

BBC response to the Post Implementation Review of s.72 of the Copyright, Designs and Patents Act 1988

[Section 72 CDPA post implementation review: Call for views - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/section-72-cdpa-post-implementation-review-call-for-views)

Submission deadline 13 August 2021

1. The British Copyright Council (BCC) is a not-for-profit organisation that provides a forum for discussion on copyright law and related issues. Our purpose is to provide a representative voice on copyright and related issues. We represent those who create, perform and manage rights across the creative industry and our 30 members represent hundreds of thousands of creators. Given our remit we have limited our response to the general questions.

General Questions

Q1. In your view, to what extent have the changes to Section 72 achieved their original objectives?

2. The changes to s72 have achieved their original objectives. Though it is important to note that the application of the Copyright (Free Public or Playing) Amendment) Regulations 2016, which effected the changes to s72, are important in ensuring that the original objectives are achieved.

Q2. Do you think that the changes to Section 72 remain appropriate?

3. Yes. Since the changes to s72, licensing of subscription services by public venues has increased and licensing bodies have been able to provide easily accessible services.
4. However, the amendment to S72 without a parallel amendment to Schedule 2, Paragraph 18 failed to address removing the outstanding exception applicable to performers whose performances are fixed in films, compared to other rightsholders. Lord Justice Arnold, during the consultation on the amendment to S72 stated that it would “presumably involve a parallel amendment to Sch.2 para 18.”¹ This issue was raised by some of our members during the previous consultation. The BCC supports the making of a parallel amendment to Schedule 2, Paragraph 18.

Q3. Could the same objectives be met through other, more efficient, means?

5. A range of options for achieving the same objectives were consulted on in 2015 and 2016. The BCC would be concerned if any of the alternatives mooted previously were revisited. Given the system is working effectively we recommend that it is not necessary to consider further amendments to s72 at this time.

¹ Richard Arnold “Performers’ Rights” Fifth Edition, Sweet & Maxwell.

Q4. Now that the UK has left the EU, do you believe the Regulations remain relevant and necessary?

6. Yes. The Regulations contribute to the success of the UK's film production sector and we do not stand to benefit from taking a step backwards in terms of the protections afforded when these have proved beneficial. The fact that the position remains reflected within the laws of EU Member States also supports issues around National Treatment and reciprocity.

Q5. Overall, do you consider that the Regulations have benefitted your business, organisation or your members? Please provide details.

7. Yes. Several of our members will be submitting individual responses with further detail.
8. With regards to futureproofing copyright ownership of film footage, members representing images (still and moving) believe the changes made to Section 72 are of important economic benefit to rightsholders, as we anticipate significant growth in these types of copyright works.
9. Members representing audiovisual performers feel that parallel changes to Schedule 2, Paragraph 18, would help to clarify the rights of performers and their entitlement to a share of revenue from new licensing opportunities developing as a result of the Regulations.

Q6. Have the Regulations led to any consequences that you did not anticipate? Please provide details.

10. Yes. Costs to inspect licensing compliance have decreased as the need for inspectors to visit premises to check for unauthorised access to television and broadcast services is reduced.