

Consultation on Reform of the UK Designs Legal Framework

Introduction

The Federation represents IP intensive companies in the United Kingdom - a list of members is attached. Our member companies are extensively involved with IP in Europe and internationally. Not only do our companies own considerable numbers of IP rights, but they are affected by the activities and IP rights of competitors. They may be either claimants or defendants in IP related court actions, here and elsewhere.

The consultation

On 24 July 2012 it was announced that the Intellectual Property Office (IPO) is making a number of proposals to make improvements to the designs legal framework following an earlier [call for evidence](#) and associated online survey. They are seeking relevant evidence on the potential for the proposed measures. The [consultation](#) is open until 2 October 2012.

IP Federation response

1. The Federation hereby responds to the *Consultation on the Reform of the UK Designs Legal Framework*. In this response, we focus on two issues previously raised by us in our papers [PP1/10](#) and [PP17/11](#) (attached for your convenience). These two issues are -
 - (A) criminal sanctions for registered design infringement,
 - (B) functional designs and unregistered design right.

(A) Criminal sanctions for registered design infringement

2. The Federation is greatly disturbed by the proposal in paragraph 10.10 to introduce criminal sanctions for “deliberate” infringement of UK and EU registered designs. Because the proposal does not extend to unregistered design rights, the latter will not be considered in more detail here; though the Federation would be opposed to criminal penalties for them too, as stated in the previous papers.
3. The Federation challenges the evidence (or the use of evidence) in paragraphs 10.4 and 10.6. But even if the evidence were sound, it would not, the Federation considers, justify the grossly disproportionate response of criminal penalties. The assertion that, if criminal sanctions were introduced, they would be little used (paragraph 10.7) does not reassure the Federation. The analogy with trade mark and copyright relied on is not sound. The public policy reasons for the existence of the latter rights, and the corresponding structure of the law, are quite different from those relating to registered design rights, which are more akin to patents; criminal penalties for patents are anathema to most informed commentators. As they would be with patents, criminal

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penalties for registered designs would be a recipe for abuse, restriction of competition, and injustice. The above points are elaborated in the following paragraphs.

4. In paragraph 10.4, reference 14 is relied on for the statement that “59 % of the firms surveyed had their designs copied, but only 32 % were able to act on this”. The actual numbers are 19 firms who had their designs copied, of which 10 took action, out of 32 firms who replied to a survey questionnaire sent to 281 firms, so the statistical significance can be questioned. But in any case the apparently intended implication - that something must therefore be wrong with the system - is unjustified. A mere statement by a respondent that a design has been “copied” does not mean that he has a legal cause of action, or that there would be a public policy interest in giving him one. The valid scope of a registered or unregistered design right depends on what is already known and used by the owner or by others, and the term of these rights is time-limited; in addition, any action depends on the nature of the thing that has been taken. The public has an interest in innovation outside the valid scope or after the term has ended. Many IP professionals would be surprised that such a high proportion (just over half) of lay clients alleging copying had a claim worth pursuing.
5. Reference 15 is relied on for a statement that a loss of ca. £ 165 M per year is suffered as a result of design infringement. The cited [web page](#), as of 25 September 2012 (annexed), does not carry this figure at all,¹ let alone any basis that could be challenged.
6. Paragraph 10.6 of the *Consultation* states:

“[We] are told that deliberate infringers of design often fail to take any notice of requests to cease ... and ... will often play the system by opening and closing companies to evade liability. ... An advantage of an action in a criminal court is said to be that it will lead to the offender having a personal criminal record ...” The Federation makes two points:

 - (i) Lacking any attribution, things “we are told” and “it is said” are quite inadequate to support any case for legislative action.
 - (ii) In the IPO’s Marks and Designs Forum, which might if cited have some evidential weight, more bodies have opposed than supported extension of criminal penalties for IP infringement beyond those currently in place.
7. But even if the evidence just discussed were sound and soundly applied, *i.e.* if material damage were being suffered by designers because of rogue infringers setting up new companies, criminalisation of deliberate registered design infringement is grossly disproportionate. Such rogues playing the system escape the consequences of committing other civil wrongs, such as not paying their bills and otherwise breaching contractual terms; but that is no justification for criminalising “deliberate” breach of contract - any solution must be sought in company law. Moreover, as will be demonstrated respectively in the

¹ Or any obvious link.

following two paragraphs, (a) the concept of “deliberate” infringement of a registered design is legally unsound and (b) it would lead to unintended damaging consequences for business generally.

