +50,000**

Costs for not being able to fulfil warranty periods, legal costs in laying off staff, cost of looking into whether design rights before 1957 qualify for copyright. Costs of defending ourselves against rights holders aggressive tactics. Costs for looking into which chairs qualify as pieces of art, costs of insuring new products do not infringe on current rights holders designs.

- **If 5 year TP: +£50,000**

Costs for not being able to fulfil warranty periods, legal costs in laying off staff, cost of looking into whether design rights before 1957 qualify for copyright. Costs of defending ourselves against rights holders aggressive tactics. Costs for looking into which chairs qualify as pieces of art, costs of insuring new products do not infringe on current rights holders designs.

- **Comments, case studies, examples:**

The fees paid to ECHO to date and on going fees projected.

Rights holders are already sending aggressive letters since the Governments suggestion of 3 years transaction period

1.2 Legal costs of defending against infringement claims?

- 1. Already spent since ERR reform announced: £3000**
- 2. If 6 month TP: 10,000**

Continuous replies to aggressive letters from Rights Holders. Namely Vitra

3. If 3 year TP: 20,000 per year

Continuous replies to aggressive letters from Rights Holders. Namely Vitra

4. If 5 year TP: 20,000 per year £100,000 in total.

Continuous replies to aggressive letters from Rights Holders. Namely Vitra. We feel that the longer transition period given the more aggressive the rights holders will be.

Vitra have been sending letters demanding the cease and desist of the website without just cause. Funds have been spent on Lawyers to respond to the letters. If the transitional period is extended there is no doubt that will not stop with the letters. Each reply takes careful consideration.

Buying and developing new products will need legal research as to whether they infringe current designs

1.3 Transitional Costs of complying with repeal of s52?
--

Already spent since ERR reform announced: £8000

If 6 month TP: 300,000

- Costs of redundancy pay
- Cost of exiting leases and commercial contracts with suppliers and support services
- Cost of stock disposal
- Legal costs outlined earlier
- Cost of researching new products
- Cost of building new website
- Cost of training new staff
- Cost of researching the market
- Cost of researching Keywords for google
- Cost of advertising products the consumer is not aware of
- Brand awareness
- Cost of buying new stock

If this approach was taken we would not survive. There would not be enough time to sell off existing stock. We do not have the additional funds available to transform our company.

If 3 year TP: 300,000

The costs involved would be the same but spread over a longer period, it has taken us 9 years to get where we are now and still we are only just making a profit. I cannot see that we would still survive

If 5 year TP: 300,000

Costs as above but a manageable amount of money to acquire to develop the company in to a new business.

Comments, case studies, examples:

We have been working on 2 new furniture websites since the repeal. We have also added 40 new products each with 10 variations in colours, totalling 400 products. However, *we have only sold 1 product from the new range to date*. For us this is extremely worrying.

1.4 New licences from rights owners?

Since ERR reform announced: 0

If 6 month TP: 0

If 3 year TP: 0

If 5 year TP: 0

Comments, case studies, examples:

Not one rights holder has offered us a License. I cannot see Rights Holders giving us any long term opportunity of being a licensed reseller of their products.

1.5 Costs of ending long term commitments / contracts early?

Already spent since ERR reform announced: NA

If 6 month TP: 200,000

Loss of 7 staff within our company and 20 support companies we currently use.

If 3 year TP: 200,000

Cost of higher prices from suppliers due to lower purchasing power.

If 5 year TP: 200,000

Same as above but hopefully we will be buying new designs from the same suppliers to supplement the old products however, we are not sure if this will be possible.

Comments, case studies, examples:

The commitments are for stock, rent and staff

1.6 Impact on competition for consumers?

Since ERR reform announced:

If 6 month TP:

Ordinary consumers will not be able to buy these classic pieces of furniture - as they were originally designed for. The most popular designers Charles and Ray Eames "identified the need for affordable, yet high-quality furniture for the average consumer."¹¹ The prices charged by Vitra etc cannot be described as affordable for the average consumer.

We have identified that these two markets for originals and replicas are completely different.

If 3 year TP:

Same as above

If 5 year TP:

Same as above

Comments, case studies, examples:

2. EVIDENCE OF KEY BENEFITS OF THE VARIOUS TRANSITIONAL PERIOD OPTIONS

NB many of the benefits of longer transitional periods for ECHO members are the converse of the costs discussed in Section 1, so only additional questions are asked here.

2.1 What benefits would a period to sell off existing stock after the repeal takes effect have on your business?

If 6 month TP:

Imperative to the survival of our company on a short term basis and to pay some of our suppliers

If 3 year TP:

Again imperative to allow investment into new products and to pay off all suppliers

If 5 year TP:

Again imperative to grow and develop a new business model with different products. Full funds available to pay off suppliers and contractors.

Comments, case studies, examples:

¹¹ US Library of Congress webpage : "The Work of Charles and Ray Eames: A Legacy of Invention." See: <http://www.loc.gov/exhibits/eames/furniture.html>

2.2 Benefits to British Designers (including ECHO members)?

If 6 month TP: No benefit. I have not heard of or read about one British designer who welcomes this new change. The only companies to benefit are Rights holders of classic designs. None of these original designs are British, none of the designs have been designed by the rights holders and the major rights holder is Swiss, based outside of the EU.

If 3 year TP:

If 5 year TP:

Comments, case studies, examples:

3 OTHER QUESTIONS ARISING FROM THE CONSULTATION

3.1 Would your business find it helpful if the Government provided non-statutory guidance on what items are likely to attract copyright as 'artistic works'? If so, what factors should be considered in this guidance?

This would be extremely useful. With this information we could evaluate the proportion of our business affected by the change in section 52 to help us invest in a new business model and to fund new products.

3.2 The Government proposes to evaluate the impact to all affected businesses 3 years after the change in law has commenced, to enable the Government to assess whether the transitional period was proportionate and fair, and the impact on the UK design industry. Do you have any comments or suggestions on this?

The Government should review the transition period before the end date to assess if British designers have benefited, to evaluate if Rights Holders have invested more in British design, to evaluate if our companies have been able to transition in the period given, to evaluate if revenue and jobs lost due to the repeal of section 52 have been substituted by new growth from new designs. Lastly the possibility of extending this transition period where necessary as they have done so in Italy. If the repeal of Section 52 has not worked why can't the transition period be extended?

3.3 Do you have any other comments or suggestions to enable the

Government to make a fair and evidence-based assessment of how best to structure the transitional period in respect of the repeal of s52 CDPA?

The Government should approach other furniture companies to see how long it takes them to develop and profit from bringing new designs to the market. Vitra themselves with vast funds and experience have stated it takes up to 10 years and I would not be surprised if this is the minimum across the board.

The government should take a close look at the transition periods in Italy (the last country to change the copyright term). To date they have been given 10 years and speaking to factories in Italy this will be extended further.

The government should make an attempt to outline how industrially produced products are likely to achieve the status of Artistic Merit.

The Government should ask Rights Holders for proof of their financial figures for data submitted. To date they have not been able to back up their figures.

RESPONDENT J

IPO CONSULTATION ON S 52 CDPA REPEAL:

SUPPLEMENTAL QUESTIONNAIRE FOR ECHO MEMBERS

1. EVIDENCE OF KEY COSTS OF THE REPEAL AND THE VARIOUS TRANSITIONAL PERIOD OPTIONS TO YOUR BUSINESS

1.1 Legal costs of advice on implications of s52 repeal on the business and on any perceived legal uncertainties?

- Already spent since ERR reform announced: £9,000
- If 6 month TP: Potential £10,000 to £15,000
- If 3 year TP: Potential £3,000 to £4,000
- If 5 year TP: Potential £1,000 to £2,000
- Comments, case studies, examples:

Most of our expenses so far are via the consortium. I suspect however that the shorter the transition the more likely that further expenses will occur.

1.2 Legal costs of defending against infringement claims?

- Already spent since ERR reform announced: £1,600 on advices regarding point 1 below
- If 6 month TP: Potential £20,000 to unknown figure in fighting potential infringement cases
- If 3 year TP: Potential £20,000 to unknown figure in fighting potential infringement cases
- If 5 year TP: Potential £20,000 to unknown figure in fighting potential infringement cases
- Comments, case studies, examples:

Due to the uncertainty of whether an item will be covered by the repeal or not, the same potential costs may apply to all transition periods.

Specific infringement claims are:

1 - November 2013: We were subjected to wrongful action through the sales Channel eBay. Vitra (via a Swiss legal firm fronted by Stefan Schroter) abused the eBay VERO (rights owner) program by informing eBay we were selling counterfeit goods! eBay have a zero tolerance to claims of copyright and it is their policy to remove potential offenders regardless of merit, as not to be caught in the middle of any potential action. We therefore found ourselves repeatedly attacked in this way and were eventually banned from the sales channel completely. To make matters worse, even individual directors had their personal accounts banned and to this day (October 2014) both these and the company accounts remain frozen. Despite numerous attempts through Paypal and eBay we have been unable to get audience from eBay. The cost of this (in our view illegal action) has been that we have been unable to sell a single item on what was once a lucrative sales channel. Vitra had absolutely no merit to do this and have abused a system put in place to protect rights owners. Of course Vitra themselves know what we do is legal. I attempted to correspond with Mr Schroter but to absolutely no avail. eBay informed us that in order to contest the action we would need to subpoena them for details of the rights owner's submission to them in the program.

2 – 30th September 2014: We received a letter (again from the Swiss firm representing Vitra) informing us that we are infringers and even quoting the repeal of s52. This is the same letter as that received by the majority of other ECHO members.

1.3 Transitional Costs of complying with repeal of s52?

- Already spent since ERR reform announced:
- If 6 month TP:
- If 3 year TP:
- If 5 year TP:
- Comments, case studies, examples:

It has been reasoned that the 3 ways of moving away from unlicensed products are as follows:

1. Get a licence from Vitra and other rights owners
2. Buy new off the shelf products from suppliers
3. Commission and launch new designs.

It may even be fair to say that it could be a combination of 2 or even all of these things.

On point 1, we have not received any dialogue with Vitra or other companies in regards to this. We also feel that from what has been said by the company and purported that this is the most unlikely of scenario. Even if it were, and made to be compulsory, the company could stipulate such conditions within the license that the whole thing would be a futile exercise with the likelihood that it would be for show. A license of course would not be for the reproduced and more 'value' versions that we already manufacture and distribute but rather the original and expensive alternatives, thus removing the entire market place in which our company was currently in.

This leaves options 2, 3, or both (which is more likely). The process of either is in-depth, costly and with of course a significant amount of risk, the most likely reason most companies will not pursue this following the repeal, and another reason therefore that the transition should be as long as possible.

For any product there would have to be market research, the design and prototype, the moulding or tooling, the samples, the changes, the minimum order quantity - and all this before the shipping, marketing, advertising and brand development! The failure rates and 'slow seller' rates are also very high with new products. It is also worth pointing out that option 2 'off the shelf products' do not mean proven or branded items. It merely means that they are already in existence as a factory is already producing them. They in no way guarantee any sort of selling success whatsoever.

The following table shows the costs associated with new product development we have previously made.

Description of stage of process	Estimated costs of this stage (£)	Time required (months)

The first stage we undertake is research. We usually look at existing furniture sectors that may be similar in regards to designs/concepts and try to gauge the level of interest. In the past we have written to our trade resellers to gather view and information on whether they would be interested in the product in hand. Sometimes for highly conceptual designs we have met with little or no similar information being available and at times have even shelved ideas at this first stage when there is little interest.	£1,000	1 to 2 months
The conceptual stage of the design is impossible to know as it depends on the type of design. For example some designs can be architectural whereby the designer looks into all the physical properties of a design whereas others could be artistic designs that are then handed to a factory to complete the physical elements of the design process. In 2011 we even had a design that failed at this stage because the factory was unable to source adequate material for the structure in a cost effective means.	£4,000 to £5,000	3 to 4 months
The next stage is to enlist the factory in which the design will be created. We may be fortunate to be able to use an existing factory or we may have to source a new one which takes much longer. Costs vary depending on whether site visits will need to be made to the Far East.	£500 to £5,000	1 month
Next the factory will re-create the designs into CAD relevant to their machinery and process and source the costing of the mouldings. They often produce the drawings for us and on occasion have made models of the item in order to present a realistic view of the product. Although not high in cost, this process is often time consuming and often frustrating.	£500 to £2,000	3 to 4 months
If the design of the item is a success at this stage, the factory will then quote moulding costs and have samples made. These can vary significantly and so can the time of creating the moulds.	from £1,15,000 to £50,000	4 to 5 months
The next stage is the sample or samples to be created with the mouldings.	£500	2 months
We then use an independent quality control company in China that we have utilised since 2010. They do every kind of testing of the product including impact testing, fire safety and weight tests.	£1,000	1 month
At this stage we would then manufacture the product. Costs vary of course significantly depending on the design and materials being used, there is always a MOQ (minimum order quantity that a factory would require)	£30,000 to £80,000	1 month
Delivery of the goods by shipping container	£3,000	1 month

The above is a best case scenario! We have commissioned our own designs to mixed success. We also buy existing designs, see below.

1.4 New licences from rights owners?

We have not undertaken any recent dialogue with Vitra or other companies in regards to the potential of licenses. Indeed, from our experience shown in question 1.2 we would find it unlikely that they would be willing to.

When the first announcement of the repeal was made in May 2012, our Import agent (on our behalf) attempted to contact Vitra to set up a meeting. The intention was to talk to them regarding what was possible for the future. The phone calls went un-returned.

1.5 Costs of ending long term commitments / contracts early?

- If 6 month TP: £ 305,000
- If 3 year TP: £ 205,000
- If 5 year TP: £ 186,000
- Comments, case studies, examples:

Our 3 warehouse premises are all under lease, 2 of which are on 10 year leases from 2011. Even at 5 years transition we face the possibility of huge costs and will need to negotiate with respective landlords (should the business close) which is entirely out of our hands.

The other potential cost is that of redundancy. Based on current staff levels we could be looking at £168,000 for a one year transition, £85,000 for 3 years and £28,000 for 5 years.

1.6 Impact on competition for consumers?

Since our inception in 2007 we have not had a SINGLE purchase by a customer whereby they have reverted to us to state that they bought our product by mistake believing that it was one produced by Vitra or others, not a single occurrence!

This in itself shows that consumers are not the uneducated populous that the 'rights holders' have painted a picture of. Not a single confused purchase in 8 years of trading. Our consumers span individual and business, young and old and far and wide.

It is our opinion therefore that the repeal doesn't change competition at all, but instead removes an entire market place. In theory this removal may create an entirely open market place for the 'rights holders' one in which they do not have now and have never had with the product types that they offer.

2. EVIDENCE OF KEY BENEFITS OF THE VARIOUS TRANSITIONAL PERIOD OPTIONS

NB many of the benefits of longer transitional periods for ECHO members are the converse of the costs discussed in Section 1, so only additional questions are asked here.

2.1 What benefits would a period to sell off existing stock after the repeal takes effect have on

your business?

