

Consultation on the overlap of intellectual property protection between Industrial Designs and Copyright law

Design Protection in Ireland - Background

A registered design protected by design right in an EU Member State also receives additional intellectual property protection under copyright in that State. The current position in Ireland is that the copyright in a design registered under the Industrial Designs Act, 2001 expires 25 years after the application for registration of the design¹. In addition, artistic works exploited by an industrial process also receive copyright protection for 25 years after they are first marketed². Those terms of protection are in contrast with the standard copyright term that applies to other artistic works, which lasts for the life of the creator plus 70 years.³

Issue

A Court of Justice of the European Union (“CJEU”) decision has raised issues with regard to the term of copyright protection afforded to designs under the Designs Directive.⁴ The ruling clarified that Member States cannot enact legislation that provides for works to be protected by copyright for less than the life of the author plus 70 years.

Objective of this Consultation

This consultation is aimed at gathering stakeholder views with regard to the potential impacts on sectors of the Irish economy of extending the period of copyright to that period of life of the creator plus 70 years. The Government is seeking views as to which sectors would be affected and how. Views are also sought with regard to the length of the transitional time period. This would include the time required to change the behaviour on the part of those whose actions would infringe the copyright of others with the amendment of the Copyright and Related Rights Bill. This transitional period is also to give manufacturers of replicas time to dispose of or sell off their stock. We are also seeking views on the impact on rightsowners, the owners of artistic works and the industry generally.

CJEU Case clarifying the term of protection

In January 2011, the CJEU Case C-168/09 *Flos SpA v. Semeraro Casa e Famiglia SpA* considered the distribution of imported lamps from China. These lamps infringed the copyright of the Arco lamp which belonged to an Italian company, Flos, but whose copyright had fallen into public domain. The CJEU was not asked to determine the term of copyright protection in this case, however, the ruling clarified the requirement to extend the protection for the full 70 years of copyright as provided for in the Term of Protection Directive (2006/116/EC).

¹ Section 31A of the Copyright and Related Rights Act, 2001

² Section 78B

³ Sections 31A and 78B were added to the Copyright and Related Rights Act 2000 (“CRRA”) by the Industrial Designs Act 2001. This Act was introduced in part to transpose Directive 98/71/EC which sets harmonised standards for eligibility and protection for most types of registered designs.

⁴ Case C-168/09 *Flos SpA v. Semeraro Casa e Famiglia SpA*

This ruling brought to light potential divergences in Irish and EU law. Irish legislation must therefore be amended to align itself more closely with EU law. The UK recently made similar amendments to their corresponding legislation.

Transitional Period

The Court of Justice of the European Union (CJEU) also ruled that a transitional period to bring copyright for artistic designs to the full term of protection may be lawful, but must also be proportional.

There must be a balance between the needs of rights holders and the period required for others to adjust; it is also important to avoid delay in establishing the full term of copyright protection for affected works now established to be required by law.

Proposed Solution in Ireland

It is proposed to amend the existing sections 31A and 78B of the CRRA, to bring the term of protection for copyright in designs and copyright in artistic works exploited by an industrial process into alignment by extending the protection to the standard copyright term of the lifetime of the creator plus 70 years. In doing so, it is intended to provide for a transitional period, as indicated by the CJEU ruling.

A short transitional period would be most beneficial as a long period would not meet the requirements to avoid a delay in establishing the full term of copyright protection.

Once the transitional period has elapsed, the repeal will come into effect and businesses and individuals will no longer be able to rely on sections 31A and 78B. This means that any copies of affected works which fall within the life of the creator or 70 years after their death will need the agreement of the rightsowners to be imported, manufactured, advertised or sold by way of licence or other form of consent.

Submissions

The Department welcomes submissions in relation to the proposed amendment particularly in relation to the following aspects:

1. Will the proposed amendment potentially impact in a positive or a negative manner on businesses?
2. Would a short transition period before the amendment comes into force be the most appropriate and efficient?

Respondents are requested to make their submissions in writing by e-mail to copyright@djei.ie.

The closing date for receipt of submissions is **Thursday, 22nd September 2016**. Any queries regarding the consultation should be emailed to copyright@djei.ie.

Confidentiality of Submissions

Contributors are requested to note that it is the policy of the Department to treat all submissions received as being in the public domain unless confidentially is specifically requested. Respondents are, therefore, requested to clearly identify material they consider to be confidential. Where e-mails include automatically generated notices stating that the content of the e-mail should be treated as

confidential, contributors should clarify in the body of the e-mails as to whether their comments are to be treated as confidential.

Relevant provisions of Freedom of Information Act 2014

Respondents' attention is drawn to the fact that information provided to the Department may be disclosed in response to a request under the Freedom of Information Act. Therefore, please identify any information you consider commercially sensitive, and specify the reason for its sensitivity. The Department will consult with any potentially affected respondent regarding information identified as sensitive before making a decision on any Freedom of Information request.