8. Registered designs in practice are granted by the IPO and by OHIM with no examination for novelty. Therefore, it would be wrong for knowledge of a registered design to constitute basis for a subsequent assertion of deliberate infringement. It would be also wrong, when HMG and the EU have not seen fit to require IPO and OHIM to search, for the potential imitator to have to do novelty searches and to receive legal advice that he did not infringe before he could escape being “deliberate”. (And the potential imitator *would* have to take professional legal advice, for the law of registered designs is complex, with few “black and white” cases.) And what if the advice was, “The law is unclear”? The Federation cannot envisage any interpretation or re-definition of “deliberate” that would be just to third parties.
9. Challenging paragraph 10.7 of the Consultation, the Federation predicts that one or more of the following dysfunctions would arise from criminalising deliberate design infringement: -
 - (i) Any company wishing to enforce a registered design would receive the advice to notify the alleged infringer of the design, sending a copy, so as to ensure the infringement would thereafter allegedly be “deliberate”. This would give the company the option of intimidating the management of the alleged infringer (in most cases *not* a rogue) with the threat of criminal penalties.
 - (ii) Defendants subject to criminal action might settle rather than run even a remote risk of conviction (the fear of this is greater among honourable people than among rogues), despite the fact that the registration might well be invalid. This would leave the system clogged up with invalid and economically damaging designs to the detriment of all third parties and the consumer.
 - (iii) Companies, aware of the disproportionate power of registered designs once there were criminal sanctions, would file more registered design applications, including those of dubious validity. The effect of this might be to give business to the receiving sections of the IPO and OHIM, and in due course to litigation professionals, but it would be contrary to the public interest.
 - (iv) Companies who were thinking of imitating a competitor product might choose not to search for competitor registered designs, so as to avoid thereby becoming deliberate infringers at least until any infringement was detected. This would create a new source of conflict (had they not been inhibited from doing a search, they might have kept clear of the right or asked for a licence).
 - (v) Trading standards officers and juries would get involved in considering a difficult aspect of the law with few “black and white” cases (compare the comment of the Intellectual Property Bar Association, of which we have received a copy).

(B) Unregistered design right and functional designs

10. In Chapter 4 of the *Consultation*, the above matter is mentioned but not addressed explicitly. The Federation continues to urge that UK unregistered design right should cease to be able to protect technical improvements of low merit.² Section 213(3)(a) achieves this only in part (in relation to methods and principles of construction), as cases involving contact lenses and farm equipment have shown.³ The Federation suggests that a further subsection should be inserted, based on Section 1C(1) of the Registered Designs Act, as follows:

“[(*abis*)] features of appearance of a product which are solely dictated by a product’s technical function”.

This would -

- (i) reduce the anti-competitive effect of the present law within the UK market (protection of unworthy technical improvements);
- (ii) simplify the system by achieving a degree of harmonisation with the EU rights, both registered and unregistered as well as UK registered rights;
- (iii) eliminate the advantage which manufacturers elsewhere in the EU enjoy over UK manufacturers (the former qualify for the UK unregistered design right extending to functional items and can enforce it against those manufacturing to their designs in the UK, but they are exposed to no comparable risk if they manufacture to UK-originating designs in their own territory); and
- (iv) eliminate the incentive resulting from (iii) for UK manufacture to be offshored.

Conclusion

11. In the Federation’s view, criminal penalties for deliberate infringement of registered design rights are unjustified by evidence, and in any case could not be made to work without unintended bad consequences. The Federation encourages the remedying of law enacted in the CDPA 1988 (applying unregistered design right to functional designs) which has proved dysfunctional and which creates legal disharmony in the EU and indeed an unlevel playing field to the disadvantage of UK manufacturers.

