



INTELLECTUAL  
PROPERTY OFFICE

# Call for Evidence Design

Intellectual Property Office is an operating name of the Patent Office



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The UK boasts some of the world's best designers across a range of both expected and unexpected industries

# Introduction

Design contributes in many important ways to the UK economy; in fact £33.5 billion was invested in design in 2008, which is 2.4% of GDP. There is however a question around whether the government can do more to support UK design innovation. The UK boasts some of the world's best designers across a range of both expected and unexpected industries, from fashion to automotive, furniture to high tech, food products to engineering. It also seems to be the case that this success is often not underpinned by formal protection of designs via design registration, for example. So we must ask ourselves, why is this the case? What is the current intellectual property (IP) framework doing, or not doing, for designers? What changes to this framework might be needed? A combination of the response to this Call for Evidence, an associated online survey aimed at businesses and designers, and economic evidence will aim to provide answers and inform policy making in this area. In particular, the responses will help shape proposals to improve the UK design system which will be set out in a formal consultation on the UK design system, due to take place by summer 2012.

# Call for Evidence

The IPO is interested in seeing any research which has a bearing on the design system in the UK and relevant international comparisons. We would also invite anyone with an interest in design and the design industries to consider the questions below, and provide answers, suggestions and thoughts where possible.

IPO will give the greatest weight to evidence that is open and transparent in its approach and methodology. That generally means a clear description of the methods and assumptions used in the work, ideally access to the underlying data, and an element of peer review. We are conscious that smaller businesses and organisations (including individuals) face particular challenges in assembling evidence and we will assess their contributions sympathetically in line with these principles. However, if you are a small business and don't have the resources to respond substantively to this Call for Evidence, you may prefer instead to respond to our online survey at [www.ipo.gov.uk/hargreaves.htm](http://www.ipo.gov.uk/hargreaves.htm).

## 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?
- 1.2) Why do you protect your designs? What are the advantages/disadvantages and costs you face?
- 1.3) Do you protect all of your designs via registration, or just a proportion, and why?
- 1.4) Would electronic filing of applications encourage you to file more in the UK?

## 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?
- 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.
- 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.
- 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?
- 2.5) To what extent is the IP framework for designs appropriate/relevant to your business?
- 2.6) What would make the intellectual property right framework for designs more useful?
- 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?

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

## 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?
- 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?
- 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?
- 4.4) How many enforcement actions with a value of £5000+ have you taken in the last 3 years?
- 4.5) How many enforcement actions with a value of under £5000 have you taken in the last 3 years?
- 4.6) If you thought your design was being infringed but didn't take action, why not?



- 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?
- 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?
- 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?
- 4.10) Do you have any other suggestions for improvement in the design enforcement area? Please provide evidence of their likely impact.
- 4.11) What could be done to make it more cost effective for SMEs to enforce their rights?
- 4.12) What do you think are the main barriers to enforcing your registered design right?
- 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?
- 4.14) Is it too easy or too difficult to protect designs? Please provide examples or case studies to illustrate your response

## 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.

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

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?

# Background

## Digital Opportunity - A review of Intellectual Property and Growth

Professor Ian Hargreaves recently conducted an independent review of intellectual property and growth known as the “[Hargreaves Review](#)”. He found that:

*“design has an important contribution to make to growth, and it is unsatisfactory that we start from such a low base of understanding in considering how best to optimise the IP framework to support this growth”. And that “Knowledge of the relationship between design rights, and innovation and growth, is inadequate to draw wider conclusions about the implications of these difficulties for growth or for improvements in design rights and enforcement.”*

His recommendation is below.

The role of IP in supporting this important branch of the creative economy has been neglected. In the next 12 months, the IPO should conduct an evidence based assessment of the relationship between design rights and innovation, with a view to establishing a firmer basis for evaluating policy at the UK and European level. The assessment should include exploration with design interests of whether access to the proposed Digital Copyright Exchange would help creators protect and market their designs and help users better achieve legally compliant access to designs.

The Government, in its [response to the Hargreaves Review](#), acknowledged the limited evidence available on the impact of design right and recognised that the UK design rights system may not be meeting the needs of business. It made several commitments, which this Call for Evidence will help to meet.

IPO has commissioned research on the relative levels of design registration in the UK compared to France and Germany, and whether the UK's lower level of registration has any impact on the UK's competitiveness. This research will be published later this summer.

IPO will consider whether this provides a sufficient assessment of the Review's presumed relationship between design rights and innovation. If not, IPO will commission further research, with conclusions to be reached by the end of 2011.

