



BAPLA, the British Association of Picture Libraries and Agencies is the trade association representing companies and individuals licensing photographic images. Members include the major news, stock and production agencies as well as sole traders and cultural heritage institutions. A significant percentage of images seen every day in print and digital media is supplied by BAPLA members.

BAPLA's core objectives:

- Represent picture libraries and agencies of all sizes and types
- Encourage best practice within the industry
- Lobby to protect the core principles of our industry
- Develop and deliver solutions on 21st Century copyright
- Consolidate expertise of the wider picture community

The industry is worth \$2bn globally and in the UK around £650m[1]. Our own research shows BAPLA members' alone contribute about half of this turnover in the region of £310m per year. Our members employ approximately 2,500 people in the UK and generate revenue for, and manage the interests of 120,000 creators and rights holders.

Call for Evidence: Section 52 CDPA

BAPLA is sympathetic to the needs of designers to protect their copyright ensuring unlicensed 3-D Artistic Works from being reproduced. Taking a photograph of a 3-D object is not the same as making a 3-D reproduction - "fake" or replica; it is the latter for which this act should serve to protect.

As currently drafted, the scope of works would include 3D objects manufactured prior to the implementation of the 1988 Act. Use of any photographs by a commercial institution (as defined by HMRC) or for commercial purposes would need to be managed under a collective licensing scheme. We do not feel that this consequence is the purpose of this reform.

BAPLA strongly urges IPO to again review an exclusion of images and undertake further dialogue with stakeholders and an economic impact assessment as raised by Lord Stevenson, Baroness Brinton and Lord Clement Jones during the Report stages of this debate[2]. To this effect we have sought the support of Professor Lionel Bently in drafting recommendations.

It would be unreasonable to require image users to date objects in an image, impossible to know where additional permissions were required, and impractical to manage an opt out scheme. We would require specific guidance from government, not from parties with a vested financial interest, on precisely what is covered and how opt outs will be managed.

"A sword of Damocles will constantly hang over photographers and publishers. Never knowing when a designer may challenge publication and demand fees."

Arcaid Images

Question 9: Do you currently use or plan to use 2-dimensional images of artistic works that you believe will have copyright revived? If so, what are the costs and benefits of the changes, and how long would it take your business or organisation to make changes to comply with the change in law?

BAPLA seeks assurances whether a photo of a registered design is in fact an infringement or whether infringement can only happen when another 3-D object is created. At present there is anxiety in our sector that anyone using images featuring 3-D Artistic Works will need to be concerned if the 3-D Artistic Works might have been made any time during the twentieth century. This could well include objects created in 1900 by an artist who died in 1950. We would welcome assurances as a matter of urgency.

Obvious examples of 3-D Artistic Works include chairs, tables (and other classic furniture pieces), lighting, ceramics, glass, metal-ware, textiles, jewellery and so on.

Would commercial use of 2-D images containing the above everyday and often un-datable objects require additional permissions?

If so, likely impact on a number of specialist picture libraries whose collections have been developed over many years would be to devastate their livelihoods and those of their contributors. Many of the relationships built up over the years with publishers would simply disappear as those looking to use materials featuring 3-D Artistic Works assess the risks involved and determine the value of producing new materials or reissuing previous publications.

Over recent years BAPLA has received accounts from members regarding cases of similar issues (albeit on a smaller scale at present), which would escalate with no recourse to amend or support 2-D Artistic Works.

Aware of a 3-D Artistic Work legal case outside the UK, one member has already withdrawn all images from their archive featuring several of the works involved in the legal case to avoid possible infringement. Another, in discussions with a publisher to produce a visual biography of well-known works (which would have been of benefit to the public), abandoned the project when faced with the enormous costs to clear rights.

If images are included by means to protect 3d works from industry copies, BAPLA would ask the Government to take into consideration the unforeseen consequences of not protecting 2-D Artistic Works, such as photographs. The positive affect felt by bringing 3-D Artistic Works in line with current artistic works which benefit from full term protection, could be significantly undermined when there is a greater risk of infringement and higher costs, impeding the future editorial promotion of 3-D Artistic Works.

Response and quotes from members

BAPLA is supportive of the submissions made by Arcaid, GAP Interiors and other image agencies. In meeting with several concerned members who specialize in photographs featuring many 3-D Artistic Works, we offer the following quotes:

“The percentage of interior design photographs is two-thirds of our collection of lifestyle images, generating regular and sustaining income from a breadth of global clients, and providing a valuable resource to our clients producing printed and online publications. To

repeal such a clause without an amendment to protect our business as well as those relationships we have spent time developing will have such a financial and administrative burden that we may simply have to abandon this area of our business altogether.”

Loupe Images

“The fees in our industry have been reducing year-on-year as the publishers budgets have shrunk; with a consistent drop in print advertising revenues. The knock-on effect on picture libraries such as ours is that we are working with greatly reduced margins with much smaller staff numbers and simply would not be able to undertake to clear the rights for the 2D representation of 3D works on a picture by picture basis. I am sure the same could be said for our customers (the publishers).”