IP Federation
1 October 2012

² In this respect, any view that second-tier patent rights in other countries have a similar effect which the UK would do well to imitate either by adopting such rights or by using unregistered design right instead is not generally supported by the facts. In France and in Germany (GRUR 2006, page 842), the inventive level for the second-tier patents is the same as for normal patents. This was formerly also the case in Belgium and the Netherlands, but in recent years they have abolished their second-tier system altogether.

³ *Ocular Sciences v Aspect Vision Care* [1997] RPC 289; *Farmers Build* [1999] RPC 461.

Annex:

Copy of www.acid.uk.com/acid-action.html as of 26 September 2012

ACID Action

ACID Action's work with government on IP issues – a snapshot

There are approximately 232,000 designers in the UK, 87% have less than 15 employees, 60% have less than 4 employees. The majority of small businesses cannot afford to take legal action if their designs are infringed.

The creative industries have grown twice as fast as the rest of the economy in recent years and account for 8.4% of GDP; an integral measure of economic activity in the UK. According to the [Design Council](#), design intensive companies outperformed the FTSE 100 by 200% over a ten-year period – there is every indication that this growth will continue. Every single aspect of the creative economy is underpinned by intellectual property, intellectual capital, knowhow and ideas – it is the lifeblood running through the veins of the future prosperity of a Creative Britain. In order to make it easier for creative people to build on their success it will be equally important to raise awareness about the protection, exploitation and commercialisation of IP. If we are entering what is said to be the most challenging economic period this century has experienced there will be many who will seek the fast track to market through IP theft. With the right kind of support, however, SME's in the Creative Industries could contribute to UK economic growth and provide certainty for jobs and employment in this sector.

ACID is proud to be an associate member of the [Alliance Against IP Theft](#) Providing a single voice for those who share an interest in preventing intellectual property theft in the UK. CEO Dids Macdonald was appointed Vice Chair in September 2011. ACID is also a member of IPAN ([Intellectual Property Awareness Network](#)) the Innovations Support Network and the [Parliamentary Group for Design and Innovation](#) ACID is part of the UK IPO CREATE group ([view Word document](#))

Good design, recognised as a market differentiator, doesn't happen by chance. It takes years to create a brand with a pedigree of creative excellence not only to lead on visual elements but on essential ingredients/components such as quality engineering, high specification raw materials, health, safety and environmental compliance and skilled craftsmanship. Talent alone will not be the route to design success, a huge investment is necessary to develop top quality designs and products to obtain and maintain a place as a market leader and innovator. Design leaders need and demand to maintain their market position without being threatened by look alikes and copies.

[Nick Kounoupias](#) from ACID Accredited law firm [DMHStallard](#) advises ACID as Chief Legal Counsel on IP issues including the latest [Calls for Evidence](#) issued by the UKIPO prior to a full consultation in 2012.

IP Federation members 2012

The IP Federation represents the views of UK industry in both IPR policy and practice matters within the EU, the UK and internationally. Its membership comprises the innovative and influential companies listed below. Its Council also includes representatives of the CBI, and its meetings are attended by IP specialists from three leading law firms. It is listed on the joint Transparency Register of the European Parliament and the Commission with identity No. 83549331760-12.

AGCO Ltd
ARM Ltd
AstraZeneca plc
Babcock International Ltd
BAE Systems plc
BP p.l.c.
British Telecommunications plc
British-American Tobacco Co Ltd
BTG plc
Caterpillar U.K. Ltd
Delphi Corp.
Dyson Technology Ltd
Eli Lilly & Co Ltd
ExxonMobil Chemical Europe Inc
Ford of Europe
Fujitsu Services Ltd
GE Healthcare
GKN plc
GlaxoSmithKline plc
Hewlett-Packard Ltd
IBM UK Ltd
Infineum UK Ltd
Merck Sharp & Dohme Ltd
Microsoft Limited
Nokia UK Ltd
Nucletron Ltd
Pfizer Ltd
Philips Electronics UK Ltd
Pilkington Group Ltd
Procter & Gamble Ltd
Rolls-Royce plc
Shell International Ltd
Smith & Nephew
Syngenta Ltd
The Linde Group
UCB Pharma plc
Unilever plc
Vectura Limited