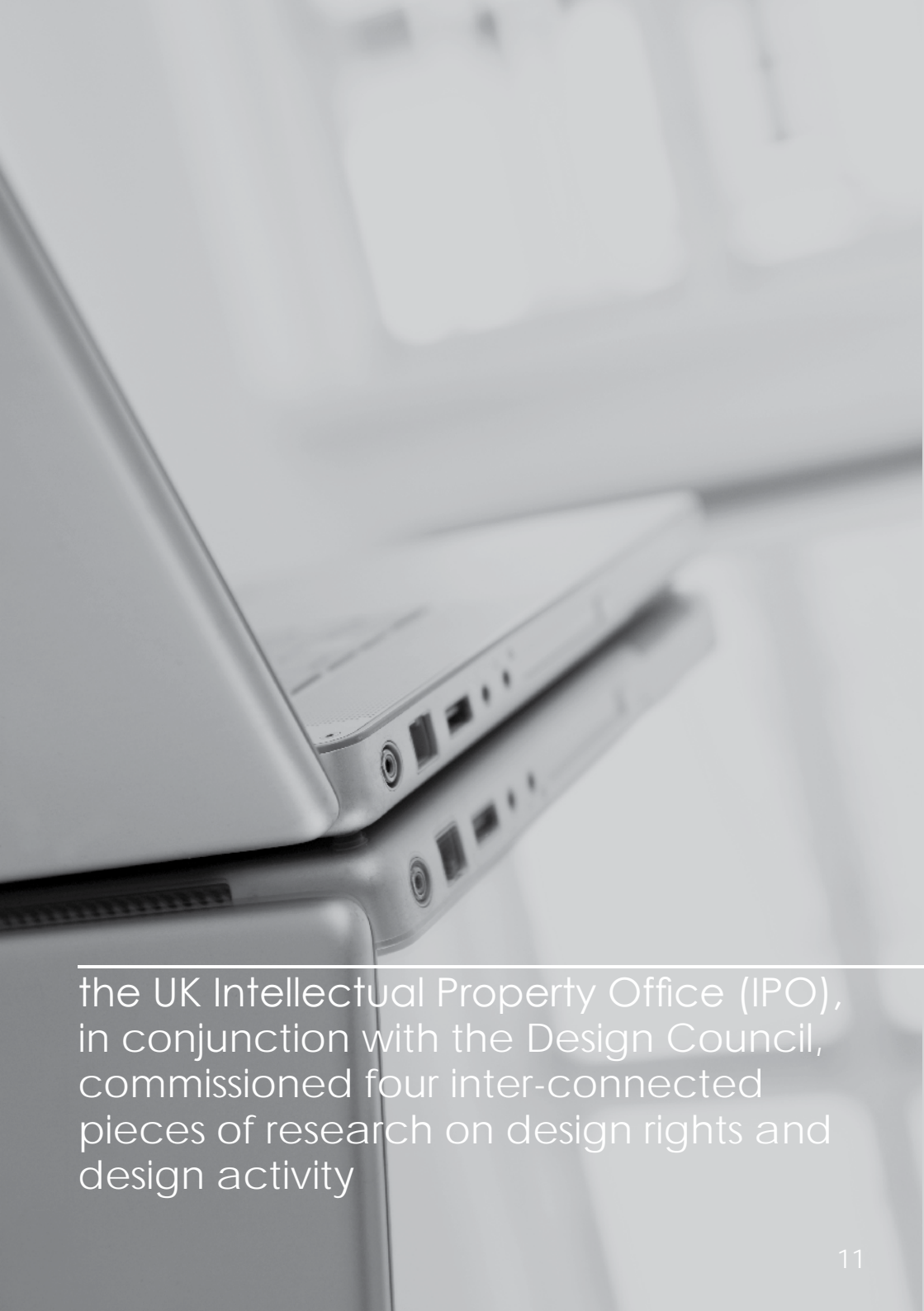
IPO will by the end of 2011 publish its assessment of the case for simplification of the design right system, and in particular whether there is a need for a UK unregistered design right alongside the EU right.

The possible inclusion of design rights (particularly unregistered designs) in the Digital Copyright Exchange or equivalent will be built into work on the Exchange from the beginning.

## Current Research

As stated in the [Government's response](#), the UK Intellectual Property Office (IPO), in conjunction with the Design Council, commissioned four inter-connected pieces of research on design rights and design activity.

