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**BRITISH FILM INSTITUTE**

**Response to:**

# **A consultation 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)**

**October 2015**

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| Consultation title:A consultation 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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**Executive summary**

# The BFI welcomes the opportunity to comment on **the IPO’s** consultation 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).

1. Clarity on the scope and nature of the exception as proposed by the Government would ensure that both the BFI as an organisation and our stakeholders in the film sector are clear about what is and what is not covered by this exception.
2. Such a clarification would also ensure that UK law is consistent with both u Directives and judgements issued by the European Court of Justice.

**About the BFI**

In 2011 the BFI became the lead organisation for film in the UK. It is now a Government arm’s-length body and a distributor of Lottery funds for film.

Our mission is to ensure that film is central to our cultural life, in particular by supporting and nurturing the next generation of filmmakers and audiences. The BFI serves a public role which covers the cultural, creative and economic aspects of film in the UK.

It delivers this role:

* As the UK-wide organisation for film, a charity core-funded by government;
* By providing Lottery and government funds for film across the UK;
* By working with partners to advance the position of film in the UK.

In October 2012, the BFI published ‘Film Forever, Supporting UK Film 2012-2017’, which set out its strategy for the next five years, following an extensive industry consultation. It described the activities underpinning the BFI’s three strategic priorities:

* + Expanding education and learning opportunities and boosting audience choice across the UK;
  + Supporting the future success of British film; and
  + Unlocking film heritage for everyone in the UK to enjoy.

To that end, the BFI helps ensure that public policy supports film and, in particular, British film.

Founded in 1933, the BFI is a registered charity governed by Royal Charter. The BFI Board of Governors is chaired by Greg Dyke.

**Questions:**

**Part A: Clarifying that the exception in Section 72(1) applies only to producers’ rights in film fixations, and not to creative (or “cinematographic”) aspects of film**

1. What would be the impact of the proposal on your organisation, business or industry?

Clarity on nature of the exception would ensure that both the BFI as an organisation and our stakeholders in the film sector are clear about what is and what is not covered by this exception.

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

While we do not have material evidence about the impact of such a change, it is of course highly desirable to ensure that UK law is consistent with EU Directives and case law as reflected in judgements made by the European Court of Justice (ECJ) including C-403/08 Football Association Premier League Limited and Others v QC Leisure and Others (C-403/08) and Karen Murphy v Media Protection Services Ltd (C-429/08) as referenced in the consultation document.

1. Do you agree that this proposal appropriately reflects the requirements of the relevant EU Directives and EU and UK court judgments?

Yes, the BFI believes that clarifying the scope of the exception would be consistent with these Directives and court judgements.

1. Are there any alternative approaches that could be taken to clarify this area of legislation?

The BFI is not aware of any alternative approaches.

**Part B: Narrowing the scope of Section 72(1) so that it cannot be relied on by commercial premises seeking to show exclusive subscription broadcasts in public without an appropriate commercial viewing licence**

1. What would be the impact of the proposal on your organisation, business or industry?

Clarity on nature of the exception would ensure that both the BFI as an organisation and our stakeholders in the film sector are clear about what is and what is not covered by this exception.

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

Again, while we do not have material evidence about the impact of such a change, it is of course highly desirable to ensure that UK law is consistent with EU Directives and case law as reflected in judgements made by the ECJ

1. Do you agree that this proposal strikes an appropriate balance between the needs of right holders and users of copyright works?

Yes.

**Copyright Users**

1. Will the proposal affect whether you show broadcasts, either on free-to-air channels or via subscription?

N/A.

**Right Holders and Licensors (including Collecting Societies)**

1. 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.

N/A.

1. Will you change the way you enforce against such public communication of your works 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?

N/A.

**Part C: Views on other options.**

1. Do you have any views on the costs and/or benefits of any other options which you feel the Government should consider?

No.