FEDERATION response to UK-IPO informal paper re DESIGNS

1. The Federation notes the discussion paper on designs.
2. For the Federation, three main issues arise:
 - (a) the close overlap between UK and EU registered designs;
 - (b) the lack of precise overlap between UK and EU unregistered design rights; and
 - (c) the possibility of introducing criminal penalties for infringement of registered and unregistered design rights.
3. The Federation's views on these are as follows:-
 - (a) **the close overlap between UK and EU registered designs**
4. We note that relatively few UK registered design applications are made, and these mostly by unrepresented SMEs. Larger companies tend to use the Community system. The Federation represents primarily larger companies. Nevertheless, the Federation believes that careful consideration of the interests of SMEs should precede any abolition of the UK system.
 - (b1) **the lack of precise overlap between UK and EU unregistered design right - first, in relation to what is protectable**
5. The EU unregistered design right, like the EU and UK *registered* designs, "shall not subsist in features of appearance of a product which are solely dictated by its technical function" (Council Regulation 6/2002/EC, Article 8; Registered Designs Act 1949, as amended, Section 1C (1)). The UK unregistered design right is not so limited, and therefore covers designs for items which are technically functional, such as aircraft wings, tools, and engines. Its protection includes designs which have little or no inventive merit. The Federation has long opposed second-tier patent rights offering protection to inventions which have lower inventive merit than those covered by normal patents; these, if introduced, would have rewarded the originator disproportionately relative to his contribution to the art. The same objection applies to unregistered design right subsisting in technically functional features.
6. Therefore, the Federation recommends that the UK unregistered design right should be brought into line with the other three rights, by excluding protection of features of appearance which are solely dictated by the product's technical function.
 - (b2) **the lack of precise overlap between UK and EU unregistered design right - secondly, in relation to term**
7. The UK right lasts very considerably longer than the EU right. Insofar as the right should in the Federation's view exist (*i.e.* subject to an exclusion as proposed in paragraph



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6), the UK term does not seem to be disproportionate, and the system does act as a useful backup to registration, especially for UK SMEs. Clearly, the effect of the discrepancy is in principle to divide the common market within the EU, but the Federation is not aware of this discrepancy's having caused any problems.

(c) the possibility of introducing criminal penalties for infringement of registered and unregistered designs

8. Criminal penalties are appropriate when some one pirates a CD including the packaging or counterfeits branded clothing, for instance. However, infringement of registered or unregistered designs of itself does not imply counterfeiting or piracy. Analogies with continental jurisdictions on criminal penalties are misleading; some unlike UK have criminal penalties on patent infringement, but the consequences are not what they would be in the aggressive UK system of litigation. With disparate criminal régimes, harmonisation on paper within IP statutes does not mean harmonisation in practice in the Courts.

9. The Federation therefore opposes the introduction of criminal penalties for infringement of design rights, whether registered or unregistered.

March 2010

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Implementing the Hargreaves review – call for evidence in relation to the design sector

Introduction

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The consultation

The IPO is interested in seeing any research which has a bearing on the design system in the UK and relevant international comparisons. They are inviting anyone with an interest in design and the design industries to consider the questions below, and provide answers, suggestions and thoughts where possible. The [consultation](#) is open until **11 November 2011**.

IP Federation response

Design contributes in many important ways to the UK economy and the UK boasts some of the world's best designers across a range of industries. This success is often not underpinned by formal protection of designs via design registration. Thus the IP Federation is fully supportive of any measures that can do more to support UK design innovation, and has recently made submissions on the following topics:

[Response To IPO Informal Paper re Designs](#)

Policy paper PP 1/10 **Dated:** 22 March 2010

UK Design rights: registered and unregistered right

[Unintentional infringement of UK and Community designs](#)

Policy paper PP 6/11 **Dated:** 21 March 2011

Response to IPO public consultation about equalisation of remedies for unintentional design infringement launched on 1 December 2010

Our response to the specific questions is as follows.