- [Chapter One](#) provides a map of where design activity takes place in the UK, how it is purchased (bought externally or created internally) and how registered rights are used.
- [Chapter Two](#) analyses the impact registered design rights have on business performance, given a UK or EU design registration.
- [Chapter Three](#) is a survey, and case studies, looking at the reasons for the behaviour of firms when interacting (or not as the case may be) with the IP framework for design.
- [Chapter Four](#) is an international comparison of design systems in the UK, France and Germany.



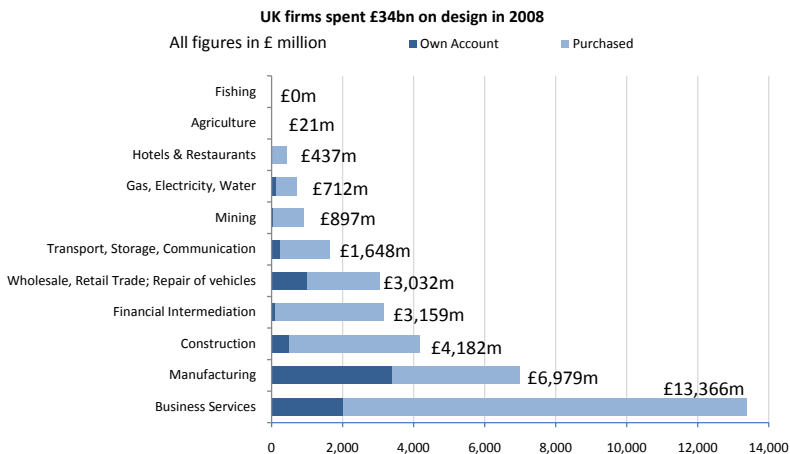
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## Key Findings of Chapter One

This paper was written by Jonathan Haskel and Annarosa Pesole of Imperial College. They discovered that in 2008, UK private sector firms purchased about £26bn worth of architectural, engineering, graphic and product design services, but produced about another £7.5bn worth in house, as shown in figure one. The most intensive spenders on design are business services, manufacturing, and construction accounting for 39%, 20% and 12% of all design spending.

Figure One



Only 15% of firms report registering an industrial design. On average, firms report that design gives benefits for around 4 years. Firms who do own-account design report a significantly longer benefit time than firms who purchase.

## Key Finding of Chapter Two

This paper was written by Bruce Tether and Elif Bascavusoglu-Moreau of Imperial College. This study examines whether there is any performance impact associated with holding designs registered in the UK or in Europe. The answer is a cautious “there was, but ...”

The strongest evidence for a performance benefit was found for holding designs registered in the UK Intellectual Property Office in the late 1990s and early 2000s. In most of the years studied between 1997 and 2005 there was a significant performance premium associated with holding designs registered in the UK. The magnitude of this effect varied, but was averaged around 17%. However, this effect did not continue into the late 2000s, when the study found that holding UK-IPO registered designs was associated with underperformance .

There is more limited evidence of a performance benefit associated with holding European design rights, especially in the mid-2000s. However, in more recent years no significant performance benefit is apparent for holders of registered (European) Community Designs.

## Key Findings of Chapter Three

This paper was written by James Moultrie and Finbarr Livesey. This study which is a pilot study, with a sample of 32 companies and ten design agencies, seeks to understand how design rights (and specifically registered designs) are used, and what benefits firms gain from owning them. There was a very strong feeling amongst all respondents that the design of the product does matter for differentiation against competitors. This would suggest that design registrations might be important for commercial success. However, despite the perceived importance of design to competition, relatively few firms (41%) own a registered design. In technology based firms, this is especially low (11%).

Respondents are aware of the existence of design rights (registered and unregistered), but this awareness does not translate into knowledge about what is protected and for how long, or the process and cost of protection. Knowledge and awareness is higher amongst 'design intensive' firms than 'technology based firms'. Surprisingly, there appears to be generally low awareness and usage of design registrations amongst the design consultancy sector.

A very high proportion of respondents had personal experience of designs being copied (59%), but only a few of these claimed to be more likely to register a design as a result (only four firms, or 21% of those that had experience of being copied).

There is strong evidence from the firms, and specifically 'design intensive' firms that registered designs are difficult to defend. Very few of the firms that had experienced designs being copied took successful action in defending against this copying.

Amongst 'technology based' firms, the main reason for not protecting their designs was that they 'just had not considered it'. Procedural issues such as cost, time or complexity of registering did not appear to be strong disincentives for registering a design amongst any of the firms. Some firms however noted that it is increasingly sensible to register through the EU, for the immediate benefits of wider coverage, despite a marginally higher cost. Given this trend, the UK IPO could provide a portal to enable registration internationally as an alternative or addition to providing a domestic service.