The right to sell off stock is absolutely essential. The potential for holding stock that could potentially infringe could be disastrous if this was still in our possession upon the repeal taking affect. The reasons are:

1. Any stock left that cannot be sold is an entire 'write off' potentially costing many thousands of pounds to companies already being forced to close their legitimate business.
2. Forced sell off of stock could result in stock being 'burnt' in fire sales as the date approaches. Once more, this is essentially selling off the stock at a loss in order to reap anything in return. This again is harmful to normal trade and effectively means that the transition period is not a reality as the company will likely be making losses long before the date of repeal.
3. Any forced stock sell off will see all affected companies compete with each other in an unproductive fashion likely to see the entire sector be devalued.
4. Any cap on sell off will mean that businesses affected by the repeal will essentially not run 'in the way they do now'. This is their fundamental right during the transition, after all, they are legitimate business being forced to close or change their model through no fault of their own. Although these businesses will pro-actively look to the future with new lines etc, it is absolutely essential that during the years of transition they are able to function as they do now without being subjected to pressures which will force them to change. Any cap would mean orders would not be made as they would be huge potential risks that could result in points 1 and 2. This basically means that the transition period is flawed and it may as well come in straight away as companies will not be able to change at pace designed to promote change.

We, and other companies I am sure, would be more than happy to submit to a voluntary 'inventory submission' to provide transparency on the matter but the conclusion is that an indefinite sell off is frankly compulsory otherwise the transition period is not a transition period.

2.2 Benefits to British Designers (including ECHO members)?

- **If 6 month TP:** None
- **If 3 year TP:** Small, unquantifiable
- **If 5 year TP:** Realistic possibility
- **Comments, case studies, examples:**

Our entire product range of 522 individual items and 1200 items including variables does not have a single one made by a British Designer in its origin. The genre of furniture that we legally reproduce is strongly linked with mid-century designs borne from the USA, Scandinavia and Mainland Europe. This is largely the case for all ECHO members therefore it does question the IPO impact assessment that refers to our existence as stifling British design!

We do, however, have 13 current products that were designed by ourselves, via the company and factory. Whilst not being able to attribute to an 'English designer' they were originated through the ideas of our company. So with that in mind it is fair to say that the longer the transitional period the higher the chance of our 'in house' or 'UK' design.

Clearly a 6 month transitional would not lead to any new designs being produced as each one is months in the making. There is a chance 3 years may give us time to create more, but with it

already taking 4 years to produce the 13 we have it is fair to say 25 to 30 designs (by the end of 3 years) will not be enough to survive commercially. 5 years or more transition however could theoretically provide enough time to be able to create approximately 45 to 50 designs, which along with other supplemental 'off the shelf' products, may provide a platform to be commercially sustainable whilst promoting new ideas.

3 OTHER QUESTIONS ARISING FROM THE CONSULTATION

3.1 Would your business find it helpful if the Government provided non-statutory guidance on what items are likely to attract copyright as 'artistic works'? If so, what factors should be considered in this guidance?

This question goes toward addressing one of our biggest concerns about the repeal. No matter if the transition is 6 months or 5 years, the question mark over the legality of products is such that it almost serves as a blanket ban. Due to the ambiguity of the situation, we are having to assume that a) all designs we currently sell are likely to be affected and b) that the companies will also assume that they will likely have the copyright returned on every product.

We have been led to believe that each and every design could in theory be tested in the courts by companies attempting to prove 'artistic work'. This is of course an impossible situation for small or medium based companies that are going to struggle to contest 1 or 2 designs through this process, yet alone multiple. The cost of each case is likely to be tens of thousands of pounds, something the 'rights holders' have proven is no obstacle, judging by their huge lobbying exercises in recent times.

Although guidance is not legally binding, I cannot see how this will fail to help. Essentially some of the doom and gloom regarding the industry and our company's future may be given a glimmer of hope if we can get an opinion that in fact it won't be a blanket ban and indeed there will be products that can continue to be legally produced. I would certainly welcome this guideline as a means to making a more reasoned decision on whether to contest something once it reaches the courts stage, post repeal.

3.2 The Government proposes to evaluate the impact to all affected businesses 3 years after the change in law has commenced, to enable the Government to assess whether the transitional period was proportionate and fair, and the impact on the UK design industry. Do you have any comments or suggestions on this?

As with the previous point 3.1, I cannot see how this would not be of helpful interest.

From the initial IPO impact assessment it was quite clear that a great travesty had occurred and that the assessment had not been made impartially but rather as a result of lobbying and misrepresentation. It our belief that the sneaking in of the repeal at that time was done so purely at the request of and in aid of, certain businesses set to benefit. Even to this day we are convinced there are a great many businesses and industry sectors which are still completely unaware that these changes are coming and will affect them. It is only through the hard work and commitment of the ECHO organisation that we were able to get a voice and be heard, without it, the repeal may likely be already in force!

So yes, I think it is important that after a time period the government takes responsibility to re-visit the repeal and ensure that it has done all it can and in the right way. There are of course questions that will arise such as, what if there is a change of government? What if it becomes clear the repeal has not been long enough for ours and other businesses to survive?

Based on other industries which have been affected by a change in law outside their control and have pursued a compensation route (Mink Farming, Cigarette Vendors, Firearms Vendors) it would be fair to say that should insufficient provision be given to our industry, we would certainly need to explore this as a possibility.

3.3 Do you have any other comments or suggestions to enable the Government to make a fair and evidence-based assessment of how best to structure the transitional period in respect of the repeal of s52 CDPA?

Although the initial proposal from the IPO appears to have picked the 'middle road' solution of 3 years, we believe that as a minimum the transition period should be 5 years for the reasons as follows:

- 5 years is the only transition length that would enable us to find, not only suitable alternative products, but long enough time to suitably test them in the marketplace to ensure they can be commercially viable.
- 5 years transition is the only time frame that will enable us to provide enough designs of our own that, married with already available products, may be commercially viable and successful. 5 years may give us 40, up to 50 designs, which although optimistic, is the only level we can hope to continue.
- From concept to final design, a bespoke product has a minimum 6 month process but the reality is usually far longer. Even with increased resources (and risk) it is unlikely to be able to harbour enough during a 3 year transition. Even Vitra AG in their own submission to the IPO stated it takes years to create a successful product.
- 5 years is the only transition period that would offer the best chance of holding onto anything like the staff numbers we currently we hold. Based on our forecast, even a period of 5 years is likely to see our staff number fall to just below or around 10. This is due to the investment processes of new products and likely risk from such.
- 5 year transition has a far less severe penalty for us foreclosing on contracts and lease agreements, worth up to 150 thousand pounds just from the 3 year option alone.
- A similar process in Italy granted 10 years as transition period.
- No matter the length of the transition, there may be a winding up period whereby the products we sell command a less favourable value, especially at the end when companies will look to release stocks. Clearly the longer we have to operate in the way in which we have been will give legitimate business a chance to retain turnover whilst researching new products/paths.
- We are a legitimate UK business with UK staff that pay UK taxes and fulfil a happy and contented UK marketplace - the complete opposite from the initial and most damaging IPO impact assessment¹². We are not alone either, many companies in the same position as ours are affected. The UK government should do as much as possible to protect UK companies in the wake of successful lobbying by Swiss companies.

¹² See: http://www.legislation.gov.uk/ukia/2013/1053/pdfs/ukia_20131053_en.pdf

RESPONDENT K

IPO CONSULTATION ON S 52 CDPA REPEAL:

SUPPLEMENTAL QUESTIONNAIRE FOR ECHO MEMBERS

1. EVIDENCE OF KEY COSTS OF THE REPEAL AND THE VARIOUS TRANSITIONAL PERIOD OPTIONS TO YOUR BUSINESS

1.1 Legal costs of advice on implications of s52 repeal on the business and on any perceived legal uncertainties?

- Already spent since ERR reform announced: £4625 share of consortium costs
- If 6 month TP: £18000
- If 3 year TP: £25000
- If 5 year TP: £10000
- Comments, case studies, examples:
 - Costs incurred so far are for legal work already carried out for the consortium investigating copyrights, current legislations and transitional period negotiations.
 - For a short TP, 6 months or less, Legal fees will be incurred for advice on current contractual commitments and company dissolution.
 - A 3 year TP will not give us enough time to fully diversify away from dependence upon 'design classics' so we would encounter further costs based on copyrights, legislations and establishing what will be permitted under new legislations, especially as we are unsure of which items would be affected by the change in law.
 - For a longer TP some of the above legal advice will not be required as we can diversify our business away from reliance on 'design classics' and make the necessary adjustments within our business.

1.2 Legal costs of defending against infringement claims?

- Already spent since ERR reform announced: £0
- If 6 month TP: £20000
- If 3 year TP: £10000
- If 5 year TP: £5000
- Comments, case studies, examples:
 - Although no infringement claim has been received by our company yet, we are aware many other companies have already been targeted and are therefore mindful of the imminent threat and expect significant legal costs will be incurred with a short TP.
 - Again, a longer TP (5 years) would enable us to diversify and phase out the 'design classics'.

1.3 Transitional Costs of complying with repeal of s52?

- **Already spent since ERR reform announced: £35000**
- **If 6 month TP: £200000+**
- **If 3 year TP: £100000**
- **If 5 year TP: £100000**
- **Comments, case studies, examples:**
 - In light of the repeal of S52 coming in to force with a 6 month TP we would unfortunately cease to trade as this would not give significant time for us to transform our business model as the majority of our working capital is currently tied up in stock of 'design classics'.
 - Diversification of our business has already commenced. However is proving a very slow process and is somewhat unsuccessful to date. Our current business marketing model was based around design classics (which at the time was a legitimate / lawful commercial enterprise in the UK) and the new products require significant changes to marketing strategies. With a 6 month TP, these changes would need to be implemented immediately. However we do not have the capital or time to generate the large sum required.
 - Having a 3 year TP would still heavily damage our business in lost revenue and we would not be able to generate the working capital in the time needed to adjust, given the costs involved in introducing new designs to the market.
 - A 5 year TP should enable us to do so as we would be able to spread the cost and phase out the 'design classics' and implement new lines with marketing to suit.

1.4 New licences from rights owners?

- **Since ERR reform announced: None**
- **If 6 month TP:**
- **If 3 year TP:**
- **If 5 year TP:**
- **Comments, case studies, examples:**

We have had no direct contact with right owners regarding licenses so therefore do not have enough information for us to specify effects of different TP's.

1.5 Costs of ending long term commitments / contracts early?

- **Already spent since ERR reform announced: None**
- **If 6 month TP: £30000**
- **If 3 year TP: £20000**
- **If 5 year TP: None**
- **Comments, case studies, examples:**
 - If a 6 month TP came into force we would incur costs for current commitments including warehouse lease, vehicle leases and office facilities etc. and any associated legal fees.
 - Should we be granted a 3 year TP costs would reduce as some short term commitments would have expired however costs will still be incurred for ongoing long term commitments.

- If we were to receive a 5 year TP our long term agreements would have finished and also we would hopefully have implemented a new business model without the reliance upon 'iconic designs' and could sustain any new commitments.

1.6 Impact on competition for consumers?

- Since ERR reform announced:
- If 6 month TP:
- If 3 year TP:
- If 5 year TP:
- Comments, case studies, examples:

2. EVIDENCE OF KEY BENEFITS OF THE VARIOUS TRANSITIONAL PERIOD OPTIONS

NB many of the benefits of longer transitional periods for ECHO members are the converse of the costs discussed in Section 1, so only additional questions are asked here.

2.1 What benefits would a period to sell off existing stock after the repeal takes effect have on your business?

- If 6 month TP: £100000
- If 3 year TP: £200000
- If 5 year TP:
- Comments, case studies, examples:
- If we are not given an indefinite stock sell off upon the commencement of the repeal coming into force we would be financially ruined. We have stock holding of approx. £100000. As a small company the majority of our working capital is tied up in stock. A 6 month TP would see us selling stock at heavily discounted rates, probably below the price paid, especially as we would be competing with many other business' in the same situation and to ensure we depleted our stock holding whilst still lawful. Without the means to sell off stock we would be left with stock that cannot be lawfully sold after the change in law comes into place.
- A 3 year TP would have the same consequence as we would be left with stock that we wouldn't lawfully be able to sell as we wouldn't yet have been able to fully adjust our business. As our customers will not wait for products to be manufactured and require products quickly, our stock holding needs to be maintained or actually increase to enable our business to continue as viable enterprise and to ensure revenue is generated for investment in new products.
- Should we be given 5 years TP we would hope that we would have enough working capital and time to enable us to phase in the new products but we would still have a need for an indefinite sell off period, as without it, lost capital tied up in unsaleable stock would kill our business. As a consequence of the appeal our lawful business is being taken away from us, we therefore need to ensure all of our investment is utilised and is returned to ensure our survival.

2.2 Benefits to British Designers (including ECHO members)?

- If 6 month TP: None

- If 3 year TP: None
- If 5 year TP: None
- Comments, case studies, examples:

From our experience, we do not see any benefits to British designers as the replica market is based on old designs created well beyond the original 25 year protection period.

3 OTHER QUESTIONS ARISING FROM THE CONSULTATION

3.1 Would your business find it helpful if the Government provided non-statutory guidance on what items are likely to attract copyright as 'artistic works'? If so, what factors should be considered in this guidance?

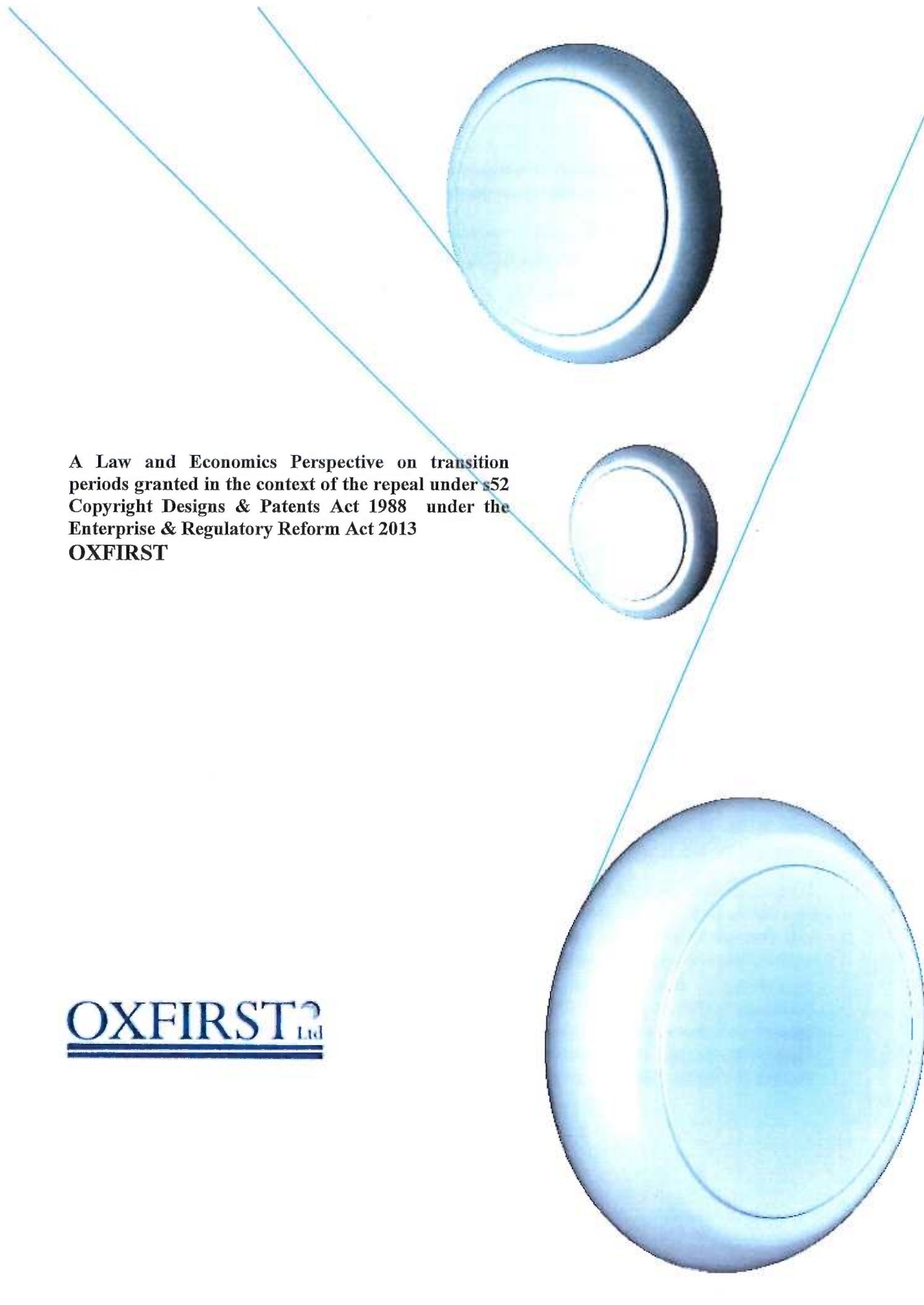
We do not feel non-statutory guidance would be helpful to our company

3.2 The Government proposes to evaluate the impact to all affected businesses 3 years after the change in law has commenced, to enable the Government to assess whether the transitional period was proportionate and fair, and the impact on the UK design industry. Do you have any comments or suggestions on this?