Do you register your designs in the EU or the UK?

- 1.1) If you protect designs by registering them at OHIM, or with the IPO, what criteria did you use to choose where to register, and what influenced your choice?

Many of our members are multinational organisations so it makes sense for them to file as broadly as possible at the lowest possible expense. The Community design offers an option to register in all countries of the EU under a single registration for

a low cost. This also means that renewal of any registration will similarly be of low cost.

Most would only file at the IPO as a way of obtaining a priority date (it is easier to obtain priority documents from the IPO to use for foreign filings) or for obtaining protection in those overseas countries which grant rights on the basis of a corresponding UK right.

However, on occasion, applications for design registration might be filed in both EU and UK.

1.2) Why do you protect your designs? What are the advantages/disadvantages and costs you face?

Our members protect their designs to deter copying and make enforcement easier compared with unregistered designs.

Many of our members register designs for package shapes. The registrations act as a deterrent for any would be copiers of these packs and often fill in the gaps where trade mark or patent protection might be deficient.

1.3) Do you protect all of your designs via registration, or just a proportion, and why?

Many of our members like to have the comfort of a registration certificate which shows a number and date (it also helps for licensing and assignment purposes). They would therefore always tend to apply to register the design of a new product if at all possible.

However, each new product may contain several different "designs" and our members may generate new designs which are in some cases only incremental changes from their predecessors. Protecting all would often not represent value for money, where it is not possible to take advantage of the EU multiple design provisions.

1.4) Would electronic filing of applications encourage you to file more in the UK?

It would help our members when they file UK applications, but is unlikely to encourage them to file any more than they currently do.

If you do not register your designs, why not?

2.1) Do you rely on unregistered design rights at EU or UK level? If so, why?

Our members sometimes rely on them when they find they are being copied, but prefer the comfort of a registration certificate.

2.2) Do you rely on copyright or other IP rights, such as patents, to protect your designs? If so, please explain what you protect with each right and your reasons.

Our members almost always rely on patents to protect new products. Patents are often applicable to several generations or ranges of products, offsetting the higher cost of obtaining protection. On the other hand, designs, being narrower, are likelier to be valid and cost less to enforce. Our members also rely on copyright in computer software, and in surface decorations and screen displays. Such protection costs nothing to obtain, although is more expensive to litigate than a design.

2.3) Do you use trade marks to protect elements of your design? If so, please detail what you protect with trade marks and your reasons.

If they can obtain trade mark protection for an element of the design (such as a logo or an aspect of packaging) then this would be the preferred route of protection for many of our members. Registered designs would only be used for those elements that they could not protect by way of another IP right.

- 2.4) Do you use private registration services such as those provided by "ACID"? If so, what are the advantages/disadvantages and costs you face?

Our members tend to have their own intellectual property departments, and do not use private registration services such as those provided by ACID (Anti Copying in Design).

- 2.5) To what extent is the IP framework for designs appropriate/relevant to your business?

It is appropriate and relevant to our members, but may come further down their list of preferred IP rights after patents and trade marks.

- 2.6) What would make the intellectual property right framework for designs more useful?

Knowledge of designs rights would make it more useful - outside of IP practitioners, very few know or understand what designs are about.

- 2.7) Do you think there would be any value in the UK joining the Hague system, especially as coverage for the UK is provided through the EU's membership? What would you see as the benefits/costs?

No. An international registration is a "nice to have", especially for multinational organisations like many of our members, where they could make even more cost savings. However, they have lived without it so far and, as it is already available via an EU registration, it might even add a further layer of complexity in an already confusing design world.

Is the legal system too complex?

- 3.1) How would you rate the complexity of the design right system as a whole, including both UK and OHIM registered and unregistered rights? Manageable, fairly manageable, hard to grasp, very hard to grasp? [Choose one]

It is very hard to grasp. The legal complexity of the design system as a whole is confusing and hard even for advisors to handle on occasions. An area of especial concern is the applicability of rights to functional designs, so as to operate rather similarly to utility models (to which the Federation is opposed). For instance, the Federation is concerned by the implications for engineering companies of the cases which decided that UK unregistered design right applied to purely functional, non-aesthetic design features of: (i) contact lenses (the features being in that case invisible to the naked eye), and (ii) farming machinery (the features being internal and for that reason being usually concealed): *Ocular Sciences v. Aspect Vision Care* [1997] RPC 289 and *Farmers Build* [1999] RPC 461.