There was some anecdotal evidence that firms are a little confused by the range of options available for protecting their designs. This includes the UK, EU and International options for registering designs, as well as the UK and EU non-registered rights. But, significantly, protection might also be provided under other modes of intellectual property (trade marks and patents). Given this complexity, the specific benefits of registering a design are not sufficiently transparent, and companies need help to navigate the set of alternative routes to registering a design.

For design intensive firms, where designs change frequently, trade marks (brands) often provide a more effective mode of protection. In technology based firms, patents (perhaps unsurprisingly) provide the dominant mode of protection. In addition to the perception that design rights are difficult to defend, firms also believe that they have low value as an asset that might be tradable. For example trademarks which help differentiate products or services might be traded commercially; or patents have the potential to result in future revenue may have a clear market value. Where intellectual property is tradable, then it is possible to assign a market value to them. In comparison with trade marks and patents, design rights have low perceived value as an asset.



## Key Findings of Chapter Four

This paper was written by BOP Consulting. From a historical perspective, France and Germany have generally shown a higher level of registration of design rights, in comparison with the UK. This propensity to register seems to be embedded in their legal tradition and culture.

UK innovators seem to rely on other methods to protect their designs. It is estimated that confidentiality of agreement, secrecy and lead-time advantage are preferred methods of protection among UK firms. Only a small percentage of firms use design registration to protect their innovation.

In contrast, in Germany there seems to be a greater systematic awareness of design IPR among design owners, private companies and educational institutions. The cost of enforcement seems to be lower in comparison with the UK, and there is a generalised perception that courts will be actively interested in protecting design IP, partly because of the greater weight given to the 'author's right'. In addition to strong and relatively inexpensive legal enforcement, Germany has multiple private initiatives, such as the Messe Frankfurt (which polices products at trade shows to establish whether they infringe or are genuine) and Plagiarius (a negative award informing the public about the problem of fakes and plagiarisms, and their negative impacts on the economy, SMEs and designers) to enforce the respect of design IP.

In contrast with Germany, design infringements are dealt with under civil law in the UK and do not include criminal sanctions.

The short-cycle nature of products can deter design owners from registering designs. However, the French IP office seems to have successfully tackled this issue by introducing a 'simplified' procedure aimed to the fashion industry, among others. Around 80% of all design registrations at INPI now comes through this 'simplified' route. The existence of this procedure is likely to explain why French designers have been reluctant to move from the local registration to the EU system.

There are other differences in administrative procedures when looking at the UK, France and Germany. The online filing system, which the UK is considering, is the main administrative advantage of other systems since it simplifies registration but also makes for significantly lower registration costs per country.

## How to submit your responses

The IPO welcomes responses to the issues and questions raised in this paper. Alternatively, individual designers and SMEs may prefer to respond to the short accompanying online survey at [www.ipo.gov.uk/hargreaves.htm](http://www.ipo.gov.uk/hargreaves.htm).

### **Submissions should be sent to the IPO by 11 November 2011.**

In your reply, please clearly state the number of the question you are providing input to, and fill in the attached cover sheet.

### **We would prefer electronic submissions to**

[DesignsReviewTeam@ipo.gov.uk](mailto:DesignsReviewTeam@ipo.gov.uk) where possible, but you can also send responses by post to:

IPO Designs Review Team  
Intellectual Property Office  
Trade Marks and Designs Directorate, Rm 2R40  
Cardiff Road  
Newport  
South Wales  
NP10 8QQ

## Confidentiality & Data Protection

Information provided in response to this call for evidence, 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 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 the 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, of itself, be regarded as binding on the Department.

## Help with queries

Questions about the policy issues raised in the document can be addressed to:

### Natalie Morgan

IPO Designs Review Team  
Intellectual Property Office  
Trade Marks and Designs Directorate, Rm 2R40  
Cardiff Road  
Newport  
South Wales  
NP10 8QQ

Tel: [01633 814297](tel:01633814297)

E-mail: [DesignsReviewTeam@ipo.gov.uk](mailto:DesignsReviewTeam@ipo.gov.uk)

# Cover Sheet for Responses

Contact details of respondent	
Name	
Job Title (if applicable)	
Organisation (if applicable)	
Postal address	
Telephone number	
Email address	



As part of the evidence gathering exercise, we would like to ask a few questions about respondents to give a picture of who has responded.

How do you interact with IP Rights? (tick all that apply):

- Create
- Manage
- License out
- License in
- Interested party
- Legal

What type of respondent are you? (please tick)

- Private individual
- Interest group / organisation
- SME (0-250 empl.)
- Large firm





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