We feel the government should commit to a three year assessment of business affected by the change in law

3.3 Do you have any other comments or suggestions to enable the Government to make a fair and evidence-based assessment of how best to structure the transitional period in respect of the repeal of s52 CDPA?

Annex 6 – Oxfirst Limited Report

An abstract graphic featuring three blue, 3D-rendered spheres of varying sizes. The largest sphere is at the top right, a medium-sized one is in the center, and a smaller one is at the bottom right. Three thin, light blue lines connect the spheres: one from the top sphere to the middle one, one from the middle sphere to the bottom sphere, and a longer one from the top sphere to the bottom sphere. The background is white.

**A Law and Economics Perspective on transition
periods granted in the context of the repeal under s52
Copyright Designs & Patents Act 1988 under the
Enterprise & Regulatory Reform Act 2013
OXFIRST**

OXFIRST_{Ltd}

Table of Contents

A Law and Economics Perspective on transition periods granted in the context of the repeal under s52 Copyright Designs & Patents Act 1988 under the Enterprise & Regulatory Reform Act 2013	0
Copyright: A Balance of Interests	2
A transition period of five years: A Balancing Act.....	4
Graphical Illustration of Potential Risks	4
Potential Economic Shifts	5
What can the policy maker do?	9

Oxfirst specializes in the valuation of intellectual property and economic aspects of innovation. Our client portfolio comprises some of the most prominent technology firms, investment banks, telecom firms, the World Bank, the European Commission and the Austrian Technology Council; just to name a few. The team of experts Oxfirst can engage has a deep and long lasting experience in acting as IP valuation experts. Because Oxfirst has a baseline in the U.S., as well as in Europe, we are able to serve Clients on both sides of the Atlantic. Further information can be found on www.oxfirst.com. Oxfirst was engaged by ECHO to provide a law and economics perspective on transition periods granted in the context of the repeal under s52 of the Copyright, Designs and Patents Act of 1988.

Dr Roya Ghafele is the Director of Oxfirst Ltd. She is a tenured Assistant Professor (Lecturer) in IP Law at the School of Law at Edinburgh University and holds three distinct Fellowships with the University of Oxford (both in the Law and the Business School). She is also a Fellow of CREATE, the Centre for Copyright and New Business Models in the Creative Economy. Prior to launching Oxfirst she held a Lectureship in international political economy with the University of Oxford and was an academic at U.C. Berkeley. Her testimonials have been used multiple times at the CJEU, as well as the European Commission, the U.N. & the Austrian Government. Most recently, she testified on IP valuation and the role of patent aggregators for the E.C. Prior to becoming an academic entrepreneur; she worked for seven years as an Economist for WIPO, the OECD, McKinsey and Harvard University. In 2002 she was selected as the only Austrian in several years to represent the Republic of Austria to the United Nations.

Douglas Graham Douglas led two award winning consulting practices at BSG and KPMG and ran an \$8.5 Billion bank. He has written a book on the protection and valuation of intellectual assets that was well reviewed by Carl Icahn, Lee Iacocca, Sir David Cooksey and Craig Fields. He has developed a sophisticated methodology for valuing intellectual assets and, working with NYU, successfully tested the methodology on their mainframe. He has spoken at major venues including US Congress, ISSA, Brookings, RAND, Gartner, US Chamber of Commerce, and the State of the World Forum. He owns three granted patents (over 150 citations) and two pending patents. He was pivotal in the eBay vs Merc case in which he served as an expert witness. He won a Gartner award, is a Salzburg Global Fellow and a member of Mensa and the National Arts Club.

The Dilemma of the Policy Maker¹

While opinions diverge on the length of the transition periods granted in the context of the repeal of s52, both sides justify their position in economic terms. While believers in a short transition period argue that genuine innovation can only be guaranteed if creators are able to capture the revenues associated with their innovative or creative expression as fast as possible, proponents of a transition period of five years argue that this can result in a deadweight loss to society, risk driving British SMEs out of business and potentially result in job losses in a sector that has for an extensive period of time illustrated how the IP system can work towards the benefit of small corporations and foster genuine entrepreneurship. While opinions diverge which path copyright law should take, the arguments of proponents of both sides are justified with reference to an economic argument.

Because the legitimacy of copyright law is above all established through economics, it is more than justified to discuss the economic context in which the debate is situated. The policy maker, who is confronted with the challenging task to assure the public interest, while maintaining Great Britain's status as an innovation leader² does after all need to have well reflected arguments at hand before taking a policy decision.

Copyright: A Balance of Interests

Since Anglo-American copyright protection was first enshrined in the 1710 Statue of Anne³, the law has served the goal of promoting scientific and artistic progress by stimulating the production and dissemination of works for the public benefit. Copyright achieves this goal by

¹ Disclaimer. This research has sought to respect academic and professional integrity to the best of its ability. This research has been undertaken to the best of Oxfirst's abilities within an exceedingly short time period. This research material does not constitute an offer or solicitation to make financial, managerial, policy or economic decisions on the basis of its content. It has been undertaken to the best of the authors' abilities. It should not be so construed, nor should it or any part of it form the basis of, or be relied on in connection with, any contract or commitment whatsoever. The information in our research, or on which it is based, has been obtained from sources that we believe to be reliable and accurate. However, it has not been independently verified and no representation or warranty, express or implied, is made as to the accuracy or completeness of any information obtained from third parties. The information or opinions are provided as at the date of their original publication and are subject to change without notice. The information and opinions provided in our research take no account of the reader's or the IPO's, ECHO's or VITRA's individual circumstances and should not be taken as specific advice on the merits of any economic, financial or managerial decision. Readers should consider our research as only a single factor in making any type of decision. Further information is available upon request. No member of the authors accepts any liability whatsoever for any direct or consequential loss howsoever arising, directly or indirectly, from any use of our research or its contents. The recommendations provided in this study should only be read as an indication, yet it is emphasized that the decision on any policy choice remains with the sole authority of the British Government.

² Innovation Union Scoreboard. 2014. http://ec.europa.eu/enterprise/policies/innovation/policy/innovation-scoreboard/index_en.htm

³ Barron, A. 2006. Copyright. *Theory, Culture & Society*, 23, 278–282. doi:10.1177/026327640602300237

investing authors with exclusive rights to exploitation in order to incentivize the production of new works. The rationale is that, without legal protection, creators like designers of furniture would not be able to profit from their efforts and dissemination channels would not be able to recoup the investment necessary to produce and distribute those works to consumers. Appropriating the full social value of furniture design, is difficult because design is a public good, which is both non-rivalrous in consumption and non-excludable. This means that one person's use of a design does not stop another's use of it simultaneously and that it is very difficult to exclude others from the use of this design.⁴ Design is not subject to the economic constraint of scarcity. It can be freely copied and distributed on a huge scale at virtually zero marginal cost. The non-rivalrous nature of information and the inability to exclude others once it is produced – a challenge that is becoming increasingly problematic due to new copying technologies – has been termed the *appropriability problem* in copyright.⁵

Yet, copyright is a delicate balancing act between artists, designers, traditional distribution channels and small corporations which have historically taken advantage of the fact that the copyright of certain designer furniture had dropped in the public domain. In this eco-system economic incentives to create must be balanced against providing SMEs with the opportunity to reinvent their business model and avoid job losses.

Copyright policy is essentially a trade -off between increasing incentives to create and increasing the use of those works already created.⁶ Yet copyright has increasingly contributed to the evolution of what Michelman termed the anti-commons: 'when multiple owners have the right to exclude others from taking advantage of a scarce resource, and no one has an enforceable privilege of use, the resource might be underutilized.'⁷ From a public policy perspective, it is critical to avoid this anti-commons effect and maintain a balance in copyright. An extended transition period of a minimum of five years is an important essential to maintain such a balance and to assure deliberate checks and balances in copyright law. A number of limitations and exceptions to exclusive copyrights have been an essential part of the doctrine from the outset, an extended transition period of five years adds to these crucial exemptions to copyright law. A transition period of five years protects British SMEs in the furniture industry from infringement liability and promotes public welfare by stimulating entrepreneurship, avoiding job losses and sending a clear message that the IP system is not in contradiction to the needs of small market participants.

⁴ Martens in: Heylighen, F. 2006. "Why is Open Access Development so Successful? Stigmergic organization and the economics of information." *Arxiv preprint cs/0612071*.

⁵ Cotter, T. F. (2007). Fair Use and Copyright Overenforcement. *Iowa L. Rev.*, 93, 1271.

⁶ Besen, S. M., & Kirby, S. N. (1989). Private Copying, Appropriability, and Optimal Copying Royalties. *Journal of Law and Economics*, 32(2), 255–280

⁷ Depoorter, B., & Parisi, F. (2002). Fair use and copyright protection: a price theory explanation. *International Review of Law and Economics*, 21(4), 453–473

A transition period of five years: A Balancing Act

A transition period of five years establishes a limit to the exclusive rights of rightholders. This is justified on the basis that without adequate time to adjust these firms will risk running out of business as they risk making significant losses, which in turn can lead to unemployment, causing thus a serious social cost. In that sense an extended transition period is bound to competition policy in many ways because it prohibits rightholders from the economic exploitation of particular uses and markets for their works for a given period in time. A transition period of five years achieves a balance in copyright between various interest groups, promoting the diffusion of furniture without eliminating incentives to create it.

The incentive-based rationale for copyright has led many judges to argue in favour of checks and balances in copyright law, arguing that “not every use of a work undermines this underlying rational”... [and] the literal application of copyright would weaken other values and stifle the very progress it is supposed to promote.”⁸ While some authors conceive that compulsory licenses will be a means to mediate the negative consequences associated with a too short time period,⁹ this misses an important point. The ‘Lollipop Shoppe’ example shows that in spite of adequate licensing structures the firm was not able to maintain its business and filed bankruptcy. At other instances ECHO members reported that the rightholder was not responsive and reluctant to offer adequate terms and conditions. The practical application of a compulsory license is thus complicated by uncertainty regarding the relevance it will have to the business success of British SMEs and the availability of adequate licensing conditions provided by the incumbent.¹⁰

Graphical Illustration of Potential Risks

The IP system has been criticised for establishing significant asymmetries between firms with a strong market position and small players. The academic literature addressing the risk of increasing rather than decreasing the gap between small and big players is self-explanatory in that regard.¹¹ A too short transition period in the context of the repeal of s52 risks to underline the argument that the IP system is unable to accommodate the needs of small scale entrepreneurs.

⁸ Ku, R.S.R. (2003). Consumers and Creative Destruction: Fair Use Beyond Market Failure. *Berkeley Tech. LJ*, 18, 539.

⁹ Cotter, T. F. (2007). Fair Use and Copyright Overenforcement. *Iowa L. Rev.*, 93, 1271

¹⁰ Depoorter, B., & Parisi, F. (2002). Fair use and copyright protection: a price theory explanation. *International Review of Law and Economics*, 21(4), 453–473.;

¹¹ Jaffe, A. B., & Lerner, J. (2011). *Innovation and its discontents: How our broken patent system is endangering innovation and progress, and what to do about it*. Princeton University Press. Balganes, S. (2013). The Uneasy Case Against Copyright Trolls. *S. CAL. L. REV.*, 86, 723. Gallini, Nancy. "Competition policy, patent pools and copyright collectives." *Review of Economic Research on Copyright Issues* 8.2 (2011): 3-34. Arai, Y., & Kinukawa, S. (2014). Copyright infringement as user innovation. *Journal of Cultural Economics*, 38(2), 131-144.; Conley, J. P., & Yoo, C. S. (2009). Nonrivalry and Price Discrimination in Copyright Economics. *University of Pennsylvania Law Review*, 1801-1830.; Greenberg, B. A. (2011). More than just a formality: instant authorship and copyright's opt-out future in the digital age. *UCLA L. Rev.*, 59, 1028.; Handke, C. 2012. A Taxonomy of Empirical Research on Copyright - How Do We Inform Policy? *Review of Economic Research on Copyright Issues*, June 2012, v. 9, iss. 1,

The main argument put forward by incumbents like Vitra is that replicas undermine their revenue streams. By assuming that each replica sold equals one unit of lost sale, IP holders produce loss estimates that easily number in hundreds of millions of pounds. In doing so, the incumbent seems however to have had difficulties substantiating its estimates of losses.¹² In May 2013 the IPO reported that ‘A company which makes furniture design classics claimed that it loses more than 250 Mio Euro per year in international annual turnover due to copies and that a significant proportion of that loss is attributable to UK legislation which differs from that in other E.U. states.’ In November 2013, Vitra’s reply reads however that the loss from replica sales was about 17 Mio UK Pounds.¹³ The difference between 250 Mio Euro and 17 Mio UK Pounds is substantial and invites to examine roughly potential economic shifts associated with the change in regulation and its accompanying shifts in transition periods.

