

Design Council Response

Industrial Strategy: Intellectual Property Call for Views

Background

1. The Design Council is an independent charity, recognised as a leading authority on the value and use of design. It uses its expertise and insight to improve the quality of people's lives through design
2. Its people-centred approach is focused on delivering positive social, economic and environmental change. It addresses all aspects of design including product, service, user experience and design in the built environment.
3. Design Council welcomes the IPOs Call for Views and the example proposals set out in the Annex such as 'Royalty-free Patents' and 'IP licensing resolution' are positive steps forward. We recognise that keeping pace with technological changes, such as 3D printing, pose significant challenges but to encourage innovation across the UK economy, it is vitally important that the current proposals go further with a focus on support for design rights.

Comparisons of the UK IP system

4. UK designers' will not automatically gain access to Registered Community Design and Trade Mark Registrations once we leave the EU. This is a significant and growing concern. The current UK system needs significant improvement to be of a similar standard to the European system. Recent changes to UK registered design rights by the IPO are welcome but there is further work required to make the system clear and appealing for UK designers. UK unregistered design right only offers design protection for the shape and configuration of a design. Whereas EU unregistered design rights offer protection for shape, contours, line, ornamentation, texture and materials. Its lack of coverage for surface decoration is of particular concern to fashion and furniture designers.
5. According to a 2017 survey by Anti-Copying in Design, the design trade association which campaigns to protect design rights and intellectual property, 78% of its members (mainly freelancers or microbusinesses) rely on EU unregistered design rights to protect their design IP.
6. Design Council ran an online survey between 24 March and 6 April 2017 to collect design sector views on the possible impact of the UK exiting the EU on their work. The survey found that 71% of respondents had concerns about the impact of Brexit on intellectual property and design rights. The survey also found that respondents are anxious that changes to IP might make it harder

for them to win contracts in the EU post-Brexit. This needs urgent consideration in the EU withdrawal process.

7. IP registrations are important economic indicators, recognising growth, innovation and productivity. Design Council's Design Economy report highlights an increasing awareness of design in growing economies, and a relative falling of the UK's position as a result. For instance, statistics on international design IP registrations from World Intellectual Property Office (WIPO) show that the UK is ninth in number of registrations, relative to population, behind Germany, China and South Korea (at number one). The UK has fallen from sixth since 2002 (see table 1).
8. These patterns are supported by national and international data on the use of design registrations in the UK, which show that they are comparably under-used. There are currently only around 5,000 design registrations each year with the UK Intellectual Property Office (IPO), around 10% of which come from just 10 companies. This has declined from a high point of around 30,000 in 1910, despite significant population and design sector growth since then.
9. There is also a further issue that IP litigation is expensive, as most designers are small or micro businesses they do not have the ability to protect their rights through litigation. Therefore, the safeguards of the IPO and EU legislation are critical.

Table 1: WIPO design registrations

Country	Total number of WIPO design registrations	Rank (absolute)	Population (millions, 2013)	Design registrations per million population	Rank (relative)
Republic of Korea	47308	2	50.2	942.39	1
Australia	7064	6	23.1	305.80	2
China	412467	1	1357	303.96	3
Japan	28288	3	127.3	222.22	4
Turkey	9602	5	74.9	128.20	5
Canada	3785	10	35.1	107.8348	6
United States of America	23468	4	316.4	74.17	7
Germany	5912	8	80.6	73.34988	8
United Kingdom	4672	9	64.1	72.88612	9
India	6975	7	1252	5.57	10

Source: WIPO IP Statistics Data Center (2015) Total design applications (direct and via the Hague system) total count by filing office 2013.

Case study: Design Council's Spark Programme

10. Spark is a Design Council accelerator programme which invests £15,000 to develop innovative products. The 16-week programme provides design expertise to help shape business opportunities and develop product innovations as well as accessing specialists across business, IP, investment and marketing. Now in its fourth year, up to 15 finalists are selected to be part of the programme.
11. Research from years one and two of the programme suggests that intellectual property rights are relatively underused in the UK.
12. Analysis from Spark shows that, of 631 eligible applications, only 35% had some form of IP protection. This pattern remains even when split by cohort, with less than half of the first cohort (41%) and less than a third of the second cohort (31%) having design rights, patents or other IP protection in place.
13. Our evaluation of the programme suggests that an additional explanation for the low use of IP protection amongst inventors stems from their own perceptions of their product. Beginning with the idea (rather than the

business) causes some to think of their product in more emotional terms, rather than its economic value or technical quality. As such, cost recovery may not be as strong an objective for these inventors, or they may seek smaller returns over a short period of time.

14. Design Council provide Spark finalists with advice to help them make the best decision depending on their business strategy, whether that includes wanting to protect their IP or not. Some inventions submitted to Spark are not yet in the public domain, and we have found some inventors wait until their invention progresses further before filling for protection. Yet during our evaluation of the programme, delivery staff reflected that because several designs were not yet in the public domain, several finalists had been protective about the design of their product. This fear of disclosure thus impacted on the extent to which the programme was able to facilitate peer-to-peer support and learning, as teams were not always forthcoming in sharing their problems or practicing pitches, in part through fear of giving away too much information about their product to potential competitors
15. Additional research from years one to three of Spark found that:
 - Most applicants did not have IP protection in place, with 12% of all eligible applicants having been granted a design registration or patent and 12% having applied. A quarter of applicants were not sure if IP would apply to them.
 - Moving through the stages of the programme, the proportion of applicants with IP protection in place increase. Of those offered a place on Design Camp, 23% had been granted a design registration or patent and there were no applicants who felt that IP would not apply to their idea. Around a third of those who are part of Spark at a later stage have applied for a design registration and/or patent. Just over 40% have researched whether their product requires IP protection.
16. Recent explanations for low IP uptake amongst small businesses, include costs (both perceived and actual), complexity, and awareness. Within design rights specifically, there is also the comparable legal strength of unregistered rights, and the shorter product lifestyles – which incentivise rapid innovation and marketization over slower asset development through IP
17. Design Council recommends that the IPO continues to work with industry to develop urgent options which will be triggered after March 2019. Design Council would be very happy to support a programme of engagement to which helps designers understand the value and importance of IP to their business.

[REDACTED]