

LEGISLATIVE CONSENT MEMORANDUM

INTELLECTUAL PROPERTY BILL

Draft Legislative Consent Motion

1. The draft motion, which will be tabled by the Minister of Enterprise, Trade and Investment, is:

“That this Assembly agrees that the provisions in clause 13 of the Intellectual Property Bill, as introduced in the House of Lords on 9 May 2013, dealing with the offence of unauthorised copying etc. of design in the course of business, should be considered by the UK Parliament.”

Background

2. This memorandum has been laid before the Assembly by the Minister of Enterprise, Trade and Investment under Standing Order 42A (2). The Intellectual Property Bill was introduced in the House of Lords on 9 May 2013. The latest version of the Bill can be found at:

<http://www.publications.parliament.uk/pa/bills/lbill/2013-2014/0033/14033.pdf>

Summary of the Bill and its policy objectives

3. The purpose of the Bill is to modernise certain aspects of the law relating to intellectual property (“IP”), in order to ensure that the IP system operates more efficiently, is clearer and more accessible, thus increasing legal certainty. The Bill will achieve these objectives through amendments to a number of existing statutes affecting intellectual property principally the Registered Designs Act 1949.

Provision Dealing with a Devolution Matter

4. The Intellectual Property Bill will confer on the “relevant Northern Ireland Department” (in this case DETI) enforcement powers for two new offences involving the deliberate copying in the course of business of a registered design. These powers will be exercised by DETI’s Trading Standards Service if the Bill is enacted. This would involve a change in the Department’s functions under Assembly Standing Order 42A (10) such a change is a “devolution matter” and requires Assembly consent. The relevant provisions are in clause 13 of the Bill, which will insert four new sections into the Registered Designs Act 1949. The first of these, section 35ZA, will create two new offences related to the deliberate copying in the course of business of a registered design. The enforcement arrangements for these offences are set out in, section 35ZB, subsection 1. The remaining two sections deal with the forfeiture arrangements for infringing articles. (The subject of intellectual property is reserved to the UK Parliament, by virtue of paragraph 27 of Schedule 3 of The Northern Ireland Act 1998).

Reasons for making the Provisions

5. A new criminal offence for deliberate copying of a UK or EU Registered Design and a related offence of offering, importing etc. products incorporating such a design, will create an additional deterrent to the existing civil sanctions. These measures will align the regime for design protection more closely with that for copyright and trademark infringement. DETI already has enforcement responsibilities for the existing IP offences relating to trademark and copyright infringement that are carried out by the Trading Standards Service.

Reasons for Utilising the Bill rather than an Act of the Assembly

6. The provision is ancillary to provisions dealing with reserved matters and the use of a Legislative Consent Motion is the most effective vehicle to give the relevant Northern Ireland Department (DETI) enforcing powers in respect of the proposed new offence for deliberate copying of a registered design.

Consultation

7. Design owning businesses confirmed in their responses to the consultation that enforcing their rights can be very time consuming, costly and divert resources, which could otherwise be put towards business development. This can deter them from pursuing legitimate claims and can affect their willingness, or ability, to innovate. The majority of respondents to the consultation agreed with the introduction of criminal sanctions for the deliberate copying of a design. This included support from small businesses, independent designers and the IP legal profession. Respondents said it was rare to experience inadvertent copying and felt certain design infringement was both blatant and deliberate. It was felt criminal sanctions would level the playing field between small and large organisations.

Human Rights and Equality

8. No Convention rights are engaged and there are no differential impacts as regards equality and good relations. The regulatory change is not expected to have an impact on equality and diversity in relation to race, religion or belief, disability, sex, age, gender reassignment, pregnancy and maternity, or sexual orientation. There are no specific Northern Ireland circumstances that would lead us to expect any difference in terms of impact here

Financial Implications

9. The Department of Enterprise, Trade and investment considers that the Trading Standards Service will be able to take on the enforcement role of this new offence without the need for extra staffing resources any other costs will be negligible.

Summary of Regulatory Impact

10. An Impact Assessment (including Regulatory Impact) was prepared by the Department for Business, Innovation and Skills (BIS) for the Bill's provisions in respect of the UK. It concluded that the introduction of criminal sanctions would not impose any more legal or administrative costs for businesses trying to protect their design rights as businesses will not need to spend any more time than they do now understanding whether their actions might constitute infringement of an existing design registered. This knowledge is already necessary so as not to become a party to civil litigation, and the test for whether an action is or is not a criminal offence will still fall within the scope of existing civil infringement.

Engagement to date with the Committee for Enterprise, Trade and Investment

11. A letter providing the Committee with information on the intention to confer these enforcement powers on DETI and of the need for a legislative consent motion issued on 11 June 2013.

Conclusion

12. The view of the Minister of Enterprise, Trade and Investment is that it is important that enforcement powers be given to the “relevant Northern Ireland Department” (DETI) in respect of this offence so that businesses here will have the same level of protection as elsewhere in the UK. Therefore, it is recommended that the Assembly agrees to the Legislative Consent Motion in relation to the Intellectual Property Bill in terms of the draft at paragraph 1.

Department of Enterprise, Trade and Investment

2 September 2013