Potential Economic Shifts

From an economic perspective, the incumbent argues that a very short transition period will allow it to recapture “lost” sales quickly, thus enhancing significantly demand for its products. This is illustrated graphically in the diagram below, where the demand curve for designer furniture (essentially the incumbent’s demand curve) shifts to the right. The incumbent’s argument rests on the assumption that customers who purchase cheaper replicas will purchase full-priced originals if given no other alternative. Since designer furniture classify as luxury durables, this is highly improbable. Extending the copyright term of a product, which has previously expired, forces the customer segment that is able to afford low cost copied furniture to look for cheaper, unbranded alternatives, effectively creating a monopolistic supply for the designer furniture. This then results in a deadweight loss to society. Both models are illustrated below.

pp. 47-92; Pessach, G. 2013. Deconstructing Disintermediation. A Skeptical Copyright Perspective. *Cardozo Arts & Entertainment Law Journal*, 2013/01/01, Vol: 31, p833; Yoo, C. S. (2006). Copyright and Public Good Economics: A Misunderstood Relation. *U. Pa. L. Rev.*, 155, 635.;

¹² Impact Assessment. IPO. 15.5.2012. Copyright Protection for Design. ‘A company which makes furniture design classics claimed that it loses more than 250 Mio Euro per year in international annual turnover due to copies and that a significant proportion of that loss it attributable to UK legislation which differs from that in other E.U. states. http://www.legislation.gov.uk/ukia/2013/1053/pdfs/ukia_20131053_en.pdf; ‘For Vitra alone the estimated annual loss from replica sales exceeds 17 Mio Pounds.’ p.2, Vitra Call for Evidence. Transitional Periods. Response on Behalf of the Vitra Group. Transitional provisions for the repeals of SC52 of the Copyright, Designs and Patent Act of 1988. ‘For Vitra alone the estimated annual loss from replica sales exceeds 17 Mio Pounds.’ p.2, Vitra Call for Evidence. Transitional Periods. Response on Behalf of the Vitra Group. Transitional provisions for the repeals of SC52 of the Copyright, Designs and Patent Act of 1988.

¹³ Impact Assessment. IPO. 15.5.2012. Copyright Protection for Design. http://www.legislation.gov.uk/ukia/2013/1053/pdfs/ukia_20131053_en.pdf

Chart 1: In theory an outward shift in the demand curve for designer furniture should increase sales from Q_0 to Q_1 . This also results in an increase in price from P_0 to P_1 .

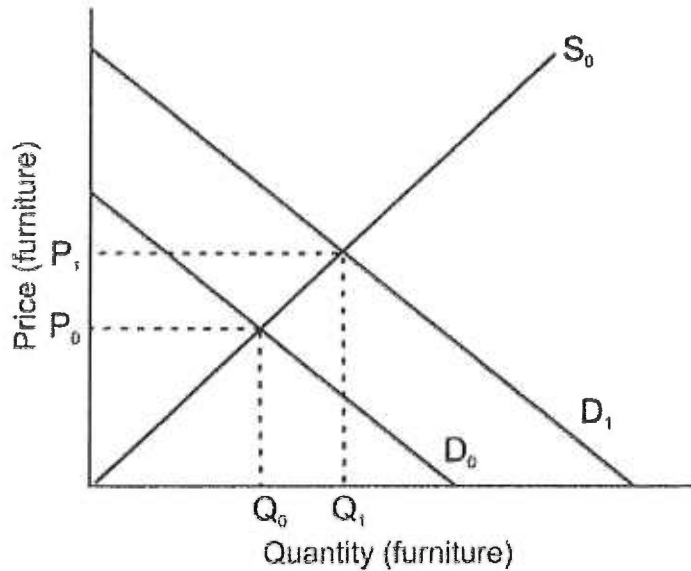
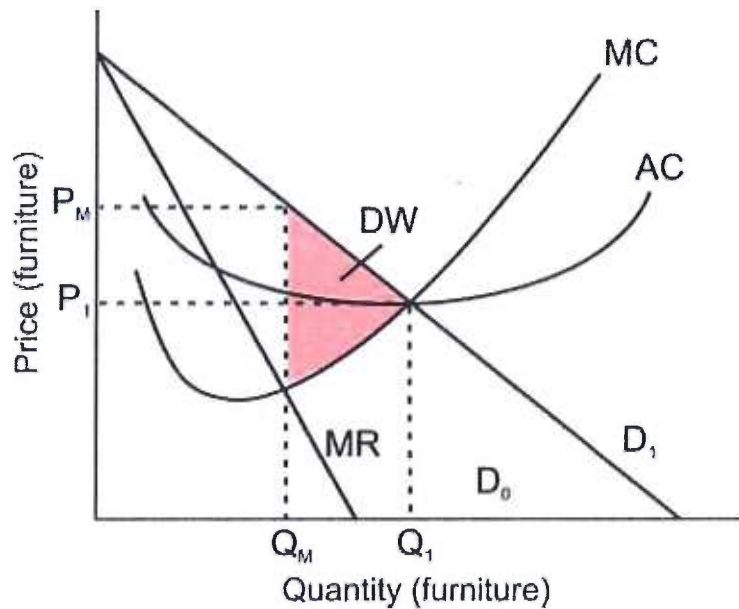


Chart 2: However, if there is a monopoly, then the company gets to set its own prices. A monopoly can do this at the optimal point where marginal revenues (MR) equal marginal costs (MC), i.e. $MR = MC$. Beyond this point, the increased revenue from producing one more unit is lower than the increase in cost of producing that extra unit, so there is no incentive to increase production (similarly, if marginal cost is higher than marginal revenue, the firm will lower production). In a competitive market, allocative efficiency is maintained and firms would have been selling furniture without supernormal profit at the point $MC = D_1$ with price P_1 . The square bound by the vertical axis, P_1 , P_M and Q_M is the supernormal profit realized by the monopoly firm (which is in addition to the producer surplus already achieved under YP_1Q_MX). Since consumer surplus is only in the triangle bound by the vertical axis, P_M and D_1 , the shaded area (DW) represents a deadweight loss to society due to the allocative inefficiency of the monopoly. NB: AC represents the average costs of the company.



Extending the length of copyright protection makes it illegal for replica companies represented by ECHO to sell replicas of furniture whose copyright had previously expired, potentially creating a monopolistic market for designer furniture as illustrated above. This can create a deadweight loss for society whereby consumers are unable to purchase designer furniture at or below the price they are willing and able to pay, while furniture companies are forced out of the replica business unless they take license. British SMEs active in selling replica furniture will therefore need to invest in developing new designs of their own so that they can diversify their portfolio. The outstanding issue is whether the transition period (TP) before the new copyright law takes effect for the companies should be 6 months, 3 years or 5 years.

If there is a more monopolistic market for designer furniture created, then it risks creating a case of market failure, albeit one with the potential for new innovation and industry growth. If given enough time to develop new and competitive furniture designs, these SMEs are enabled to create a new market for quality British-designed furniture. The replica furniture sector already has a strong international focus, with 45% of goods sold outside the UK. In fact, a full third of surveyed firms reported 70% or more of sales going abroad.¹⁴ Thus, in addition to stimulating the domestic economy, assisting these SMEs will potentially improve balance of payments by lowering imports and increasing exports of quality British designer goods.

However, this will only be possible if the economic loss associated with the new law can be effectively mitigated with a sufficiently long transition period. Replica furniture SMEs will suffer losses while they invest in building up a new product portfolio. In doing so, they face high transaction costs, which are associated with long-term contract agreements (i.e. production

¹⁴ Arts Economics (2012). *UK Replica Furniture Industry Economic Impact Assessment Report*. Dublin.

orders, warehouse leasing, vehicle rent, etc.). The shorter the transition period, the more expensive it will be to cancel these agreements, while an adequate transition period of five years will allow for better contract renegotiations. In a survey carried out by ECHO, 46% of responding companies reported long-term financial obligations of more than £125,000; of these, 100% lasted more than 2 years while 33% lasted 5 years or more.

A shorter transition period is moreover estimated by ECHO firms to lower legal costs associated with seeking legal advice and defending against infringement claims by rightholders. This is in addition to the legal costs that have already been met since the repeal was first announced. The estimated average transaction costs of cancelling long-term agreements and legal costs per firm for each respective transition period are both summarized in the table below. These can represent an additional deadweight loss to society since they may, essentially, be wasted resources. The estimates do not include the estimated restructuring costs for firms, such as product development and marketing, since they represent an investment, nor do they include the cost of selling current inventory at a loss. They also do not reflect the costs associated with potential loss of employment or the loss to consumers.¹⁵

Estimated Legal Costs and Costs of Cancelling Long Term Agreements Only

Time Period	Transaction Costs	Legal Costs	Total Avg Costs	Total Sector Costs
6 months	96,617	18,400	115,017	6,901,000
3 years	49,917	14,300	64,217	3,853,000
5 years	31,000	3,700	34,700	2,082,000

In addition to the high costs associated with any transition period below 5 years, it takes a significant amount of time and capital to develop new designs. Most ECHO companies surveyed reported a total time period of 2-10 years for each new design, with half of respondents estimating an upper limit of 5 years or more for the whole process. Moreover, the majority of respondents indicated an estimated failure rate of 50% or more for new designs. This indicates that SMEs will need a full 5 years to create a diverse and successful portfolio of marketable furniture designs.

¹⁵ These estimated average costs were calculated based on nine survey responses generated by ECHO in the context of the current consultation process. According to ECHO's legal representative these survey responses are to be anonymized. The survey estimated legal costs in two parts, "legal costs of advice on implications of s52 repeal" and "legal costs of defending against infringement claims." Transaction costs were surveyed as "Costs of ending long-term commitments/contracts." Mean value was used when a range was provided (in one case). Two responses were excluded, one due to miscalculations while another firm simply reports that they are unable to meet costs and will be closing business regardless of the transition period. The total sector cost was estimated by multiplying the total average cost by 60 (firms), which is the estimated number of SMEs in the UK furniture replica industry (see the *UK Replica Furniture Industry Economic Impact Assessment Report*).

Durables like furniture sell slowly, and once the transition period is over it is essentially illegal for the firms to hold on to old stock which might force them to destroy the goods if they cannot sell them. ECHO members predict having to sell their remaining stock at a loss in “fire sales” if the transition period is less than 5 years. Moreover, if all ECHO members attempt to sell their remaining stock greatly below market price towards the end of the TP, they will compete with one another and have to cut prices even further. In conjunction with the deadweight loss to society from instilling a monopolistic supply of designer furniture, these losses (and potential destruction of leftover stock) represent an additional social cost to the UK economy.

Longer transition periods can also be of benefit to new designers. If SMEs like those unified under ECHO are given adequate transition periods they will have the time to reinvent their business model and this in return will benefit emerging British designers as the latter will find a platform for their work. If however they are driven out of business, British designers will lose out on those opportunities.

There is a further risk of creating structural unemployment if the transition period is too short. According to Arts Economics the furniture replica industry directly employs some 600 people, 87% in full-time positions, as well as another 400 indirectly.¹⁶ Some companies will inevitably fail to adapt to the repeal of s52 due to the challenges of crafting, testing and marketing new furniture designs. Workers at risk of being laid off will need time to undertake new training before companies close. Given that the UK unemployment rate remains at a stubborn high of 6.8%, it is therefore in the interest of the government to extend the transition period to 5 years so to give firms as much opportunity to adapt.

Lastly, a short transition period will send to the wrong signal to the markets and British entrepreneurs. Great Britain is highly respected for its welcoming business environment, and has a growing number of successful SMEs.¹⁷ This is a good opportunity for the policy maker to send a strong signal of support for SMEs and high-quality niche businesses in Britain by extending the transition period to five years.

What can the policy maker do?

Is there a risk to discourage rather than promote SMEs? Will a transition period of less than five years still be able to meet the expectations set in the copyright system or does it risk to become nothing else but a historical advantage of incumbents?

The British Government has been heavily involved in bringing the IP system closer to SMEs. Significant amount of funds and efforts have been spent to raise IP awareness among SMEs, to provide assistance with IP Audits, IP valuation and IP management. Most recently, the

¹⁶ Arts Economics (2012). *UK Replica Furniture Industry Economic Impact Assessment Report*. Dublin.

¹⁷ UK Department for Business Innovation & Skills (2013).

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/254552/13-92-business-population-estimates-2013-stats-release-4.pdf (released 23 October 2013).

Government has also sought to assist with the funding of SMEs, by bringing the IP system closer to the finance community.¹⁸ All of these initiatives are to be strongly applauded and set an example among the member states of the European Union as they show how Great Britain as a clear innovation leader has once more succeeded in assuring her national competitiveness by managing the IP system in a beneficial way for both small and big players.

In this specific case, granting SMEs a transition period of less than five years will be in a sharp contrast to the most laudable initiatives the Government has taken to enable SMEs to take advantage of the IP system.¹⁹ Giving SMEs, whose business model is strongly intertwined with the IP system, a too short time period to adjust will seriously undermine existing and previous Government initiatives as these firms may have insufficient time to reorganize their business. By consequence, it risks that firms are shut and jobs are lost. These jobs are particularly valuable as they offer a strong case for IP based entrepreneurship among Small corporations.

It is the responsibility of the policy maker to assure copyright policy is welfare enhancing. That means to deliberately reflect on the net benefit or cost of a given policy choice for society at large and not only the historical incumbent. If welfare is understood as a product of market based efficiencies that simultaneously promote and reflect the pursuit of self-interest, then only a transition period of five years will be able to assure that the requirements of a coherent policy on the role of IP for SMEs. A modern copyright systems needs at the same time to stimulate innovation, encourage diffusion and eliminate the public goods dilemma associated with creative and innovative expression. Against this background, it will be profoundly important to assure competitive practices in downstream markets. A transition period of five years seems therefore an important structural framework the British Government needs to offer to its citizens.

¹⁸ Helping SMEs get value from IP. <https://www.gov.uk/government/publications/helping-smes-get-value-from-their-intellectual-property>; Business Support for SMEs, IP for Business <https://www.gov.uk/government/publications/business-support-for-smes>; From Ideas to Growth, what every SME should know. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/316116/ip4b-sme.pdf; Banking on IP? <https://www.gov.uk/government/publications/banking-on-ip>

¹⁹ An overview of tools to help SMEs cope with IP can be found here for example. <https://www.gov.uk/government/news/businesses-to-get-greater-intellectual-property-support>

Annex 7 – New questionnaire responses

RESPONDENT A



Questionnaire for new consultation on transitional arrangements for the repeal of section 52 of the Copyright, Designs and Patents Act 1988

Please return your responses to Sara McDiamond at [REDACTED]

1. Your business

1.1 Please provide a short description of your business:

We supply furniture for the home, office and garden areas. This includes selling replica furniture lines which have been affected by changes in the law.

1.2 Please provide the following information:

Number of employees	12
Turnover per year (average)	2.5m
Percentage of turnover impacted by the repeal of section 52	30%
Turnover past 5 years	3.5m per year for last 2 years dropped 1 million this year due to fall in replica sales
Tax contributions past 5 years	Approx 250k
Number of product lines	898
Number of dependent businesses	
% of sales subject to VAT	100%

2. **Impact of previous transitional arrangements**
(The previous transitional arrangements were that the repeal of section 52 would come into effect on April 2020 and that any stock imported into or produced in the UK prior to that date would remain lawful after that date)

2.1 What were the costs and benefits on your business of the previous transitional arrangements?

The previous transition period allowed us more time to plan replacement product lines for the furniture we would have to stop selling. Now we have 6 months and with the fact that we import stock the process of manufacture and shipping takes between 70-90 days so It has left me with 3 months to find lines to replace nearly 1/3rd of our revenue.

