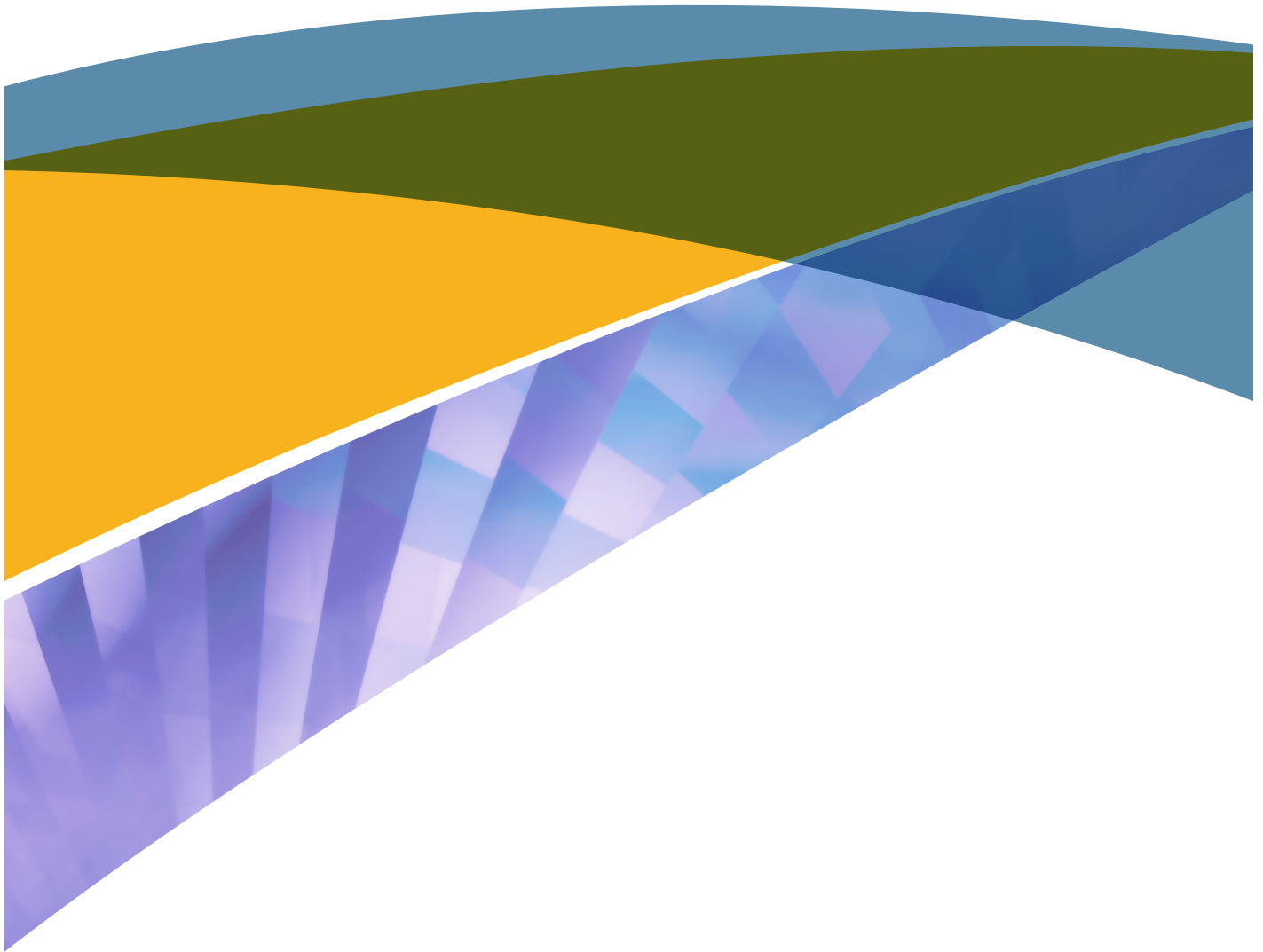




Intellectual
Property
Office

The Copyright, Designs and Patents Act 1988 (as amended)

A consultation on changes to the penalties for offences under sections 107(2A) and 198(1A) of the Copyright, Designs and Patents Act 1988 (Penalties for Online Copyright Infringement)





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Introduction

This consultation seeks views on equalising the maximum custodial sentence for online and physical copyright infringement at ten years, now that online infringement is so much more significant.

The current situation

Online copyright infringement is dealt with under s107(2A) (communicating works to the public in the course of a business or to an extent prejudicially affecting the copyright owner) and s198(1A) (infringing a performer's making available right in a recording in the course of a business or to an extent prejudicially affecting the owner of such right) of the Copyright Designs and Patent Act 1988. These offences are punishable by a maximum of two years imprisonment. By comparison, the maximum custodial sentence for infringement in respect of physical goods is ten years.

Feedback from enforcement agencies and prosecutors suggests that in certain circumstances, the Fraud Act and the common law offence of conspiracy to defraud are used where a custodial term of more than two years is sought. The copyright provisions for online offences were used only twice in 2013.

The need for change

The case for harmonising the maximum custodial sentence for physical and online copyright infringement goes back many years. The 2005 Gowers Review recommended that the penalty for online copyright infringement should be increased from two to ten years because, as it stated "The intention and impact of physical and online infringement are the same". The Government at the time consulted, but did not make the change due to its policy to only imprison serious and/or dangerous offenders. It did, however, increase the statutory maxima fine from £5,000 to £50,000. This has subsequently been made unlimited.

