



Designing the Future

Following the UK's departure from the EU, holders of rights in designs have been busy ensuring continuity of rights and strategies for navigating the new scope of rights in the UK and the EU. As the dust settles from this flurry of activity, the future of design legislation in the EU is taking shape and the IP Federation has been active in presenting the view of UK industry.

For registered Community designs that were registered prior to the 1 January 2021, our members welcomed the smooth duplication of rights by the UK IPO in the form of the UK re-registered designs. For those registered Community designs which were still pending (and/or unpublished) on 1 January 2021, proprietors were faced with the choice of losing protection or registering them in the UK prior to the deadline of the end of September. Moreover, from the 1 January, designers are faced with the extra cost of registering protection in the UK in addition to the EU for all new designs.

Unregistered Community designs which were automatically protected in the UK prior to the 1 January 2021 continue to enjoy protection in the UK by means of the UK continuing unregistered design. For new designs, designers are faced with the choice of pursuing protection in the UK or the EU. The UK supplementary unregistered design arises from disclosures first made in the UK whereas unregistered Community designs arise from disclosures first made in the EU. It is possible that simultaneous disclosure in the UK and EU will give rise to both rights but this is an area of law that has yet to be clarified and causes uncertainty for designers.

So far there appear to be few issues with the new rights created post 1 January 2021 but some of the consequences (such as the issue of simultaneous disclosure discussed above) may not become apparent for several years.

Meanwhile, the EU commission has been busy reviewing the legislative framework for EU designs and the IP Federation has responded to both the Inception Impact Assessment and the more recent public consultation. One of the main points emphasized by the IP Federation was that on very many measures, the EU design regime has been an unqualified success since its relatively recent inception. Thus the IP Federation believes that any changes to the regime to achieve the proposed objectives should, where possible, be achieved by improved guidance and cooperation between the offices rather than legislative interventions. This is particularly the case where the Commission is attempting to remedy an apparent perceived unclarity in the existing legislation as to what can be protected as a design.

The IP Federation was supportive of legislative changes proposed to broaden the scope of design rights conferred to better fight against counterfeit goods. We also supported further harmonisation of national law in so far as this relates to introducing a repair clause into the Directive to complete the single market for spare parts.

As regards clarifying the interlink between design and copyright protection, the IP Federation has advocated for ensuring a demarcation between design rights and copyright to, for example, avoid copyright extending to technical subject matter. The design regime includes important safeguards to ensure that advances in technical function are excluded (and therefore remain in the purview of

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patent law with all of its requirements, such as those of novelty and inventive step). Such safeguards are not necessarily explicit in copyright legislation and recent evolution of EU copyright law has led to questions over whether subject matter that was intended to be protected by unregistered Community designs would necessarily already be protected by the much longer-lasting copyright.

The IP Federation has voiced its support for other measures that will clearly enhance the ease of use and reduce user's costs. These include streamlining and simplifying procedures to facilitate the simple filing of all design types, including in multiple form, and the adjustment of fee structures. This is also the case for the proposals regarding enhanced interoperability of design protection systems in the EU.

In all of its submissions, the IP Federation has been keen to reiterate its opposition to any changes that would lead to protection of technical function by designs.

Looking forward to 2022, we anticipate the draft legislation from the Commission regarding the proposed changes to EU design law and will look for further opportunities to present the views of UK industry on the proposals. Moreover we anticipate that the UK IPO will begin to look at the evolution of the UK designs regime and the IP Federation hopes to be a key partner in designing the future.

Danny Keenan, Copyright and Design Committee Chair