From:	Pontus Rosen
To:	Section52CDPA
Subject:	Repeal of section 52 of the Copyright, Designs and Patents Act 1988 - Consultation on transitional period
Date:	09 December 2015 16:41:42

Dear Madams/Sirs,

Please accept these official views of the Association of Art Historians on this issue. We heard about this consultation rather late, but have put together the following thoughts, which we hope may be of use.

Do not hesitate to get in touch with the Association if we can be of help in exploring any of these issues further.

Thank you.

1. Transitional period before the repeal of section 52 takes effect

A longer transition period would benefit publications in art history, because a longer term of copyright protection means that more often rights will have to be cleared, for example for articles dealing with modern design.

The six months transitional period is too short, taking into account that the ‘production time’ of an art historical article or a monograph is longer. The legal insecurity and pressure is greater with a shorter period of transition.

The transition period, which would like to see longer than six months, should run from the end date of the consultation period, because the outcome of the consultation is not clear. Considering the starting date of the consultation actually devalues the consultation in itself.

A transitional period longer than six months would be desirable in the interests of art historical publishing. Two to three years seems a more sensible production time, which would make the transitional process more predictable in terms of fundraising for licensing costs.

In terms of other issues which the guidance should cover, the interests of academic research, teaching and publishing, as wells as the interests of design museums are not at all covered and should be.

2. Depletion period for existing stock

We do not agree that the Government is right not to distinguish between two- and three-dimensional copies. In the interests of museums, scholars and academic publishing, this is a distinction to be made. The fact that it was not made in the Flos case by the ECJ does not mean it cannot be made. Further, implementing the regulations would mean that published but not yet

sold copies of articles and books might become illegal to sell in view of copyright law. Illustrations from digital versions of articles might have to be removed if no licence was obtained. This can neither be put into practice nor is it controllable.

3. Compulsory licensing of works where copyright is revived

We do not agree that Regulation 24 of the Duration of Copyright and Rights in Performances Regulations 1995 should be repealed. It would aggravate the problems of academic publishing and for museums. For example, if an illustration of a designer chair now required a licence, whereas it had been free to publish under the old term of protection, the regulation 24 quoted above at least gave the publisher the right to obtain a licence. Under the new regime, a rights holder might just say no, for example meaning that a publisher would have to delete the illustration from their digital version of an academic art history or design journal.

Given the fact that there exist articles on art and design, some reproductions would need a licence, which makes us expect future costs due to compulsory licensing of works. No funding is available to cover these costs as the publishing costs have been accounted for and the publications are finalised.

Sincerely,
The Association of Art Historians

Contact:

Pontus Rosén, Chief Executive
Association of Art Historians
70 Cowcross Street
London EC1M 6EJ
t. [redacted]
e. [redacted]
w. www.aah.org.uk
twitter. [redacted]