- 3.2) If you think the design right system needs to be simplified, how do you suggest the system is simplified and why? What would change as a result?

In addition to copyright, there are currently four systems covering designs:

- registered and unregistered designs, in both
- the UK and the EU.

There are limited options for simplification, however. The Community rights cannot be changed unilaterally. Nor can the Hague system. Only the UK rights could be simplified. Simplification by abolition of UK rights would reduce the protection available. Simplification by harmonisation of UK rights with EU rights would increase the coherence of the system without loss of protection (save in the area of functional designs).

3.3) Would increasing the deferment period make it easier to use design registration in conjunction with other rights?

No.

3.4) If you are aware of any education/outreach activities which the IPO carries out in relation to designs, what improvements could be made to them?

No. With the possible exception of the IP Awareness Network, we do not know the details of such activities.

Enforcement of design rights

4.1) Have you ever had a letter(s) sent out to inform someone that they are infringing your design? If so, what was the result?

Our members send such letters on occasions, but it is often tied into a matter where there is also an infringement of another IP right, such as a trade mark.

4.2) Have you ever received a letter(s) informing you of your infringement of someone else's design? If so, what was the result?

Our members have occasionally received such letters. They would prefer to conclude the matter through an agreement.

4.3) Have you ever been through any legal actions, e.g. through the courts or through the IPO's tribunal (as either the claimant or defendant) regarding enforcing the protection of any type of design right? If so what were the financial and non-financial costs/benefits? How long did it take?

Our members are occasionally involved in such legal actions. Outcomes and costs vary widely.

4.4) How many enforcement actions with a value of £5000+ have you taken in the last 3 years?

We leave this question to individual company respondents.

4.5) How many enforcement actions with a value of under £5000 have you taken in the last 3 years?

We leave this question to individual company respondents.

4.6) If you thought your design was being infringed but didn't take action, why not?

Our members would usually take action. The usual reason for not doing so would be that the cost/benefit analysis does not favour action.

- 4.7) If you think there are other areas of IP law or other laws, e.g. unfair competition, which may need to be changed, how do you suggest the law is changed and why? What would improve as a result?

In addition to copyright, other areas of law which are used in European countries to protect designs are:

- Trade marks
- Passing off
- Unfair competition
- Utility Models

The Federation is opposed to second-tier patent rights such as utility models. See for example our policy paper [1/10](#):

The Federation has long opposed second-tier patent rights offering protection to inventions which have lower inventive merit than those covered by normal patents; these, if introduced, would have rewarded the originator disproportionately relative to his contribution to the art. The same objection applies to unregistered design right subsisting in technically functional features.

See also our policy paper [2/10](#) on the trade mark system in Europe.

A review of unfair competition law could be performed, dealing with designs as well. Any regulation of designs via unfair competition laws should be made explicit in the statute. However, we are not convinced that it will benefit the protection of designs if another layer of complexity is placed on top of the already complex design laws.

- 4.8) Could the IPO provide additional services that would help make designs more enforceable? If so, what might they be and how much would you be willing to pay?

The IPO could offer services that might make designs more enforceable:

- search and examination of designs after grant and before enforcement; or
- Design Opinion Service (based on that already offered for patents by the IPO).

Revival of the examination service before grant would also help. Cost is difficult to determine as it will necessitate more staff to handle the extra work (and will inevitably slow registration down).

Clearing designs is still difficult. In this age of facial recognition and fingerprint recognition, search facilities appear to have improved in all walks of life, apart from in the field of registered designs. It is currently difficult to know what rights anyone is likely to have as there is no capability to check or search for them.

Standardisation of representations of designs might make this easier. It ought to be possible to place all designs on a simplified register at a very low cost.

