

British
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To:

Section 73 CDPA Technical Consultation 2016
Copyright and Enforcement Directorate
Intellectual Property Office
Room 1Y05
Concept House
Cardiff Road Newport
NP10 8QQ

The logo for BAPLA, consisting of the letters 'BAPLA' in a serif font. The letter 'L' is highlighted in blue, while the other letters are black.

Emailed to: Section73CDPA@ipo.gov.uk

21st November 2016

BAPLA Submission for the Repeal of Section 73 (CDPA, 1988)

About BAPLA

BAPLA, founded in 1975, is the UK trade association for picture libraries and agencies representing members of a unique area of the creative industry. BAPLA has a broad and diverse membership of image-makers and purveyors, from sole traders to major news, stock and production agencies, as well as SMEs, archives and cultural heritage institutions. Our members have adapted the needs of their B2B clients such as broadcasters, whether as public service or platform providers, they have been in the business of licensing and supplying both still and moving images to broadcasters for several decades.

The potential future rights market

BAPLA welcomes the IPO's proposal to repeal Section 73 of the Copyright Designs Patents Act, 1988. For the visual media industry which includes still and moving images including photography, the use of image-led content within broadcast programmes is extensive and therefore we see that this repeal has a direct effect on rights holders' rights to remuneration. It is positive to see that the Government identified in their Impact Assessment that the public service broadcasters (PSB's) themselves do not always own all of the copyright, and they are in many cases owned by the underlying rights holders in the value chain. A significant priority for BAPLA is to ensure that the interests of image owners such as their members are taken into account when these changes take effect.

How copyright owners (e.g. image-makers, scriptwriters, performers) in any underlying content in cable retransmissions may choose to administer their rights

We believe it is important for our industry - and also for the public at large who are also image owners whose works are used in broadcast programmes - that those licensing and supplying images for broadcast programmes should be able to share in the value that they bring to society. Of particularly high importance are the processes by which monies generated by cable platform operators and negotiated between public service broadcasters (PSBs) are administered to rights

holders. We would not fully agree with the Government's suggestion that "no new financial value will be generated for the PSBs", and as a result neither for the underlying rights holder, such as our members and their contributors, due to the must offer/must carry regulations. Licensing agreements are pivotal to our industry, whether by individual negotiation or by collective bargaining, and are based on the negotiation of new or additional rights irrespective of the obligation on PSBs terms with platforms. We believe it is the right of right holders to negotiate and agree new terms when they arise, such as the repeal of Section 73, with PSBs and we welcome the opportunity to do so in a constructive manner by which all parties are relatively satisfied, and new agreements communicated with relevant parties. Importantly, all broadcast information as part of the retransmission (such as viewing figures) should be made available by the platform providers and PSBs to interested parties, such as relevant collecting societies and right holders alike, in order that these groups can meaningfully participate in the consent process and license agreement reviews.

Whether transitional periods are required to help the market adapt to new licensing structures

We note the intended timetable of the repeal is to form part of the Digital Economy Bill, which is expected to receive royal assent in the summer of 2017, giving another potential six (6) months notification to cable platform operators and PSBs. A transition period of a further six (6) months should be adequate period of time to adjust once the act is repealed. It would also provide ample opportunity for rights holders such as our members to re-negotiate and reach a fair and equitable agreement with those involved.

Many of our members derive the majority of their income from business models for commercial interests therefore BAPLA would also request that an assessment of the impact of this repeal in relation to both types of broadcasters (public service and platform providers), and of collective licensing to the visual media sector, be included in the IPO's annual copyright policy review report.

Yours sincerely,

Isabelle Doran, Chairperson

For and on behalf of British Association of Picture Libraries and Agencies Ltd