

Copyright - times are changing

Up until quite recently, it was perfectly legal to replicate an artistic work like a sculpture or piece of furniture, provided it was 25 years old and had been reproduced more than 50 times. A photograph, replica sculpture or replica piece of furniture could be reproduced and sold by anyone. Fair game – according to section 52 of the Copyright, Designs and Patents Act 1988 (CDPA). But now section 52 has been repealed, everything is about to change.

The changes in a nutshell

Currently 'industrially manufactured artistic works', created over 25 years ago, aren't protected by copyright. From the 28 January they will be protected for the life of their creator plus 70 years.

Does the repeal affect me?

- Do you hold the copyright in an artistic work classed as 'industrially manufactured'?
- Do you hold copyright under section 52 which has now expired?
- Do you make or import copies of artistic works within your product range?
- Do you print images of works of artistic craftsmanship in your publication?

If you've answered yes to any of the above then you could be missing out on income or falling foul of the copyright.

What is artistic work?

- Graphic work, photograph, sculpture or collage, irrespective of artistic quality
- A work of architecture being a building or a model for a building
- A work of artistic craftsmanship

Artistic craftsmanship is difficult to define. It is a question for the court to decide whether a specific product is classed as a work of 'artistic craftsmanship'. Craftsmanship assumes a special skill or training e.g. silversmith, and 'artistic' denotes real artistic quality, a work of art or fine art.

But what about old work that was created over 25 years ago?

The change still applies and the copyright protection will resume for the remainder of the creator's lifetime, plus 70 years.

What happens now?

From 28 January 2017 you cannot rely on section 52 for dealing in any artistic works. You must:

- sell or destroy them; or
- have permission from the rights holder to continue their trading; or
- rely on an exception under CDPA in the continued use of those items. A couple of examples include: criticisms or reviews of artistic works in publications, teaching or non-commercial research.

If this applies to me, what can I do?

If you hold the copyright, you can make decisions about who will be able to copy or use your work.

If you replicate work, you need to think about getting a licence if you don't already have one, stop making copies or rely on an exemption.

Make sure you check existing licences to see if this change impacts the terms.

What are the risks if I don't act now?

If you're affected and don't act then you may be sued for copyright infringement or lose out on income.

For further information, please contact Alex.



Alex Craig
Partner

Tel: 0191 211 7911

Mob: 07880 039 706

alex.craig@muckle-llp.com