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## Further consultation and technical review on changes to Section 72 of the Copyright Designs and Patents Act 1988 (which permits the free public showing or playing of a film contained in a broadcast)

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<b>Organisation and main services</b>	<p>British Copyright Council</p> <p>The British Copyright Council represents those who create, hold interests or manage rights in literary, dramatic, musical and artistic works, performances, films, sound recordings, broadcasts and other material in which there are rights of copyright and related rights.</p> <p>Our members include professional associations, industry bodies and trade unions which together represent hundreds of thousands of authors, creators, performers, publishers and producers. These right holders include many individual freelancers, sole traders and SMEs as well as larger corporations within the creative and cultural industries. While many of these create works and performances professionally and make decisions relating to both commercial and non-commercial use of those works and performances, they also use and access works in an individual private capacity. Some of our member organisations also represent amateur creators and performers. Our members also include collective rights management organisations which represent right holders and which enable access to works of creativity.</p> <p>A list of BCC members and more about our services to our members can be found at <a href="http://www.britishcopyright.org/bcc-members/member-list">http://www.britishcopyright.org/bcc-members/member-list</a>.</p>
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<b>Confidential response</b>	This response is not confidential.
<b>Introductory comments</b>	<p>The BCC welcomes this further consultation by IPO on changes to s 72 CDPA and supports the simplification of the exception by removal of “film” entirely from the exception.</p> <p>The BCC does not represent producers of films, nor does it directly represent the interests of broadcasters, so cannot respond for, or on behalf of, these interests.</p> <p>The BCC does represent other authors of films and underlying contributors to films (particularly performers and directors and also script and screenwriters, composers of music for films and creators of artistic works included in films) and our comments are made on their behalf. The BCC also has a wider and more technical interest in the importance of proper recognition of copyright and related rights in films.</p> <p>The BCC has, therefore, used this opportunity to concentrate on questions which arise in relation to these matters and the impact of this proposal on the creative aspects of a film.</p>

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**Questions 1 to 4 – General Questions**


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**Question 1****What would be the impact of removing “film” from the Section 72 exception?**

EU law restricts the types of copyright exception which EU Member States may apply in relation to cinematographic works. It is the BCC’s opinion that removal of the current s 72 exception insofar as it applies to such works would comply with the provisions of the EC Copyright Directive.

As IPO is aware, the definition of “film” in s 5B CDPA is that:-

*“film” means a recording on any medium from which a moving image may by any means be produced”*

This definition is applied under the CDPA for both the rights of copyright in films and exceptions to such rights. The definition does not recognise a specific “subset” of films that are merely “fixations”, i.e. films without creative aspects.

As such, the impact of removing “film” as defined under s 5B CDPA from the current section 72 exception would:-

- (a) remove the current conflict with EU law;
- (b) avoid the need for recognition of a new class of copyright work linked to “film” which would need reconciliation across all the other provisions within the CDPA and linked Regulations; and
- (c) provide greater clarity on the extent of the exception, for those users to whom the s 72 exception might otherwise be relevant but who chose to work around the exception to avoid taking a licence.

**Question 2****What evidence is there for this? Please explain the impact and provide evidence on the costs and benefits.**

The BCC is not in a position to provide evidence of costs and benefits. We leave it to those of our members directly impacted by the legislation to do so. However, we would make the following comment.

The proposal to bring the provisions of s 72 in line with EU law will allow right holders to assert rights against those seeking to avoid payment of commercial subscriptions (see references in the Impact Assessment), using the current lack of compliance as justification for their approach.

In practice, it would be almost impossible for a licensee to distinguish between films included within a broadcast service that are “mere fixations” and those which included creative elements. In addition, as the Impact Assessment recognises, it is in most cases, already an infringement of copyright to show television broadcasts to the public without a commercial subscription, and as a result most public houses that show satellite television already hold commercial subscriptions.

**Question 3****Do you agree that removing film from the exception appropriately reflects the requirements of the relevant EU Directives and EU and UK court judgments?**

Yes. As the BCC said in its response to the 2015 Consultation on the proposed changes to s 72 and provisions relevant to films:-

*“EU law does not permit exceptions of the type currently applied under s 72 (1) in relation to creative works.”*

**Question 4****Do you agree that removing film strikes an appropriate balance between the needs of right holders and legitimate users of copyright works.**

Yes. The BCC thinks that removing film strikes an appropriate balance.

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**Questions 6 and 7 - Questions for right holders and licensors (including collecting societies)**

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**Question 6**

**Will you change the way you license your works as a result of this proposal? Please provide details of possible licensing structures including estimates for licence fees**

The BCC leaves it to those members directly involved in licensing their works to respond to this question.

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**Question 7**

**Will you change the way you enforce against such public communication of your work as a result of this proposal? Please provide details of the ways in which you would seek to protect your film content. Would this have an impact on the judicial system?**

The BCC leaves it to those members directly involved in licensing their rights to respond to this question.

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**Question 8**

**Is this the most appropriate way to achieve the desired objective?**

Within the wider context of the provisions of the CDPA the proposal to delete film entirely from the s 72(1) exception is welcomed by the BCC as the most appropriate way to achieve the desired objective.

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**Question 9**

**Do you agree that the approach taken in the draft regulations is consistent with the Government's approach?**

Insofar as the proposed Regulations seek to remove "film" entirely from the provisions of s 72 (1) CDPA, the approach taken in the draft Regulations is consistent with the Government's approach.

**Reference to "communication to the public" (as defined in s 20 CDPA)**

It is hoped that technical review of the draft will obviate the need for any reference being made in the new wording to all the elements of "communication to the public" (as defined in s 20 CPDA). S 20 already makes it clear that the CDPA recognises a broadcast is one of the methods by which a copyright broadcast may be communicated to the public.

This point might best be recognised within explanatory notes to the new Regulations rather than future questions being raised over intention if the full scope of the definition of "communication to the public" is included within the revised wording for s 72.

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**Question 10**

**Are there any additional consequences of this change that the Government should consider/be aware of?**

Yes, in relation to Performers' Rights.

The original consultation raised particular questions for the BCC's performer members in relation to s 72 CDPA which we covered in some detail in our response.<sup>1</sup>

If the technical issue of "communication to the public" (see above) is recognised, future review of the way in which the current wording of Schedule 2 paragraph 18 (addressing rights of performances fixed in films) will be required to ensure consistency with the revised scope of s 72 CDPA.

<sup>1</sup> [http://www.britishcopyright.org/files/2614/4430/2331/BCC\\_response\\_on\\_changes\\_to\\_S72\\_CDPA.pdf](http://www.britishcopyright.org/files/2614/4430/2331/BCC_response_on_changes_to_S72_CDPA.pdf)