This will probably mean lay offs of staff will we recover sales volumes.

2.2 What steps had you taken to transition your business and/or amend your business model on the basis of the future repeal of section 52 in 2020? (e.g. Invest in new product lines.)

We have started new ranges in beds. These have arrived in November. It has taken since February for us to get this stock in and now we have to build up leads for selling the beds. This will also take time.

The plan was to get an increase in the bed sales and cut a selection of replica furniture lines and then start the process of finding new lines again.

The longer transation period would have allowed us to stagger this process rather than now worry where turnover will come from to allow us time to change.

2.3 Have you taken any other steps in reliance on the previous transitional arrangements? (e.g. entered into new contracts, taken on more staff, entered into long-term leases.)

We have taken a risk on the beds being popular sellers. They may prove not to be wanted by the market but the fact we could still sell our excisting lines helped us to take this risk.

Not being able to sell the replicas and buying new product lines that don't sell or we don't have enough time to test will result in us going out of business..

3. **Impact of proposed new transitional arrangements**
(The Government is proposing that the repeal of section 52 will now come into effect on 28 April 2016, with a further 6 month depletion period until October 2016 for any stock produced or acquired under a contract entered into before 28 October 2015)

3.1 What would be the costs and benefits on your business of the proposed new transitional arrangements?

No costs in terms of breaking contracts.

The loss for us would be in turnover which is roughly about 30% so I envisage losing around 1/3 of the staff as we will have a dramatic cut in our revenues rather than a staggered reduction and addition of replacement lines.

3.2 The Government announced its proposal to shorten the transitional period for the repeal of section 52 on 28 October 2015. Since that announcement, what additional steps have you taken, if any, to speed up the transition of your business and/or the amendment of your business model?

At present we are having to look at bringing in new lines more quickly. This is a big risk as we are hoping they will sell without having the chance to do proper market testing.

We are basically taking a huge gamble to prevent us going bust and this gamble may not come off.

- 3.3 Would the change to the new transitional proposals have any other impact on your business that you have not dealt with above?

The main impact on us would be the dramatic loss in revenue without the timescales that were promised for us to change.

We had set in place a system of change based on what the government had told us. This has cost us a lot of man hours which might well be lost man hours now this u turn has taken place.

RESPONDENT B



Questionnaire for new consultation on transitional arrangements for the repeal of section 52 of the Copyright, Designs and Patents Act 1988

Please return your responses to Sara McDiamond at [REDACTED]

1. Your business

1.1 Please provide a short description of your business:

We are a Furniture business covering all aspects of furniture from chairs, tables, lighting, homeware accessories etc

We have a showroom and also separate office in London.

We also have our own 60,000 sqft warehouse in Essex

We employ a total of 44 staff directly with a further 14 freelance workers.

1.2 Please provide the following information:

Number of employees	44 + 14 freelance
Turnover per year (average)	4 Million
Percentage of turnover impacted by the repeal of section 52	75%
Turnover past 5 years	20 million
Tax contributions past 5 years	700,000
Number of product lines	1200
Number of dependent businesses	18
% of sales subject to VAT	95%

2. **Impact of previous transitional arrangements**
(The previous transitional arrangements were that the repeal of section 52 would come into effect on April 2020 and that any stock imported into or produced in the UK prior to that date would remain lawful after that date)

2.1 What were the costs and benefits on your business of the previous transitional arrangements?

The previous transitional arrangements gave us time to change our business model and introduce new lines of furniture away from reproductions.

Also this gave us time to rebrand our company and try to establish ourselves in the furniture market away from replica furniture.

2.2 What steps had you taken to transition your business and/or amend your business model on the basis of the future repeal of section 52 in 2020? (e.g. Invest in new product lines.)

Invested in a lot of research and development for new product designs.

Taken on new staff including product designers to help us design new product lines, invested in various moulds and sample designs.

2.3 Have you taken any other steps in reliance on the previous transitional arrangements? (e.g. entered into new contracts, taken on more staff, entered into long-term leases.)

Taken on a total of 8 new staff, new 5 year warehouse lease, new 3 year office lease.

3. **Impact of proposed new transitional arrangements**
(The Government is proposing that the repeal of section 52 will now come into effect on 28 April 2016, with a further 6 month depletion period until October 2016 for any stock produced or acquired under a contract entered into before 28 October 2015)

3.1 What would be the costs and benefits on your business of the proposed new transitional arrangements?

Please include details of the costs of:

- (a) Ending any long term contracts or other commitments early; and
- (b) Ending any contracts or other commitments entered into since the Government published its response to the previous consultation on 18 February 2015

There would be no benefit at all, I believe we would struggle in such a short time frame to be able to launch and market our new product range.

We would see a 70% drop in sales revenue, our business would not be able to survive long enough to see us launch and market new designs.

3.2 The Government announced its proposal to shorten the transitional period for the repeal of section 52 on 28 October 2015. Since that announcement, what additional steps have you taken, if any, to speed up the transition of your business and/or the amendment of your business model?

We are trying to urgently push through some new designs, but launching new products to the market takes time, this cannot be done in the space of a few months.

These are very tough and worrying times for all concerned.

RESPONDENT C



Questionnaire for new consultation on transitional arrangements for the repeal of section 52 of the Copyright, Designs and Patents Act 1988

Please return your responses to Sara McDiamond at [REDACTED]

1. Your business

1.1 Please provide a short description of your business:

We are an internet retailer selling furniture reproductions of the classics from the 20th century.

1.2 Please provide the following information:

Number of employees	Two
Turnover per year (average)	£700k
Percentage of turnover impacted by the repeal of section 52	80%
Turnover past 5 years	£3,000,000
Tax contributions past 5 years	£200.000
Number of product lines	45
Number of dependent businesses	11
% of sales subject to VAT	80%

2. **Impact of previous transitional arrangements**
(The previous transitional arrangements were that the repeal of section 52 would come into effect on April 2020 and that any stock imported into or produced in the UK prior to that date would remain lawful after that date)

2.1 What were the costs and benefits on your business of the previous transitional arrangements?

The 2020 transition allowed the company plenty of time to start developing new lines. It's difficult to put an actual cost on developing new lines. You're essentially blind as to what new lines will sell so it's a case of adding new furniture pieces to the web site and seeing if they're popular with our customers. To add each new furniture piece involves time to add pieces to the website. The time cost would be estimated at £5000 per year for five years.

2.2 What steps had you taken to transition your business and/or amend your business model on the basis of the future repeal of section 52 in 2020? (e.g. Invest in new product lines.)

We were busy approaching new suppliers of furniture which would not be affected by section 52.

2.3 Have you taken any other steps in reliance on the previous transitional arrangements? (e.g. entered into new contracts, taken on more staff, entered into long-term leases.)

No.

3. **Impact of proposed new transitional arrangements**
(The Government is proposing that the repeal of section 52 will now come into effect on 28 April 2016, with a further 6 month depletion period until October 2016 for any stock produced or acquired under a contract entered into before 28 October 2015)

3.1 What would be the costs and benefits on your business of the proposed new transitional arrangements?

Please include details of the costs of:

- (a) Ending any long term contracts or other commitments early; and
- (b) Ending any contracts or other commitments entered into since the Government published its response to the previous consultation on 18 February 2015

There are no benefits to the new proposed transitional period. This short period will effectively kill the company. It is simply not enough time to transform the company.

The cost would be killing the company.

3.2 The Government announced its proposal to shorten the transitional period for the repeal of section 52 on 28 October 2015. Since that announcement, what additional steps have you taken, if any, to speed up the transition of your business and/or the amendment of your business model?

We have made no steps. Still in shock. The loose plan is to sell off as much stock as we can and fold the company.

RESPONDENT D



Questionnaire for new consultation on transitional arrangements for the repeal of section 52 of the Copyright, Designs and Patents Act 1988

Please return your responses to Sara McDiamond at [REDACTED]

1. Your business

1.1 Please provide a short description of your business:

Mostly selling replica product from famous designers around in the world. After spending more than 30 years in the Furniture Business the present Directors founded [a website] and spent over a year travelling the world sourcing product and material for their new venture 6 years ago, several hundred thousand of pounds were spent buying materials such as leathers from Italy, Steel, Foam, Wood etc. from various other countries. Virtually our entire product range sold is of replica designs from famous designers, always respecting the original quality, and of course keeping within the present laws in the UK of selling such product.

1.2 Please provide the following information:

Number of employees	6.
Turnover per year (average)	£ 0,8<1M
Percentage of turnover impacted by the repeal of section 52	90 %
Turnover past 5 years	£ 5M
Tax contributions past 5 years	£ 140k
Number of product lines	360 = 6.800 SKU
Number of dependent businesses	23
% of sales subject to VAT	95%

2. **Impact of previous transitional arrangements**

(The previous transitional arrangements were that the repeal of section 52 would come into effect on April 2020 and that any stock imported into or produced in the UK prior to that date would remain lawful after that date)

2.1 What were the costs and benefits on your business of the previous transitional arrangements?

With the agreed transitional period up to April 2020 it will be possible to keep cost down on redeveloping product and in good time marketing it and in the transitional period be able to take over existing replica product. The cost will still be significant, but we will be able to handle it as we can take the cost over a longer period. The expected cost of developing new product, marketing and rebranding we expect to be around £ 450k

2.2 What steps had you taken to transition your business and/or amend your business model on the basis of the future repeal of section 52 in 2020? (e.g. Invest in new product lines.)

We have attended all national as well as international shows, work with internal designer and architects together with existing suppliers as well as new supplier. Already spend significant amount on developing new product, started to launch new product, slowly moving focus on some of these new products.

2.3 Have you taken any other steps in reliance on the previous transitional arrangements? (e.g. entered into new contracts, taken on more staff, entered into long-term leases.)

We have worked with existing suppliers and made our commitment to them, and they have taken on new staff (especially product develop team of designers and architects) to develop new product, to support that we have in-house taken on a new product and marketing coordinator.

3. **Impact of proposed new transitional arrangements**
(The Government is proposing that the repeal of section 52 will now come into effect on 28 April 2016, with a further 6 month depletion period until October 2016 for any stock produced or acquired under a contract entered into before 28 October 2015)

3.1 What would be the costs and benefits on your business of the proposed new transitional arrangements?

- (a) Made new agreement with suppliers for existing product lines up to April 2020 with the agreement to invest in developing new lines
- (b) Made new lease contract up to April 2020 which will be the dates where we for sure was able to run existing business according to transitional arrangements made by the Government.
- (c) Made long-time commitment to staff, to give them comfort in the future and get the team working together to work on existing business model, and work on developing the business with new product through the transitional period to make sure that the company will remain strong through the transition with new product and business model.

If new law is actioned sooner than already agreed April 2020, then it will not give us the time for transition into new product which needs to be sourced and developed, then business will suffer huge loss because of large stock holdings, and will not be able to avoid liquidation.

Sourced and developed for new product we are already working on, things that does take a long time, but with the agreed transitional period up to April 2020 we will be able to get that in place, but if the new proposed transitional arrangements comes in place it will be impossible.

3.2 The Government announced its proposal to shorten the transitional period for the repeal of section 52 on 28 October 2015. Since that announcement, what additional steps have you taken, if any, to speed up the transition of your business and/or the amendment of your business model?

As this is all new to us, we have not made any step as yet – also we will not be able to speed up the transition of our business so it will be in place by April 2016, this will be total impossible. If this new proposal to shorten the transitional period comes into effect we will have no options than to give up, the investment we have done since the announcement of the existent transitional period for April 2020 will have been wasted.

3.3 Would the change to the new transitional proposals have any other impact on your business that you have not dealt with above?

No, and it will be total impossible to changes anything in that short period, we are looking at in 5 month, we will simply not be possible to move forward the developing of the new product, it take minimum 1<2 years to develop new produce, including testing according to British standard, on top of that you will need to promote and market the product.

If Government proposal to shorten the transitional period for the repeal of section 52 on 28 October 2015 will come into effect, then business will suffer huge loss because of large stock holdings, and will not be able to avoid liquidation.



RESPONDENT E

Questionnaire for new consultation on transitional arrangements for the repeal of section 52 of the Copyright, Designs and Patents Act 1988

Please return your responses to Sara McDiamond at [REDACTED]

Your business

Please provide a short description of your business:

We are an online retailer of replica and contemporary furniture, established in late 2014, when the Government was working on the basis of a 3 to 5 year transitional period.

Please provide the following information:

Number of employees	2
---------------------	---

Turnover per year (average)	85000
Percentage of turnover impacted by the repeal of section 52	90.00%
Turnover past 5 years	First year of business

Tax contributions past 5 years	Not applicable
Number of product lines	80
Number of dependent businesses	Not applicable

% of sales subject to VAT	100.00%
---------------------------	---------

Impact of previous transitional arrangements

(The previous transitional arrangements were that the repeal of section 52 would come into effect on April 2020 and that any stock imported into or produced in the UK prior to that date would remain lawful after that date)

What were the costs and benefits on your business of the previous transitional arrangements?

As a start-up business set up under previous arrangements, we needed the extra period of time to get established and the income from replica furniture meant that we had planned to re-invest profits into developing new ranges.

This shorter period being suggested means that we will most likely go out of business.

The extremely short period being suggested would also mean that many other businesses, both large and small would be vying for similar stock lines within a very short period of time, potentially making it very difficult to compete.

What steps had you taken to transition your business and/or amend your business model on the basis of the future repeal of section 52 in 2020? (e.g. Invest in new product lines.)

We have looked into importing new styles and contemporary furniture but we need the income from replica sales to make this happen.

Have you taken any other steps in reliance on the previous transitional arrangements? (e.g. entered into new contracts, taken on more staff, entered into long-term leases.)

We set up our business, website with all the associated costs of such, on the reliance of the previous arrangements. We invested our own funds and left previous employment to make this small UK business start-up successful.

Impact of proposed new transitional arrangements

(The Government is proposing that the repeal of section 52 will now come into effect on 28 April 2016, with a further 6 month depletion period until October 2016 for any stock produced or acquired under a contract entered into before 28 October 2015)

What would be the costs and benefits on your business of the proposed new transitional arrangements?

The costs to us would most probably be the loss of our fledging business as replica styles account for 90%+ of our current sales and the sudden change to terms and dates and such a short period of time being suggested, means that we would not have enough time to adjust accordingly.

The Government announced its proposal to shorten the transitional period for the repeal of section 52 on 28 October 2015. Since that announcement, what additional steps have you taken, if any, to speed up the transition of your business and/or the amendment of your business model?

We are in contact with suppliers of other lines and seeking new styles and designs but this sudden Government change has happened in the run up to Christmas also, so our focus at present has to be on pre-Christmas selling, so we have not had the time, as a small business, to dedicate a lot of our time to researching and contacting and listing new products, which does take time.

Would the change to the new transitional proposals have any other impact on your business that you have not dealt with above?

In reality, if our suppliers cannot supply us due to stock depleting from April then our business will be affected as and when this happens, we don't necessarily have until next October so we are in a complete limbo at present and this makes forward planning very difficult.

It would make more sense to have a longer transition period so that there is not 40+ companies all vying for same new products and lines in a short period. A longer phased period makes more sense all around to prevent UK business closures and job losses. Six months is just too short and makes everything unworkable.

