
Section 72 of the Copyright, Designs and Patents Act

Department for Business, Innovation and Skills (Intellectual Property Office)

RPC rating: **fit for purpose**

The IA is now fit for purpose as a result of the Department's response to the RPC's initial review. As first submitted, the IA was not fit for purpose.

Description of proposal

The proposal will bring domestic copyright law into line with EU legislation. As this is a complex area of law, the Department proposes to clarify the legal position regarding a copyright exemption for the public showing of protected video content (such as sports). The Department proposes to remove the film exemption from section 72 of the Copyright, Designs and Patents Act. EU law recognises two types of protected copyright in film, covering the 'creative' aspects (such as direction of scenes, music and logos) and the 'fixation' aspects (the recording of events). The current exemption allows the fixation (but not the creative) aspect of film to be shown in commercial premises, without the need for a commercial broadcast subscription. However, commercial premises require a broadcasting licence from the owners of any creative material.

Some commercial premises that currently display film without a broadcasting licence believe that section 72 allows them to do so if they are able to remove the creative aspect from the film. They attempt to do so through the use of '*unauthorised systems*', which remove the creative aspects from the film. Examples include switching off the sound and covering logos with cards or masking technology. However, there is a strong argument that some creative elements of the film are impossible to cover up or are inherent in the recording, which led the Court of Appeal to rule that section 72 is unclear and may not be a reliable legal defence. By removing the film exemption from section 72, premises will no longer believe (erroneously) that section 72 allows them to bypass the requirement for a broadcasting licence.

Impacts of proposal

Costs

As premises will definitely not be able to rely on the section 72 exemption, those currently infringing copyright will be required to purchase a broadcasting licence if

they wish to continue displaying film. The Department has been unable to quantify the number of commercial premises currently in breach of copyright laws regarding the display of 'film', therefore, the IA does not monetise the effect on these businesses. As these businesses are non-compliant with current legislation, any impact on them would not have affected the EANCB of the proposal.

Benefits

The proposal is expected to benefit rights holders by increasing compliance with the legislation and thus the demand for broadcasting licences. Commercial premises that are currently compliant will benefit from a decrease in the competitive disadvantage of enduring higher costs than their non-compliant competitors. These effects have not contributed to the equivalent annual net cost to business (EANCB).

The RPC verifies the estimated EANCB of zero for reporting purposes. This will be a non-qualifying regulatory provision that will not score under the business impact target.

Quality of submission

The initial IA submitted to the RPC did not make clear why businesses that exploit the exemption should be considered to be non-compliant with current legislation. Following the RPC's initial review, the Department has provided evidence that rights holders have routinely been successful in prosecuting premises using unauthorised systems in an attempt to take advantage of the section 72 exemption. This is based on the court ruling that the exemption does not clearly define 'fixation' and 'creative' aspects. The Department has also clarified that the exemption was *not intended to be used in the way some have sought to apply it*. The purpose of section 72 is to reduce the need to obtain multiple licences from a range of rights holders in order to display 'film' in a commercial premise. The exemption was not intended to allow premises to display 'film' without a licence by 'removing' the 'creative' aspect. Considering these businesses as non-compliant with existing regulation now seems reasonable.

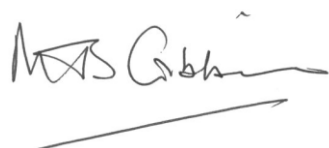
Any effects arising from an increase in compliance should have previously been captured in the original impact assessment for the copyright law. Despite this, the IA would have benefitted from including detail of the scale of the number of non-compliant businesses that will be affected by the proposal and the average cost for a broadcasting licence. However, the Department's argument that quantification would not have been proportionate in the circumstances seems reasonable.

Departmental assessment

Classification	Non-qualifying regulatory provision (EU)
Equivalent annual net cost to business (EANCB)	Zero (initial estimate) Zero (final estimate)
Business net present value	Zero
Societal net present value	Zero

RPC assessment

Classification	Non-qualifying regulatory provision (EU)
EANCB – RPC validated ¹	Zero
Small and micro business assessment	Not required (European origin)
RPC rating (of initial submission)	Not fit for purpose



Michael Gibbons CBE, Chairman

¹ For reporting purposes, the RPC validates EANCB figures to the nearest £100,000.