

From the Office of the Minister



Department of  
**Enterprise, Trade  
and Investment**  
www.detini.gov.uk

NETHERLEIGH  
MASSEY AVENUE  
BELFAST  
BT4 2JP  
Tel: 028 90 529452  
Fax: 028 90 529545

E Mail: private.office@detini.gov.uk  
Our Ref: **DETI COR 249/2013**

Patsy McGlone  
ETI Committee Chair  
Northern Ireland Assembly  
Room 375  
Parliament Buildings  
BELFAST  
BT4 3XX

11 June 2013

Dear Patsy

I wish to make the Committee aware that Viscount Younger of Leckie, Parliamentary Under Secretary of State for the Department for Business, Innovation and Skills has written to me on the subject of the enforcement by my Department of a proposed new offence for the deliberate copying of a registered design. As this enforcement role would mean a change to the functions of my Department a legislative consent motion will be required to be passed in the Assembly to allow this change.

A Registered Design is a means for businesses to protect their legal rights to the originality of their design relating to the visual appearance of a product or a part of a product. Unlike other forms of intellectual property there is no criminal offence for infringing the design rights of another. The owner of the design right can only take action in the civil courts. As design rights fall under the heading of intellectual property the responsibility for them is reserved to Westminster.

### **Background to the Proposed Change**

In 2011, the UK Government commissioned The Hargreaves Review of Intellectual Property and Growth. The review concluded that the system for protecting designs was difficult for businesses to understand and to use effectively.

Following on from the Hargreaves Review, the Intellectual Property Office (IPO) issued a call for evidence in September 2011, this was followed by a consultation in July 2012 on proposals to amend the system. Design owning businesses confirmed in their responses to the consultation that enforcing their rights can be very time consuming, costly and divert resources, which should otherwise be put towards business development. This can deter them from pursuing legitimate claims and can affect their willingness, or ability, to innovate.

To help make enforcement easier and less costly, various changes are being proposed to be taken forward in the Intellectual Property Bill introduced in the House of Commons on 10 May 2013. This proposed new offence is to be created by amending the Registered Designs Act 1949.

## **DETI's Current Role and Future Assessment**

DETI, through the Trading Standards Service, has responsibility for enforcement in Northern Ireland of offences under the Trade Marks Act 1994, for unauthorised use of a trademark, and for offences under the Copyright, Designs and Patents Act 1988 for infringing the rights of copyright holders. (In the case of offences under the Copyrights, Designs and Patents Act 1988 these offence provisions were added by Section 165 Criminal Justice and Public Order Act 1994, which was commenced in 2007). DETI's role under both the trademark and copyright legislation mirrors that of local authority trading standards departments in GB. Trading Standards Officers investigating offences under either of these statutes do so using the powers provided by the Trade Descriptions Act 1968.

The Trading Standards Service considers that should DETI agree take on this enforcement role, any enforcement activity in this area would not require any additional resources. This assessment is made on the basis of the enforcement activity involved in existing intellectual property legislation and also on the policy intention that this proposed criminal sanction would only be used in the most serious cases. The proposed role for DETI also mirrors that proposed for trading standards departments in GB.

## **Need For Legislative Consent**

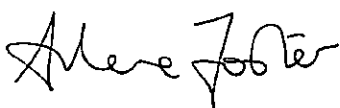
The GB Minister states in his letter that this proposed enforcement role for DETI will not require a Legislative Consent Motion in the Assembly. This view is based on the fact that the subject of intellectual property is reserved to Westminster. However, for my Department to take on this the role will mean a change to the functions of the Department and Assembly Standing Orders specifically Order 42A(10)(b)(iii) clearly states that a change to the functions of any department is to be considered a "devolution matter". Therefore, for the Department to take on this role a Legislative Consent Motion will have to be passed in the Assembly.

## **Decision**

Given that my Department already has enforcement responsibilities in relation to existing intellectual property offences under both the Trade Marks Act 1994 and The Copyright, Designs and Patents Act 1988, I consider that it would be appropriate that it should have the enforcement powers in relation to this proposed new offence for the deliberate copying of a registered design in Northern Ireland.

I have replied to Viscount Younger stating that it is my intention to take a Legislative Consent Motion through the Assembly to allow the Department to take on this new enforcement role.

Yours sincerely



**ARLENE FOSTER MLA**  
Minister of Enterprise, Trade and Investment