RESPONDENT F



Questionnaire for new consultation on transitional arrangements for the repeal of section 52 of the Copyright, Designs and Patents Act 1988

Please return your responses to Sara McDiamond at [REDACTED]

1. Your business

1.1 Please provide a short description of your business:

We are a seller of Reproduction furniture of designs from the 1920s through to the 1970's. We began in 2006 and employ 14 people in total across 2 sites.

Sadly, as we were believing we had 5 years of transitional period our move to other non-reproduction furniture had not started in earnest and was to begin in 2016 to 2017. Clearly we are now faced with the possibility that we will have to close at the loss of all employees. There is not time now to change our entire portfolio between now and October 2016, do the necessary market research and tailor new products to the marketplace.

1.2 Please provide the following information:

Number of employees	14
Turnover per year (average)	3M
Percentage of turnover impacted by the repeal of section 52	100%
Turnover past 5 years	18,369,562
Tax contributions past 5 years	
Number of product lines	769
Number of dependent businesses	1325 registered trade customers
% of sales subject to VAT	85%

2. **Impact of previous transitional arrangements**

(The previous transitional arrangements were that the repeal of section 52 would come into effect on April 2020 and that any stock imported into or produced in the UK prior to that date would remain lawful after that date)

2.1 **What were the costs and benefits on your business of the previous transitional arrangements?**

The costs were to travel to various sources, fairs and factories in looking for new lines. Cost would also be in advertising new products, trying new products and associated risks with doing so. Design work, modelling and photography, web sites and marketing.

The benefits of the 5 year transitional was clear. There would be enough time to change from reproductions to differing products with a substantial less risk because the revenue from the reproduction furniture would still be coming in and therefore not only covering basic costs and need but also re-invested into the new lines and any connected marketing, selling etc.

2.2 **What steps had you taken to transition your business and/or amend your business model on the basis of the future repeal of section 52 in 2020? (e.g. Invest in new product lines.)**

Sadly we have not yet started the process. The very vague nature of the first consultation period left us waiting. Once the transition was announced in March 2015 we have made plans but as yet they have not yet come to fruition. Our aim was to begin the process of new products over 2016 and 2017 most likely stretching beyond this time too. We have also signed leases until 2020 and we have a full capacity of employees, many we took on this summer who will certainly not be expecting that this sudden move will leave them without employment so soon.

2.3 **Have you taken any other steps in reliance on the previous transitional arrangements? (e.g. entered into new contracts, taken on more staff, entered into long-term leases.)**

In detail

14th July 2015 we signed a new 5 year lease on warehouse till 2020.

25th June 2016 we entered into new finance arrangement on 2 company vehicles

3. **Impact of proposed new transitional arrangements**
(The Government is proposing that the repeal of section 52 will now come into effect on 28 April 2016, with a further 6 month depletion period until October 2016 for any stock produced or acquired under a contract entered into before 28 October 2015)

3.1 What would be the costs and benefits on your business of the proposed new transitional arrangements?

Please include details of the costs of:

- (a) Ending any long term contracts or other commitments early; and
 - (b) Ending any contracts or other commitments entered into since the Government published its response to the previous consultation on 18 February 2015.
- a) We would default on many contracts and commitments. Purchase agreements. We have 3 warehouses all of which are contracted currently now until 2020. We have vehicle leases too. We would lose equity in vehicles due to likely repossession or early termination.

The costs associated with this would be early contract breaking fees and loss of contract breaks. For example on our 10 year lease we would lose the 6 months of free rent afforded to us at the bottom. Our vehicle lease would result in any equity paid. I imagine that

The difference in transition is everything because with the period as it was before all of our contracts and leases would have naturally ended or with a position to extend past 2020. Now we are faced with loss of equity and reputation with the likely foreclosure on vehicles and rents.

3.2 The Government announced its proposal to shorten the transitional period for the repeal of section 52 on 28 October 2015. Since that announcement, what additional steps have you taken, if any, to speed up the transition of your business and/or the amendment of your business model?

It is very difficult to speed up the process, especially given the consultation has offered no consultation whatsoever. We are no longer allowed to order! We therefore now have the possibility of limited income too which will ultimately hinder our attempt to make that transition.

We were even told in a phone call to the IPO that 'we have had plenty of time already' recently. I utterly dispute this. Ultimately, the first consultation period left us waiting and waiting for result. Then we were given the 5 years we have been able to plan and plan well for the years ahead. To then have the rug swept from beneath our feet left our plans in ruins and we no longer have the time and ability to make the necessary changes before October 2016.

3.3 Would the change to the new transitional proposals have any other impact on your business that you have not dealt with above?

Yes

- 1) Staff redundancies are inevitable and this in itself will cost us.
- 2) We would also be obliged to inform staff of the new situation likely resulting in valuable people leaving and being irreplaceable due to the short term remaining.
- 3) As there is no time to change the business model now we are likely to sell without purchase, leaving us open to paying large corporation tax bills and losing equity and revenue as the natural flow of the business is disrupted. This seems grossly unfair.
- 4) Loss of reputation of the company in the closing months.
- 5) The closing months will likely spiral into a disposal war as companies look to offload stocks they rightfully accumulated for a longer transitional period/normal selling year. This essentially means stock will likely be sold off at losses meaning even in the closing months those legitimate businesses will incur losses in order to merely accumulate some of their invested money back.

The ridiculous short term outlook of the new proposal is causing personal stress and worry for the future, something entirely overlooked by the very impersonal nature of the decision making and new stance of the government.

RESPONDENT G



Questionnaire for new consultation on transitional arrangements for the repeal of section 52 of the Copyright, Designs and Patents Act 1988

Please return your responses to Sara McDiamond at [REDACTED]

1. Your business

1.1 Please provide a short description of your business:

[The business] was founded over 9 years ago to specialise in the sourcing and online retailing of high quality replica furniture within the UK market.

The business employs 6 people and has steadily built a very good reputation for quality product and first class customer service.

We operate from a warehouse in Fife in Scotland and serve customers throughout the UK.

1.2 Please provide the following information:

Number of employees	6
Turnover per year (average)	£850,000
Percentage of turnover impacted by the repeal of section 52	100%
Turnover past 5 years	£3M
Tax contributions past 5 years	£40k (due to high level of investment)
Number of product lines	50
Number of dependent businesses	2
% of sales subject to VAT	100%

2. **Impact of previous transitional arrangements**
(The previous transitional arrangements were that the repeal of section 52 would come into effect on April 2020 and that any stock imported into or produced in the UK prior to that date would remain lawful after that date)

2.1 What were the costs and benefits on your business of the previous transitional arrangements?

We were going to progressively run our stock down in an orderly and measured manner.

Our business reputation has been built on holding good levels of stock to allow us to deliver orders within a few working days. This has meant much money invested in stock completely legitimately.

We felt that the previous transition would have given the business time to adjust into new areas at the same time as realising the value from the large stock holding.

We were hopeful that we would avoid loss.

2.2 What steps had you taken to transition your business and/or amend your business model on the basis of the future repeal of section 52 in 2020? (e.g. Invest in new product lines.)

Started a business called Blackhouse. This is an online furniture business who have furniture made in Scotland and finished only in the finest Harris Tweed. We were in the process of establishing this fledgling brand, but will now not have time to do so.

2.3 Have you taken any other steps in reliance on the previous transitional arrangements? (e.g. entered into new contracts, taken on more staff, entered into long-term leases.)

We renewed the lease on the building by 12 months and had made assurances to suppliers that the business had a number of years to run.

3. **Impact of proposed new transitional arrangements**
(The Government is proposing that the repeal of section 52 will now come into effect on 28 April 2016, with a further 6 month depletion period until October 2016 for any stock produced or acquired under a contract entered into before 28 October 2015)

3.1 What would be the costs and benefits on your business of the proposed new transitional arrangements?

Quite simply, we will have to close our doors as a furniture business with the likely loss of 5 jobs.

We have not had enough time to establish the new Blackhouse brand and therefore the business will likely be forced to close.

3.2 The Government announced its proposal to shorten the transitional period for the repeal of section 52 on 28 October 2015. Since that announcement, what additional steps have you taken, if any, to speed up the transition of your business and/or the amendment of your business model?

We are looking at ways to discount and 'fire sale' out our existing stock and we have placed no more orders with our suppliers for fear of facing criminal proceedings if goods are not sold in time.

This has meant that we are seeing far lower sales already as we are not carrying the level of normal stock to satisfy anticipated Christmas and New Year peak periods.

- 3.3 Would the change to the new transitional proposals have any other impact on your business that you have not dealt with above?

We will have to close.

It doesn't get any worse than that!

RESPONDENT H



Questionnaire for new consultation on transitional arrangements for the repeal of section 52 of the Copyright, Designs and Patents Act 1988

Please return your responses to Sara McDiamond at [REDACTED]

1. Your business

1.1 Please provide a short description of your business:

Online retail of designer furniture and replicas

1.2 Please provide the following information:

Number of employees	3
Turnover per year (average)	£550,000
Percentage of turnover impacted by the repeal of section 52	80%
Turnover past 5 years	Only trading for 2 years
Tax contributions past 5 years	None in the first year
Number of product lines	20
Number of dependent businesses	25
% of sales subject to VAT	90%

2. **Impact of previous transitional arrangements**

(The previous transitional arrangements were that the repeal of section 52 would come into effect on April 2020 and that any stock imported into or produced in the UK prior to that date would remain lawful after that date)

2.1 What were the costs and benefits on your business of the previous transitional arrangements?

Costs: additional sourcing of new products that will generate enough revenue and their suppliers. Main costs were travel to meet new suppliers and sight new goods (fairs), uploading new products in the shop, assessment of profitability. So no large costs were involved, but rather time investment.

Clear benefits of the longer transitional period are time to judge profitability of products and reliability of suppliers in regard to availability of product and in some cases dropshipping. Some new acquired partners in the last year have already been removed again, because they were not profitable or the supplier was not reliable. Some interesting product lines could not be tested yet as the business is not yet in a position to buy stock in large quantities that might sit in the warehouse for longer periods of time. Some suppliers, especially of brands, expect a minimum order though. Clearly, the profit generated in the coming years from easy selling replicas would have given the company the opportunity to invest in these options.

2.2 What steps had you taken to transition your business and/or amend your business model on the basis of the future repeal of section 52 in 2020? (e.g. Invest in new product lines.)

Sourcing of new suppliers, e.g. on furniture fairs, dropshipping websites and market research. As stated above the business is not yet in a position to heavily invest in stock that is not guaranteed to move quickly, as the impact on cash flow would be too high.

After 2 years of trading I have a better chance of securing investment, which was previously rejected because the business was too young.

2.3 Have you taken any other steps in reliance on the previous transitional arrangements? (e.g. entered into new contracts, taken on more staff, entered into long-term leases.)

New warehouse manager employed in October to cope with anticipated growth. New admin employed in August.

I also planned to employ more staff, which is now laid on ice until a decision is made. That also means our capacity is restricted, which restricts growth and acquiring sufficient funds to successfully make a transition.

I entered loan applications to the banks last month to support our growth. Again, the insecurity of not knowing the timescale of the repeal makes it impossible to make any plans at the moment.

5 year lease of warehouse entered in February 2015.

3. **Impact of proposed new transitional arrangements**
(The Government is proposing that the repeal of section 52 will now come into effect on 28 April 2016, with a further 6 month depletion period until October 2016 for any stock produced or acquired under a contract entered into before 28 October 2015)

3.1 What would be the costs and benefits on your business of the proposed new transitional arrangements?

There are no benefits to my business if the repeal comes into effect earlier than 2020.

The costs include at least £12,500 warehouse lease.

Running the business so all stock is cleared until October means:

Selling under price on slow moving items

Loss of income (80%) from items that can't be imported from April onwards, resulting in relatively higher running costs, such as lease and marketing.

Necessary reduction of employment.

This means that the stock needs to be sold of at any price as quick as possible to close the company asap to reduce running costs, so the company doesn't close at a loss.

With the 2020 repeal I am positive that the company could have successfully made a transition, because I could have secured a loan to invest in new product lines. Now the risk is too high without products that I know will sell. The longer transition period would also have resulted in more employment.

Being able to sell replica stock of indefinitely would have ensured that nothing needed to be sold under price.

- 3.2 The Government announced its proposal to shorten the transitional period for the repeal of section 52 on 28 October 2015. Since that announcement, what additional steps have you taken, if any, to speed up the transition of your business and/or the amendment of your business model?

With the early repeal there will be no transition, but closure of the UK business.

Financially, it does not make sense for us to remain in the UK, since we are well positioned on the European market. Without replicas I will concentrate more on acquiring dropshipping partners and move the business to Germany to benefit from lower shipping costs, faster shipping times to a larger (European) market, lower VAT and lower warehousing costs since there would be no need for having the place of business in the UK any more.

- 3.3 Would the change to the new transitional proposals have any other impact on your business that you have not dealt with above?



RESPONDENT I

Questionnaire for new consultation on transitional arrangements for the repeal of section 52 of the Copyright, Designs and Patents Act 1988

Please return your responses to Sara McDiamond at [REDACTED]

1. Your business

1.1 Please provide a short description of your business:

[REDACTED] is an online replica furniture retailer based in London. We have appx 120 employees in London and furthermore a big warehouse facility in Essex. We now have more than 35 partners based in the UK - some of which are reliant on the long-term contracts we have made with them and our business to stay in business themselves. Although we have known, since 2013, that section 52 of the UK copyright law would be repealed and our current business model could be forced to change, it has not been until we received information about the actual transitional period that we have been able to make any solid plans for how to transform our business model. The reason for this is that we have not been able to make any forecast without a final date of the transition. We have therefore not known how much we would be able to spend or invest to transform our business model, or if we would be forced to close our business down. For the financial forecasting for new investments we have relied on 5 years of income from our replica furniture business to build and/or grow other business models.

On the expectation of cash in over the next 5 years we have invested heavily in non-replica furniture and new online businesses that are related to selling furniture online. We have build one mattress concept and one sofa concept, both of which are completely reliant on income from the replica business in the first few years until they can sustain themselves. Moreover we have started sourcing new products, and hired relevant people to find non-replica furniture products that could be successful for us. We have also engaged a designer to start designing new lines for us. The exact sum of all investments for transforming our business model are listed in a section 2.2 on the next page.

This has not only meant significant investment, but also opportunity cost as we have not been able to maximize revenue from our replica business as resources were also focused on the transformation of the business model.

If it is so that we only get until April 2016, after having been told 2020, the outcome for all of our investments will be disastrous, for our new business models which will be closed down or will have obtain external funding and for our current model which will have to be closed down. With the amount of money spent we will go into bankruptcy, most likely taking a number of partners with us, as we are not able to honor the long term contracts made with them.

1.2 Please provide the following information:

Number of employees	120
Turnover per year (average)	20 million GBP
Percentage of turnover impacted by the repeal of section 52	100%
Turnover past 5 years	65m GBP
Tax contributions past 5 years	1.7m GBP
Number of product lines	365
Number of dependent businesses	35
% of sales subject to VAT	70%

2. Impact of previous transitional arrangements

(The previous transitional arrangements were that the repeal of section 52 would come into effect on April 2020 and that any stock imported into or produced in the UK prior to that date would remain lawful after that date)

2.1 What were the costs and benefits on your business of the previous transitional arrangements?

Whilst the repeal of section 52 was not positive for any companies selling replica furniture, the previous transitional arrangements allowed for adjustments, and for minimal losses for both companies, dependant companies and the society. Below costs and benefits are outlined.

