
Repeal of section 52 of the Copyright, Designs and Patents Act 1988: revised transitional arrangements

Department for Business, Innovation & Skills

RPC rating: fit for purpose

Description of proposal

The Department proposes to amend the transitional arrangements for ending the copyright limits for certain artistic works that have been industrially manufactured. The Copyright, Designs and Patents Act 1988 currently limits copyright protection for such items to 25 years, compared to other artistic works that have a copyright term for the lifetime of the creator plus 70 years. The RPC previously issued a final stage fit for purpose opinion on the proposed implementation in February 2015. However, the proposed five-year transition timetable was subject to a legal challenge. The Department consulted on a shorter transition period, seeking to provide the maximum time for affected businesses to deplete stock while being compliant with EU requirements. The Department has amended the proposed depletion time following consultation.

For goods ordered after the launch of the consultation, the revised transition arrangements would require businesses to deplete their stocks by March 2016. For goods ordered prior to the consultation being launched, businesses selling copies need to deplete stocks by January 2017 (revised from October 2016 as proposed during the consultation). The inclusion of a depletion period is to mitigate some of the burdens on businesses that purchased items in good faith prior to the legal challenge to the five-year transition period.

Impacts of proposal

The Department discusses a range of potential costs and benefits of the proposal, recreating the analysis and evidence used in the previous IAs. Despite extensive consultation, there is considerable uncertainty related to the assessment of the likely impacts as a result of:

- a lack of reliable data on the number of businesses trading in unlicensed copies of artistic works, although the Department believes there are some indications that the market is likely to be small;
- insufficient information on which items will be protected by copyright following the change in law; and

- limited numbers of copyright owners responding and/or providing robust evidence to the consultations to provide estimates of the current loss of income as a result of the sales of replicas.

The IA provides some estimates of the scale of costs for individual businesses if a product becomes subject to copyright. For example:

- Developing new products to replace lines that become subject to copyright. Based on a range of estimates from the manufacturers of replicas the cost of bringing a new product to market is estimated to be between £20,000 and £60,000.
- Cancellation of existing contracts for production within the nine-month period. Trade associations estimate that the cancellation of contracts will, on average, cost the cancelling business around £97,000.
- The cost of licensing 2D images used in books, e.g. those published by museums, costing £4,500 to £6,000 per title.

The IA also discusses a number of other costs and benefits, such as the benefits to copyright holders and the design industry and the costs to photography and image agencies of checking their libraries and catalogues. The length of the depletion period is expected to have a direct effect on the costs incurred by businesses currently trading in items which will no longer benefit from the exemption. The depletion date will also directly affect how soon copyright holders will begin to benefit from the end of the exemption. However, despite the detailed qualitative discussion, as with the previous IA, the Department's assessment that it is not possible to provide a robust appraisal of the net effect of the proposal is reasonable. It is also reasonable that the Department is not able to provide a robust estimate of the net effect on business as a result of the change from a five year depletion period to a nine month period. The RPC, therefore, validates the estimated equivalent annual net cost figure of zero for reporting purposes.

Quality of submission

The IA provides a detailed qualitative discussion of the likely effects of the proposal, including highlighting the additional burden that will be imposed on business as a result of the preferred transition time limit. The previous IA argued that a six-month depletion period was the maximum time period that would be consistent with EU requirements. The Department now argues that a nine-month depletion period would be consistent with the minimum EU requirements. While the Department's assessment that the difference is unlikely to have a significant monetisable effect on the long term impacts of the proposal appears reasonable, the IA would benefit from

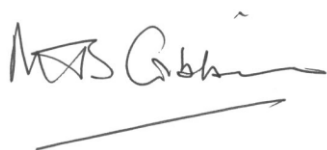
providing further information on why the nine-month depletion period will also be consistent with EU requirements and why it was not proposed in the original IA.

Initial departmental assessment

Classification	Out of scope (EU)
Equivalent annual net cost to business (EANCB)	Zero (non-monetised cost)
Business net present value	Not quantified
Societal net present value	Not quantified

RPC assessment

Classification	Out of scope (EU)
EANCB – RPC validated ¹	Zero (non-monetised cost)
Small and micro business assessment	Not required (EU)



Michael Gibbons CBE, Chairman

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