During the debate stages of the IP Bill in the House of Commons last year, the disparity between custodial sentences was raised once more and was matched by calls from stakeholders to change the law. In response the Government agreed to undertake an independent review of criminal sanctions for online and physical copyright infringement. The report, 'Penalty Fair?'¹, followed in March 2015 and stated that "Fundamentally, either online copyright offences are capable of causing serious harm, or they are not", alluding to the fact that online offences should be seen as no less serious than their physical counterparts. The Government agrees that online infringement is capable of causing serious harm.

The report also suggests that the vast majority of online copyright offenders have links to further criminality and seek to monetise their illicit activities online via advertising or subscription fees. The Government expects that increasing the maximum sentences available under the specific online copyright offence provisions would have a deterrent effect on criminals seeking to make money in this way. It will also provide real punitive action against those who continue to engage in criminal infringement.

¹ <https://www.gov.uk/government/publications/penalty-fair>

The report found that there is a case for increasing sanctions relating to online offences, and drew the following conclusions:

1. 'Custodial sentences in excess of two years have been used for physical copying offences. [Whilst] it is rare to have the maximum sentence applied to any such crime [it is] important to have the means by which to establish a scale of offending'.
2. 'There is logic to placing serious online copyright offences into a more serious category. The precedents within the IP landscape are either to leave offences outside the criminal justice system altogether (as in the case of patents) or to set a maximum offence on conviction of ten years. Fundamentally, either online copyright offences are capable of causing serious harm, or they are not.'

In addition to the conclusions in the report, there is a commitment in the Conservative election manifesto to;

‘... toughen sentencing and use new technology to protect the public’

It is also worth noting that a large proportion of criminal IP offences have a maximum custodial sentence of ten years, as evidenced by the introduction of ten year maximum sentences for criminal infringement of registered designs in 2014.

Aligning sanctions

There is no doubt that copyright infringement is serious and there is no strong case for treating online infringement any differently to physical infringement. The links to other criminal behaviour are clear; criminal gangs are making vast sums of money through exploiting the creations of others, causing real harm to those individuals, their industry and the wider economy.

The government believes that this change will send a clear message to rights holders and criminals that copyright infringement online will not be tolerated. This is furthermore supported by the Conservative manifesto commitment that sentencing should reflect the seriousness of the crime.

Consultation questions

Should the maximum custodial sentence available for online and offline copyright infringement of equal seriousness be harmonised at 10 years?

Please justify your answer and support with evidence where possible.

How to respond

The Government is seeking evidence that is open and transparent in its approach and methodology. Unsupported responses (e.g. “yes” or “no” answers) are unlikely to assist in forming a view. However, Government is aware that some individuals and small businesses and organisations face particular challenges in assembling evidence. Those contributions will be assessed accordingly. The Intellectual Property Office has published a guide to evidence for policy² which lays out the Government’s aspiration that evidence used to inform public policy is clear, verifiable and able to be peer-reviewed.

When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents (providing a link to a webpage that has the information would be ideal) and, where applicable, how the views of members were assembled. Similarly, if you as an individual have been encouraged to respond by an organisation, it would be useful to know which one.

Please make your responses as concise as possible, clearly marking the response with the question number.

You do not have to answer all of the questions, but we would welcome views on those issues of most interest or relevance to you. We are particularly interested in receiving evidence, including financial information where necessary.

Consultation responses can either be submitted electronically to enforcement@ipo.gov.uk or posted to the following address:

Copyright Infringement Consultation 2015
Copyright and Enforcement Directorate
Intellectual Property Office
Department for Business Innovation and Skills
Room 1Y05 Concept House
Cardiff Road
Newport
NP10 8QQ

E-mail: enforcement@ipo.gov.uk

Issued: 18 July 2015

Respond by: 17 August 2015

The contact details above may also be used to ask questions about policy issues raised in the document, or to obtain a copy of the consultation in another format.

This consultation document has been prepared by officials at the Intellectual Property Office. No decisions have yet been made by the Government on the proposed option and as such the document does not constitute official Government policy.

Who is being consulted?

Copies of this consultation document have been sent to the organisations listed in

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/388238/consult-2011-copyright-evidence.pdf

Annex C. Further copies, including large print and Braille versions, may be requested from the Intellectual Property Office (IPO) by contacting:

Copyright Infringement Consultation 2015
Copyright and Enforcement Directorate
Intellectual Property Office
Department for Business Innovation and Skills
Room 1Y05 Concept House
Cardiff Road
Newport
NP10 8QQ

E-mail: enforcement@ipo.gov.uk

Confidentiality & Data Protection

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data that you provide to us, to be treated as confidential, please be aware that, under the FOIA, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, in itself, be binding on the Department.

What happens next?

The Intellectual Property Office intends to publish individual responses and a summary of the responses to the consultation.

Comments or complaints on the conduct of this consultation

This consultation has been drawn up in line with the Government's Consultation Principles³.

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

Angela Rabess,
BIS Consultation Co-ordinator,
1 Victoria Street,
London
SW1H 0ET

Telephone Angela on 020 7215 1661

or e-mail to: angela.rabess@bis.gsi.gov.uk

³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/60937/Consultation-Principles.pdf

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Concept House
Cardiff Road
Newport
NP10 8QQ

Tel: 0300 300 2000

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DPS-002105/July15