The costs of previous transitional arrangements:

Redundancies will be approximately 25-30 whilst hires will be 20 new people. Opportunity cost in tax contribution is approximately 150.000 GBP +VAT 21K after Y4. Recruitment fees of 20 new people: 120.000 GBP 5 jobs loss+NI= 35K. Suppliers have time to adjust, but they will have time to get new business which might very well come from us. In addition to this there would have been profits after 5 years, but these are not included as direct costs

Total:292.000 GBP

The benefits of previous transitional arrangements:

With a 5 year period it is likely that our company can survive without any external investment as we can use the continuous profit from replica furniture to put into the design process and into integrating off-the shelf products into our current line of products. Although profitability of the new business model might not be reached until year 7, the companies will thrive and employee-wise go toward a similar point where we are now. With a 5 year transitional period we will not need to rush through the development of new product lines or new business models. This is a process which is extremely difficult to get right, even when you are not in a hurry. Myfab.com can be taken as an example. They build a company based on own designs and off-the-shelf furniture. After being widely unprofitable for a number of years they were acquired by Fab.com. In the meantime their only widely successful product was a beanbag. In spite of extensive consumer testing they had difficulties choosing bestselling products. This can be because of a preference in tastes, preferences, bad merchandising, bad marketing etc, but is definitely an indicator towards the difficulty of choosing/designing a bestselling product.

A good case to look at in terms of how difficult to be a pure play online shop and have success is Made.com. Made have spent a lot of time and money on sourcing products and own designs and still made a 5 million pound loss, this in spite of influx of investment. Made have now had to change their business model and have decided upon opening physical showrooms. The case of made just shows how difficult it is to choose winners and to make it big, selling furniture that is of your own design. For us being forced to open showrooms to be successful would move us even further away from the core of what we are now: (read about made.com here): <http://www.retail-week.com/sectors/home-and-diy/madecom-s-sales-surge-68-as-international-roll-out-gathers-pace/5064675.article?blocktitle=Latest-news-&-analysis&contentID=13145>).

Monetary benefits for society:

Corporation tax + tax on salaries + NI has amounted to 655.000 GBP YTD, meaning that it will land on appx 750.000 GBP for 2015. If we say that we would pay the same the next 5 years, the government society would benefit from 750.000 GBP a year the next 5 years, in total 3.750.000 GBP. In addition to that comes VAT, which is 14% of turnover which is 2.8m GBP annually. In 5 years the VAT would amount to 14.000.000 GBP.

This means that benefits for society of our business note closing down are 3.750.000 GBP + 14.000.000 GBP paid VAT over the next 5 years, meaning **17.750.000 GBP in total.**

In addition to this come the benefits for not paying potential benefits to people who could have been made redundant, benefits of current partner companies on the replica side of things not defaulting, as they would have time to adjust (which implies more taxes+people in employment in partner companies).

2.2 What steps had you taken to transition your business and/or amend your business model on the basis of the future repeal of section 52 in 2020? (e.g. Invest in new product lines.)

As mentioned in point 1.1 we have invested heavily in transforming our business model, relying on income from the replica furniture business up until 2020. Below is a list of the investments made so far:

- 120.000 GBP spent on hiring people who can help us transition/ who fit into the new business models (15% commission with recruitment agency). This includes furniture designer, sourcing specialists, developers for new sites, copywriters and conversion rate optimization specialists.
- 480.000 GBP on additional salaries for people hired for new businesses (over last 6 months)
- 350.000 GBP spent on sourcing new products, building prototypes and getting to final product stage.
- 400.000 GBP in advance payments to the suppliers.
- 150.000 GBP spent on creating 3d images of new products for websites.
- 115.000 GBP spent on getting initial batch of people to one of the sites (to give feedback on product and site)
- 400.000 GBP spent on building sites that match new business model. Please note that only 1 of 3 of the new sites are currently live, whilst the other were planned to go live mid 2016.

To summarize we have currently spent 2.015.000 GBP investing in transforming our business model. With the additional salaries and obligations we have made the investment becomes naturally bigger month by month. In April 2016, the total investment made would be approximately 2.795.000 GBP. This is again only to transform the business model. To make the new models successful would require further funding, which, as previously mentioned, has been forecasted to come from the replica furniture sales.

2.3 Have you taken any other steps in reliance on the previous transitional arrangements? (e.g. entered into new contracts, taken on more staff, entered into long-term leases.)

Yes, we have engaged in a number of new long-term contracts that would secure us maximum profitability in our current and new businesses and minimise our costs

- We have re-negotiated our terms with the suppliers of replica furniture products, bound ourselves to a 3 year deal and have a contractual risk to pay a compensation of 1 million pounds if this contract is broken.
- We have engaged in a 2 year agreement with our logistics and warehousing partner. We risk to pay up to 500.000 GBP if the contract is broken.
- We have engaged in an agreement on a new warehouse which costs us 150.000 GBP annually over the 3 years.
- We have recently signed a new 2 year contract for the lease of our offices in London. The cost is 250.000 GBP annually, with no way of cancelling the contract.
- We have bound ourselves to invest 1.000.000 GBP with our new suppliers over the next 12 months. This has been done because the new suppliers have had significant costs in developing the new products with us.

3. Impact of proposed new transitional arrangements

(The Government is proposing that the repeal of section 52 will now come into effect on 28 April 2016, with a further 6 month depletion period until October 2016 for any stock produced or acquired under a contract entered into before 28 October 2015)

3.1 What would be the costs and benefits on your business of the proposed new transitional arrangements?

Please include details of the costs of:

- (a) Ending any long term contracts or other commitments early;
and
- (b) Ending any contracts or other commitments entered into since the Government published its response to the previous consultation on 18 February 2015.

Please also highlight the differences between the previous and new transitional arrangements, particularly and variance in job losses.

Benefits of 28 April 2016 as a deadline

Having been told 5 years and getting 6 months means that there are no benefits of the new proposed transitional period. As previously mentioned by the government itself no one benefits from a short transitional period: Not customers (who according to the IPO loose choice and welfare, not the license holders as it has long been established that replica products are not substitutable for theirs, nor UK society and the government as society and government will effectively close a good number of businesses down with April 2016 as a deadline, and loose 3.750.000 in taxes from our company only. Pls remember that this is not really an estimate. This is what we will pay this year times 5. In addition to that comes the loses from all other companies and their potential tax and costs to support unemployment.

Costs of 28 April 2016 as a deadline

Costs will be divided up into 3 groups: 1. Sunk costs of investments made (as a consequence of 2020 deadline given), 2. Cost that occur as a consequence of long term deals made (as a consequence of 2020 deadline given), and 3. Cost to society (government):

1. As mentioned in point 2.2 a number of investments have been after receiving the 2020 deadline. The sum of points in 2.2 will on April 2016 be **2.795.000 GBP**
2. As mentioned in point 2.3 a number of long term agreements have been made after receiving the 2020 deadline. The sum of getting out of these contract where possible and/or fulfilling them is: **2.900.000 GBP**
3. As mentioned in point 2.1 the benefits of 5 year transitional period versus a 6 months transitional period equals **3.750.000 GBP** in direct taxes only. With the current level of investment we have done in transforming the business model and with the costs we would incur closing everything down on 1 April 2016, it is most likely that the company would default and that all 120 employees would be made redundant. Even getting investment to keep the company running is not realistic to start with and finish 1 April 2016, if it could at all be obtained. The costs for partners defaulting, unemployment can reasonably and very conservatively be estimated to be a similar to what we pay in taxes only. So a conservative estimate here would be **7.500.000 GBP**
4. VAT that was mentioned in point 2.1 which amounted to **14.000.000 GBP**

The total of the 4 points is **30.945.000 GBP**

3.2 The Government announced its proposal to shorten the transitional period for the repeal of section 52 on 28 October 2015. Since that announcement, what additional steps have you taken, if any, to speed up the transition of your business and/or the amendment of your business model?

Before the 2020 deadline was announced we had acquired significant legal advice on the changes and what opportunities there were for us to keep on trading replica furniture. However, no significant investments were made as we were in a waiting position to get clarification on the exact date. The exact date would enable us to do a financial forecast and enable us to understand how much we would be able to invest in adjusting the business model from what it is now (or if it would be better to close it down). After the 2020 deadline was announced we have as pr above made significant investments in new businesses/adjusted business model that are all based on income from the replica business.

There is no speeding up. You cannot built a new business or source new lines in 1 month. A license holder stated that it takes 9 years to develop a new product range in the previous consultation.

3.3 Would the change to the new transitional proposals have any other impact on your business that you have not dealt with above?

Other than the business defaulting, which is mentioned above, no.



Questionnaire for new consultation on transitional arrangements for the repeal of section 52 of the Copyright, Designs and Patents Act 1988

Please return your responses to Sara McDiamond at [REDACTED]

1. Your business

1.1 Please provide a short description of your business:

[REDACTED] is an online retailer and wholesaler of designer furniture reproductions

1.2 Please provide the following information:

Number of employees	3
Turnover per year (average)	£500k
Percentage of turnover impacted by the repeal of section 52	99%
Turnover past 5 years	£1.8m
Tax contributions past 5 years	£25k
Number of product lines	300
Number of dependent businesses	15
% of sales subject to VAT	85%

2. **Impact of previous transitional arrangements**
(The previous transitional arrangements were that the repeal of section 52 would come into effect on April 2020 and that any stock imported into or produced in the UK prior to that date would remain lawful after that date)

2.1 What were the costs and benefits on your business of the previous transitional arrangements?

The previous transitional arrangement should have given us enough time implement new product lines to replace the design reproductions and would also have provided the finance to do so

2.2 What steps had you taken to transition your business and/or amend your business model on the basis of the future repeal of section 52 in 2020? (e.g. Invest in new product lines.)

We had made initial investments in sourcing new product lines but is still in the early stages as it is a lengthy process

2.3 Have you taken any other steps in reliance on the previous transitional arrangements? (e.g. entered into new contracts, taken on more staff, entered into long-term leases.)

In May 2015 we employed a full time member of staff
In September 2015 we entered into a lease for second warehouse
In October 2015 we entered into new vehicle lease contracts
Since March 2015 we have invested heavily in our warehousing, transport + infrastructure and also in our website + marketing, absorbing almost all our recent profit

3. **Impact of proposed new transitional arrangements**
(The Government is proposing that the repeal of section 52 will now come into effect on 28 April 2016, with a further 6 month depletion period until October 2016 for any stock produced or acquired under a contract entered into before 28 October 2015)

3.1 What would be the costs and benefits on your business of the proposed new transitional arrangements?

There are no benefits to our business as we would not have enough time to diversify into new product lines and build up a sustainable income to replace lost revenue from designer reproduction furniture. We would not be able to continue as a viable business and therefore would cease to trade, resulting in the loss of all jobs

3.2 The Government announced its proposal to shorten the transitional period for the repeal of section 52 on 28 October 2015. Since that announcement, what additional steps have you taken, if any, to speed up the transition of your business and/or the amendment of your business model?

We have tried to source and implement new products at a faster rate but do not have the required funds to transform our business model in such a short period of time

- 3.3 Would the change to the new transitional proposals have any other impact on your business that you have not dealt with above?

Business would cease to trade

RESPONDENT K



Questionnaire for new consultation on transitional arrangements for the repeal of section 52 of the Copyright, Designs and Patents Act 1988

Please return your responses to Sara McDiamond at [REDACTED]

1. Your business

1.1 Please provide a short description of your business:

[The company] is an online retailer and wholesaler of reproduction design classics and contemporary furniture which enables us to sell at competitive prices.

1.2 Please provide the following information:

Number of employees	8
Turnover per year (average)	£850K
Percentage of turnover impacted by the repeal of section 52	£300K
Turnover past 5 years	£2m
Tax contributions past 5 years	£20K
Number of product lines	400
Number of dependent businesses	45
% of sales subject to VAT	100

2. **Impact of previous transitional arrangements**
(The previous transitional arrangements were that the repeal of section 52 would come into effect on April 2020 and that any stock imported into or produced in the UK prior to that date would remain lawful after that date)

2.1 What were the costs and benefits on your business of the previous transitional arrangements?

Previous arrangement gave us the chance to dilute our existing stock of design classic products and the time frame to introduce new products to our customers without effecting our growth and requiring new investment.

2.2 What steps had you taken to transition your business and/or amend your business model on the basis of the future repeal of section 52 in 2020? (e.g. Invest in new product lines.)

We are in the process of selecting new products and revamping our website gradually.

2.3 Have you taken any other steps in reliance on the previous transitional arrangements? (e.g. entered into new contracts, taken on more staff, entered into long-term leases.)

3. **Impact of proposed new transitional arrangements**
(The Government is proposing that the repeal of section 52 will now come into effect on 28 April 2016, with a further 6 month depletion period until October 2016 for any stock produced or acquired under a contract entered into before 28 October 2015)

3.1 What would be the costs and benefits on your business of the proposed new transitional arrangements?

With the new arrangement our company will lose over £300k turnover which in turn will result us having to let go one office staff and one warehouse person.

On the other hand we have plans to employ another office staff and a sales person to introduce our new lines to replace the design classics to retain our customer base.

3.2 The Government announced its proposal to shorten the transitional period for the repeal of section 52 on 28 October 2015. Since that announcement, what additional steps have you taken, if any, to speed up the transition of your business and/or the amendment of your business model?

The information has not been made public and only a few are privileged to this information. We have only today (02/12/2015) learned of this and now feel as if we have a crisis on our hands as we have just order \$70k worth of stock to cope with Chinese new year.

- 3.3 Would the change to the new transitional proposals have any other impact on your business that you have not dealt with above?

RESPONDENT L

IPO CONSULTATION ON S 52 CDPA REPEAL:

SUPPLEMENTAL QUESTIONNAIRE FOR ECHO MEMBERS

1. EVIDENCE OF KEY COSTS OF THE REPEAL AND THE VARIOUS TRANSITIONAL PERIOD OPTIONS TO YOUR BUSINESS

1.1 Legal costs of advice on implications of s52 repeal on the business and on any perceived legal uncertainties?

- Already spent since ERR reform announced: £6000.00
- If 6 month TP: further £1500
- If 3 year TP: £1000
- If 5 year TP: £500
- Comments, case studies, examples:

Already spent a considerable sum in legal advice and this could potentially increase, although we do not have the appetite or deep pockets required for lengthy court battles.

1.2 Legal costs of defending against infringement claims?

- Already spent since ERR reform announced: £0
- If 6 month TP: £5,000
- If 3 year TP:
- If 5 year TP:
- Comments, case studies, examples:

As above, our business does not wish to engage in court, although I foresee some extremely aggressive posturing from the brand owners if they are awarded a swift TP, which we would have to defend.