- 4.9) Subject to establishing the value for money case, the Government will introduce a small claims track in the Patents County Court. What evidence can you point us to that supports or challenges this in respect of designs?

Any idea that makes enforcement more affordable and quicker must be welcomed. If they are introduced, it would be desirable for the law to be simplified consider-

ably, to reduce the number of complex legal issues that must be addressed by the tribunal.

4.10) Do you have any other suggestions for improvement in the design enforcement area? Please provide evidence of their likely impact.

A review of the law by a judge-led panel is desirable.

4.11) What could be done to make it more cost effective for SMEs to enforce their rights?

Access to the court system at lower cost is desirable. The PCC rules have gone some way to facilitate litigation, by introducing a costs cap at £50 000. That is still much higher than the IPO cost cap.

4.12) What do you think are the main barriers to enforcing your registered design right?

The main barriers are:

- the narrowness of protection; and
- knowing if the right you have is indeed valid and enforceable.

4.13) What benefits would you expect from the inclusion of designs in the Digital Copyright Exchange (DCE) proposed in the [Hargreaves Review](#) of Intellectual Property and suggested as a possible mechanism in helping creators to market and protect their designs?

This may simplify licensing for those who wish for widespread licensed use by others of their designs.

4.14) Is it too easy or too difficult to protect designs? Please provide examples or case studies to illustrate your response.

It is easy to register a UK design, but the resultant protection is often not useful. The application system itself is quite simple. Difficulties arise when you only want to protect parts of an article and only have an illustration of a complete article. Protection focusing on the wrong thing is all too easy.

Design rights, investment and incentives for innovation

5.1) To what extent has your organisation:

- Introduced a new or significantly improved product (good or service) or process for making or supplying them. (Exclude cosmetic differences such as colour changes.)
- Tried to do so but failed.
- Spent money on research and development and/or external knowledge or machinery and equipment to introduce a new or significantly improved product or service

Our members have frequently introduced new or significantly improved products or processes. We are not aware of any instances of where they have tried to do so but failed. They have frequently spent money on research and development and external knowledge or machinery and equipment to achieve this.

5.2) Did design rights play a part in your decisions to do or not do any of the above? Please explain your reasons

No. We are not aware of any instances of this.

5.3) Is there a change to the design system that would lead you to invest more in these activities? How much more would you expect to spend, as % of turnover? What would the impact on others be?

No.

Conclusion

The members of the IP Federation fully support any measures which will encourage UK design innovation by the protection of designs and harmonisation of UK rights with other rights to increase the coherence of the system without loss of protection (save in the area of functional designs). We are particularly in favour of:

- a review of the law by a judge-led panel; and
- improved search facilities for registered designs.

IP Federation
11 November 2011

IP Federation members 2011

The IP Federation represents the views of UK industry in both IPR policy and practice matters within the EU, the UK and internationally. Its membership comprises the innovative and influential companies listed below. Its Council also includes representatives of the CBI, and its meetings are attended by IP specialists from three leading law firms. It is listed on the joint Transparency Register of the European Parliament and the Commission with identity No. 83549331760-12.

ARM Ltd
AstraZeneca plc
Babcock International Ltd
BAE Systems plc
BP p.l.c.
British Telecommunications plc
British-American Tobacco Co Ltd
BTG plc
Caterpillar U.K. Ltd
Delphi Corp.
Dyson Technology Ltd
Eli Lilly & Co Ltd
ExxonMobil Chemical Europe Inc
Ford of Europe
Fujitsu Services Ltd
GE Healthcare
GKN plc
GlaxoSmithKline plc
Hewlett-Packard Ltd
IBM UK Ltd
Infineum UK Ltd
Merck Sharp & Dohme Ltd
Microsoft Limited
Nokia UK Ltd
Nucletron Ltd
Pfizer Ltd
Philips Electronics UK Ltd
Pilkington Group Ltd
Procter & Gamble Ltd
QinetiQ Ltd
Rolls-Royce plc
Shell International Ltd
Smith & Nephew
Syngenta Ltd
The Linde Group
UCB Pharma plc
Unilever plc