

IPO delays controversial 'section 52' change by three months

A major change in UK copyright law that will have “huge cost implications for businesses” due to come into law today (28 April), has been pushed back three months.

Relating to new IP protections for designs, the delayed provisions focus on increased protections for mass-produced items drawn up on 28 July.

The amendment follows a UK Intellectual Property Office (UKIPO) consultation on the repeal of section 52 of the Copyright, Designs and Patents Act (CDPA) 1988, which ran from October to December last year and received 95 responses.

The government explained that a change in date creates a slightly longer transition period that will be “beneficial for businesses that have been affected by impending regulatory change”.

Currently, designers of products such as furniture, homewares and jewellery, have copyright protection for 25 years from the date the product first went on the market. This is now being extended to 70 years after the designer’s death.

Russell-Cooke’s Guy Wilmot explained that the CDPA’s repeal of Section 52 is a “significant change” that will impact many businesses which rely on reproducing mass-made products.

“By abolishing Section 52, the protections for these industrially manufactured products will be brought in line with other artistic works so it does have some logic. The change has retrospective effect, so copyrights which had expired will be brought back into force, so for businesses currently reproducing iconic furniture designs, for example, this change is likely to prove expensive, as these businesses will either have to change their designs or seek a licence,” he stated.

He added, “There is likely to be a period of confusion as companies get used to this new protection, which in some cases could add 100 years of protection to a design.” As of the enforcement date, companies will no longer be able to make or import new copies of artistic works unless they were contracted before the publication of the consultation document, have permission granted by the rightsholder, or an exception applies. The depletion period for contracts in place prior to the consultation will remain six months following the repeal, concluding on 28 January 2017. The UKIPO said the change in law does not stop designers taking inspiration from previous works, but instead is designed “to stop slavish copies of existing artistic works. In other words, producing identical copies and substantially copying other artistic works.”

Offering guidance, the office explained that retailers should assess if they need to make any changes to their business model and product range. “Companies may wish to identify existing items which are protected by copyright and determine if licences are available for copies to be made (2D or 3D), and negotiate these, remove some specific items from their product range, review any existing licences to check if the change in law impacts on the terms of the licence, and/or check whether any

copyright exceptions could apply when making or using new or existing copies,” it stated. Welcoming the move, Anti-Copying In Design’s Dids Macdonald said, “When the change comes into effect, the consequence will be that rightsholders can license these works or prohibit further copying. Anyone who is not the copyright holder or their licensee will need to seek permission, or a licence, to make copies lawfully.”

However, senior lecturer at Loughborough University, Malcolm Barnard, claimed that repealing Section 52 will “wreak chaos on future academic research into the history and theory of art and design as well as having absurd consequences on existing publications.” He added, “It looks as though this legislation has been proposed accidentally, or by mistake and will make research into art and design much more complicated, if not a laughing stock.”

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