1.3 Transitional Costs of complying with repeal of s52?

- Already spent since ERR reform announced: £45,000
- If 6 month TP: £25,000
- If 3 year TP: £10,000
- If 5 year TP: £3,000
- Comments, case studies, examples:

Our company has worked hard to get a new furniture business started since the ERR reform was first discussed.

We have created and worked hard to established a new brand called Blackhouse

() which is dedicated to retailing high quality furniture which is designed by us, manufactured in Scotland and covered exclusively in luxury Harris Tweed fabric.

This project was started around 24 months ago and so far we have invested over £45,000 in sunk direct start up costs – such as:

- Branding workshops set up with target audience to establish a need and refine what people are looking for.

RESPONDENT L

- Marketing consultant contracted to refine target market and product offering and then produce strategy to address them
- Trade Mark registration
- Designer of furniture contracted to create our range
- Branding company contracted to create strong brand image
- Website company contracted to create beautiful e-commerce site
- Copywriter and photographer required to get website populated
- Swing tags, brochure and all sales collateral produced
- Over 8 trips and counting to the Isles of Harris and Lewis to establish relationships with suppliers of cloth.
- Complete range of sample furniture made to test designs
- PR company used to convey brand to wide audience

By way of further ongoing costs, the company has employed a new full time member of staff for the last 18 months to drive this forward. We also invest in some modest advertising and Google adwords to maintain our company profile. This has meant that as of today, the sales generated by the company are not yet covering the modest ongoing costs and are certainly not making any contribution towards the initial investment.

It is estimated that a significant further sum will require to be invested in order to get the brand to a level that will start to return investment. This represents a significant risk and there is still a high chance of failure at this time.

1.4 New licences from rights owners?

- Since ERR reform announced:£0
- If 6 month TP:£0
- If 3 year TP:£0
- If 5 year TP:£0
- Comments, case studies, examples:

I just can't see this being a viable option as the rights holders have been nothing but hostile and aggressive towards our business since we legitimately started.

1.5 Costs of ending long term commitments / contracts early?

- Already spent since ERR reform announced:£0
- If 6 month TP: We have 2 years to run on our warehouse lease, meaning a potential 12 month plus period of paying unnecessarily – likely around £15,000
- If 3 year TP:£0
- If 5 year TP:£0
- Comments, case studies, examples:

As above.

1.6 Impact on competition for consumers?

- Since ERR reform announced:£0
- If 6 month TP:

RESPONDENT L

- If 3 year TP:
- If 5 year TP:
- Comments, case studies, examples:

Difficult to quantify, but there is no doubt that consumers will lose out. High design is going to be the exclusive domain of the elite.

2. EVIDENCE OF KEY BENEFITS OF THE VARIOUS TRANSITIONAL PERIOD OPTIONS

NB many of the benefits of longer transitional periods for ECHO members are the converse of the costs discussed in Section 1, so only additional questions are asked here.

2.1 What benefits would a period to sell off existing stock after the repeal takes effect have on your business?

- If 6 month TP: £140,000 loss
- If 3 year TP: £50,000 loss
- If 5 year TP: £20,000 loss
- Comments, case studies, examples:

The large headline figure is that we hold a high quantity of stock. Without an unlimited time to sell goods off then we might be legally forced to destroy what we have left following the TP.

2.2 Benefits to British Designers (including ECHO members)?

- If 6 month TP: £0
- If 3 year TP: £0
- If 5 year TP: £0
- Comments, case studies, examples:

I see no British designers benefitting from this legislation, regardless of when it is introduced.

3 OTHER QUESTIONS ARISING FROM THE CONSULTATION

3.1 Would your business find it helpful if the Government provided non-statutory guidance on what items are likely to attract copyright as 'artistic works'? If so, what factors should be considered in this guidance?

Yes – absolutely essential to know which designs qualify. None of us wish to go through court and so a definitive list is important.

3.2 The Government proposes to evaluate the impact to all affected businesses 3 years after the change in law has commenced, to enable the Government to assess whether the transitional period was proportionate and fair, and the impact on the UK design industry. Do

RESPONDENT L

you have any comments or suggestions on this?

Happy to participate, although can see very little positive impact – even for brand owners.

3.3 Do you have any other comments or suggestions to enable the Government to make a fair and evidence-based assessment of how best to structure the transitional period in respect of the repeal of s52 CDPA?

RESPONDENT M



Questionnaire for new consultation on transitional arrangements for the repeal of section 52 of the Copyright, Designs and Patents Act 1988

Please return your responses to Sara McDiamond at [REDACTED]

Your business

Please provide a short description of your business:

Retail and wholesale of expired copyright designs

Please provide the following information:

Number of employees	9
Turnover per year (average)	1000000 net
Percentage of turnover impacted by the repeal of section 52	100.00%
Turnover past 5 years	798K(2010) 1.14m(2011) 1.12m(2012) 1.14m(2013) 1.16m(2014)
Tax contributions past 5 years	Corporation Tax £49133(2010) £48114(2011) £17556(2012) £48906(2013) £12087(2014) Taxation and social security £26598(2010) £12027(2011)£9128(2012)



	£9128(2012) £55587(2013) £38600(2014)
Number of product lines	320 products with 17000 variations
Number of dependent businesses	15
% of sales subject to VAT	95.00%

Number of employees	9
Turnover per year (average)	1000000 net
Percentage of turnover impacted by the repeal of section 52	100.00%
Turnover past 5 years	798K(2010) 1.14m(2011) 1.12m(2012) 1.14m(2013) 1.16m(2014)
Tax contributions past 5 years	<p>Corporation Tax</p> <p>£49133(2010)</p> <p>£48114(2011)</p> <p>£17556(2012)</p> <p>£48906(2013)</p> <p>£12087(2014)</p> <p>Taxation and social security</p> <p>£26598(2010)</p> <p>£12027(2011)£9128(2012)</p> <p>£9128(2012)</p> <p>£55587(2013)</p> <p>£38600(2014)</p>
Number of product lines	320 products with 17000 variations
Number of dependent businesses	15
% of sales subject to VAT	95.00%

Impact of previous transitional arrangements

(The previous transitional arrangements were that the repeal of section 52 would come into effect on April 2020 and that any stock imported into or produced in the UK prior to that date would remain lawful after that date)

What were the costs and benefits on your business of the previous transitional arrangements?

Under the previous transition period the 5 years should have given us enough time to develop a new website, source products, test the market as to what would sell and to raise enough money to make it work.

What steps had you taken to transition your business and/or amend your business model on the basis of the future repeal of section 52 in 2020? (e.g. Invest in new product lines.)

We have Visited trade shows in China, Europe and the UK to find new products

Based on a 5 year plan we had decided to invest in the current business to raise enough money to start a new business. We estimated that starting a new business would cost £400,000-£500,000. This is needed to build a new website, advertising, sourcing new products, product design, tooling and stocking new products. We needed to increase the turnover of our current business in order save the funds needed to start the new business.

We have already invested £75,000 in our current website to increase turnover. We have invested heavily in our current warehouse with more space and racking to accommodate the arrival of new products. We have taken on one more member of warehouse staff to help with this transition.

We have acquired 2 new designer product ranges. They are due to be incorporated into a new website but with past experience it can take years to gain a presence in the market and rankings on google before customers will buy the product and recognise the brand.

Have you taken any other steps in reliance on the previous transitional arrangements? (e.g. entered into new contracts, taken on more staff, entered into long-term leases.)

We have taken on 1 new member of staff in June of this year

We signed a new 3 year lease on our premises in July 2015

The issue with bringing new products to market is it can take a long time to find the right product. We have already tried one brand with 50 products and we have sold 6 pieces in 12 months.

Impact of proposed new transitional arrangements

(The Government is proposing that the repeal of section 52 will now come into effect on 28 April 2016, with a further 6 month depletion period until October 2016 for any stock produced or acquired under a contract entered into before 28 October 2015)

What would be the costs and benefits on your business of the proposed new transitional arrangements?

Please include details of the costs of:

Ending any long term contracts or other commitments early; and

Ending any contracts or other commitments entered into since the Government published its response to the previous consultation on 18 February 2015.

Please also highlight the differences between the previous and new transitional arrangements, particularly and variance in job losses.

The business will have to close, all staff will loose their jobs. Termination costs of lease on the office, showroom and warehouse.

The cost of disposal of existing stock. Certain stock can take up to 2-4 years to sell.

Further costs in winding down our business

Under the old transition period all staff would keep their jobs and the business would survive.

The Government announced its proposal to shorten the transitional period for the repeal of section 52 on 28 October 2015. Since that announcement, what additional steps have you taken, if any, to speed up the transition of your business and/or the amendment of your business model?

This announcement has put us in an extremely difficult and stressful position. Without the ability to order stock we cannot keep our turnover at a level to make the business viable. Our fast moving stock has to be replenished every month. Orders from our factories take 8-12 weeks to arrive once the order has been placed. With this in mind we are only able to maintain our current turnover until the end of January 2016. After this date it will be in drastic decline. We are doing everything we can to bring in new products, develop a new strategy, build a new website and put together an advertising plan. However, trying to build a new business and maintain the current business under such time constraints is almost impossible. We have the additional problem that we cannot obtain any new designs for the new business new until the end of February 2016 due to the lengthy process of obtaining product from China

Would the change to the new transitional proposals have any other impact on your business that you have not dealt with above?

Please include figures where possible.

Annex 8 – Wragge Lawrence Graham & Co. Article



24 Jul 2015

Repealed in ERRA - s52 copyright repeal repealed

The Government has announced that its proposed repeal of section 52 of the Copyright, Designs and Patents Act 1988 has been put on the back burner; it was originally set for April 2020. This will come as good news for those selling copies of iconic works that were originally designed more than 25 years ago.



After much debate, the Government finally passed a law in 2013 to repeal section 52 of the Copyright Designs and Patents Act, as part of the catchily entitled "Enterprise and Regulatory Reform Act 2013". Given the saga involved, perhaps it is more appropriate to refer to it by its acronym (ERRA).

As a reminder, section 52 limits the term of copyright protection for artistic works to 25 years, rather than the usual 70 years after the death of the author, where the owner has made more than 50 articles that are copies of the work. In reality, this applies to things like sculptures and works of artistic craftsmanship, and is most likely to be relevant to owners of iconic designs that are no longer protected by designs or copyright.

The repeal was originally prompted by the Court of Justice of the European Union's judgment in *Flos*, a case about the famous *Arco* lamp by Achille Castiglione. This is exactly the kind of work that would be likely to benefit from this change - there are plenty of retailers of copies of classic 1960s designs, for example, that would have to stop selling them. At the moment, such sales are perfectly legitimate, provided they are sold in a way that makes it clear that they are not the originals.

Given the disruption to existing legitimate trade, the Government ran a consultation during October and November 2013, leading to a Commencement Order in March 2015 which said that there should be a further five years before the repeal came into effect - i.e. April 2020.

The latest twist in this saga is that the Government has now announced (on 23 July 2015) that the Commencement Order has been revoked, following a claim for judicial review.

So the process starts again; a new consultation, no doubt a new Commencement Order, and new transitional provisions. A blow for owners of iconic designs, and new designers looking for stronger protection for things that they hope will become classics, but an interim triumph for those who have built up legitimate businesses selling goods that are copies of classic older designs.

Key Contacts

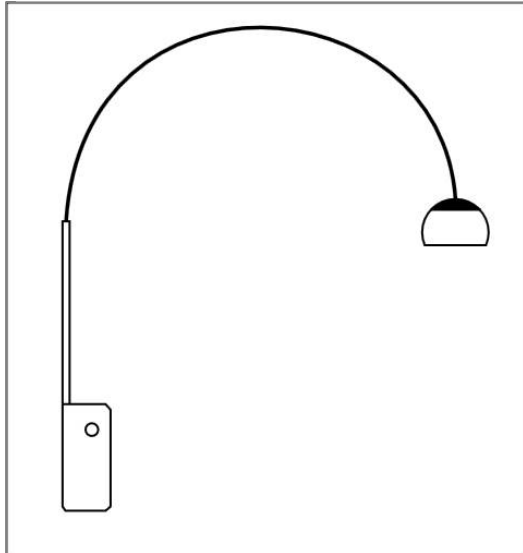
John Coldham, Director



This analysis may contain information of general interest about current legal issues, but does not give legal advice.

Annex 9 – Gabby Hardwick Solicitors Article

Copyright reprieve for sellers of classic-design replicas



Businesses that sell reproductions of mass-produced classic design works can breathe a little easier for now. A legislative change that threatens to hamper their ability to trade has been halted to allow for judicial review.

In 2013 the government passed a law to repeal section 52 of the Copyright Designs and Patents Act, which limits the term of copyright protection for industrially manufactured artistic works to 25 years, instead of the usual 70 years after the death of the author. For a work to be caught under section 52 its owner must have produced more than 50 copies.

What this means is that products that were 'out of copyright' having been produced at least 25 years ago would again be protected by copyright law for up to another 45 years, during which time replicas could not be made or sold.

Given the disruption to existing legitimate trade – there are potentially many UK-based vintage and nostalgia traders who rely on section 52 to lawfully sell reproduction works – the government had decided to delay the change but only temporarily.

However, the government has now announced that the delay will be indefinite to allow for further consultation. This has bought time for vintage and nostalgia traders whose businesses could be affected.

The most famous European copyright case of recent years involving a mass-produced item of the type covered by section 52 involved the iconic Arco lamp by Achille Castiglione, in what has been dubbed the 'Flos' case.

Following the judgment in this case, numerous manufacturers of classic design furniture – including Flos, Vitra, Cassina, Fritz Hansen, Teknolumen, Classicon, Knoll and Thonet, which are all based outside the UK – have campaigned to get section 52 scrapped. They claim that section 52 is preventing them from taking infringement action in the UK against those who import and sell replica furniture here.

The government has been told that the majority of those who import replicas from the Far East into the EU use the UK as a staging post for EU-wide sales. This is due to the reduced term of copyright protection afforded to designs under section 52.

But what about businesses that manufacture and/or sell replica goods exclusively within the UK? In an impact assessment the government notes that the number of products manufactured and sold here that may be affected by the repeal of section 52 cannot be calculated.

This is because, firstly, it is unknown what proportion of goods industrially manufactured and/or sold in the UK copy or incorporate an artistic work that would be protected by copyright save for the existence of section 52.

Secondly, it is unknown how many mass-produced items satisfy the legal criteria to benefit from copyright protection as artistic works. Under UK law, if an item is essentially functional and its artistic expression is constrained by functional considerations, it may not qualify for copyright protection. Ultimately, the courts must decide on a case by case basis whether an item qualifies as an artistic work.

The types of items that may be affected by the repeal of section 52 potentially include some classic furniture designs, jewellery, containers and other common household items. After the repeal, the manufacturers and distributors of affected works will be able to take legal action to stop the manufacture, distribution and sale of any replicas in the UK.

The above [creative commons](#) image of the Arco lamp is courtesy of Andrea Pavanello.

Specialist intellectual property (IP) solicitors

For expert advice on intellectual property (IP) matters please contact partner [Jon Fielden](#) on [REDACTED] or [REDACTED].

For specialist representation in any IP rights claim (whether initiating or defending one) please contact partner [Jeremy Laws](#) on [REDACTED] or [REDACTED].

Posted: 31 July 2015

[More news](#)