GAP Interiors

Benefits

There currently exists a harmonious symbiotic relationship between photographer and designer; 3-D Artistic Works become popular and iconic by the very interdependence of photography. These works develop into icons, gaining status and notoriety due to their appearance in books, magazines, newspapers, television and some exhibitions.

There will be no benefits of this reform for the visual media sector, indeed its impact will be negative. It will cause unnecessary friction and division between two artistic communities.

BAPLA is supportive of the position paper submitted by Thames and Hudson:

“The Government’s proposed new and amended copyright exceptions do not appear to assist in any way situations where it is necessary to reproduce images of works by designers. This is because the exceptions rendering licensing is unnecessary - being incidental inclusion, fair dealing by way of quotation for purposes such as criticism or review; or establishing that the designed object is clearly non-artistic - are all open to dispute.”

Publishers and photographers will need to check every single image to ensure the user or licensee does not run the risk of infringement and litigation. This could lead to features and projects being dropped as they carry too great a risk or publishers may find it restricts their ability to re-publish books or other works, including online publications. Publications will learn which designers expect fees and will in return publish less imagery containing such 3-D Artistic Works, therefore decreasing the exposure for the designers work.

Costs

Quantifying the cost of the impact on the visual media sector if the repeal of Section 52 is sanctioned can be accessed by taking the following into consideration:

- Cost of determining whether each 3-D Artistic Work in a new commission falls within copyright and warrants clearance of use from the designer.
- Evaluating how 3-D Artist Work can be classified to decide if the usage is incidental or covered under the ‘Exception for Quotation’.

- The assessment of existing 2-D Artistic Works in each respective archive to re-clear such rights. In some cases this maybe an entire archive of in the region on half million images.
- Time and research to establish and contact the copyright holder/designer to clear rights.
- Negotiation of such rights and generating appropriate licences/paperwork.
- In a 2-D Artistic Work of a room full of 3-D Artistic Works (objects) if clearance is obtained for all objects except one where the designer withholds rights or is non-responsive then there is a cost of time to undertake such clearances before withdrawing the work.
- If the decision is made to still publish the 2-D Artistic Work for the above scenario where one designer does not respond or agree to publication, an expensive time consuming legal case could develop.

BAPLA Recommendations

We suggest the following recommendations to government:

1. BAPLA seeks urgent dialogue with IPO and Professor Lionel Bently and Publishers Association to again review the exclusion of photographs from this provision. Our objective would be, as far as is possible, to exempt uses of images from any need to investigate or obtain licences. An outline of these amendments by Professor Lionel Bently can be viewed in Appendix 1 (attached).
2. The scope of this repeal's application is limited to a public and freely available registered works of designs only. This might not be confined to UK artists only, but protection would be provided for use in the UK wherever the artist resides and wherever the 3-D Artistic Work was made such as Charles & Ray Eames or Le Corbusier.
3. BAPLA would request that an assessment of the impact of this repeal and of extended collective licensing to the visual media be included in the IPO's annual copyright policy review report.[3]

Question 10: Would the Government's proposed new and amended copyright exceptions (announced in December 2012) assist you in situations where you need to make 2-dimensional copies of artistic works? If so, how?

BAPLA's believes that the proposed new and amended copyright exceptions announced last year will not aid in any situation to create 2-dimensional copies of such 3-D Artistic Works. Many of our members derive the majority of their income from business models for commercial interests. For the visual media sector we have proposed to government that photography is excluded from Exceptions because these would permit certain uses that go beyond the stated policy having unintended consequences and an adverse impact on the trading of image licensing.

Linda Royles
BAPLA Consultant
07971 881229

Appendix 1

Professor Lionel Bently suggests the exclusion of photographs from this provision as follows:

(1) This section applies where

(a) a design has been made available to the public, in the United Kingdom or elsewhere, through the sale of articles made to the design or bearing the design;

(b) a two-dimensional image (photograph, painting, drawing, film or otherwise) of an article made to or bearing the design was made before [the date of repeal of section 52]

(2) It is not an infringement of copyright in the design itself (if any), or any artistic work embodied or incorporated in it, to reproduce, distribute, communicate to the public such image, or to modify such an image, or reproduce, distribute or communicate to any image so modified.

(3) In this section

(a) design has the meaning found in section 1(2) of the Registered Designs Act 1949;

(b) 'making available' means 'making available to the public by publishing following registration or otherwise, or exhibiting, using in trade or otherwise disclosing.'

Footnote references.

[1] UK figure equates to a 1% contribution to UK GVA(DCMS figures state that in 2008 film, video and photography combined were responsible for 0.3% GVA).

[2] Enterprise and Regulatory Reform Bill
9th, 10th, 11th, 12th and 14th Reports from the Delegated Powers Committee

[3] <http://www.ipo.gov.uk/types/hargreaves.htm>