



Intellectual
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Research into Designs Infringement: Attitudes and behaviour of design rights owners towards infringement



Research commissioned by the Intellectual Property Office (IPO) and carried out by:
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Data available on request¹

- Data from Surveys 1 and 2
- Repindex Data (comments and interview data)
- Interview Transcripts

¹ Data will only be released in compliance with current UK and EU data protection laws. All data released will be anonymised so that no respondent may be identified.

Introduction

Innovation is at the heart of the growth potential of a knowledge-based economy such as that of the UK. The Design Council argues that the UK's economic growth in the future will be generated by design, or design processes that drive innovation and give the country a competitive edge over others.

In 2015,¹ the Design Council reported that the design economy had contributed 7.2% of gross value added (GVA) to the UK economy overall in 2013 – the equivalent of the construction and logistics sector. In its latest report, the Design Council suggested that the UK design economy had contributed 6% of the UK's total gross value added (GVA) in 2015.² Overall, the design economy has grown much faster than the UK average: between 2009 and 2013, GVA of the design economy increased by 27.9%³ while it increased by 42% between 2011 and 2015.⁴

There is some evidence that the design sector as a whole is thriving, and that the use of design improves the productivity of firms in other sectors – e.g. financial, high value manufacturing, IT and communications or utilities – that engage actively with design.⁵ Such firms realise that design can give them a competitive edge by integrating design processes into their research and development (R&D) and as a result developing innovative products and services which are more attractive to consumers.

The role played by design in innovation is difficult to describe. Traditionally, indicators used to measure innovation were patents and expenditure on R&D.⁶ Only since the beginning of the 21st century has research focussed on the impact of design on business performance, and it is even more recently that registered design rights have been explored for their suitability as indicators of innovation.⁷

National registers of design rights, and the EU IPO's register of EU design rights, provide an objective and comparable data set at least within the EU member states whose design rights are widely harmonised. However, simply comparing the number of design registrations by country or business sector is not a suitable method to determine the potential of innovation in that country or sector. The lack of substantive examination means that various factors are not considered. For example, it is likely that not all registered designs meet the legal requirements for a valid registered design,⁸ the motivations for registrations vary from sector to sector or even from company to company within a sector, and there are many reasons not to register a design but to rely on unregistered rights.⁹

Considering that the purpose of protecting designs through policy and legislation is to encourage innovation and reward the design owner for their contribution to the GVA, there is still little knowledge based on reliable evidence about the effectiveness of the legal system to achieve its aim.

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- 1 Design Council. (2015) *The Design Economy: The value of design to the UK*. London: Design Council, p 18.
 - 2 Design Council. (2018) *Designing a Future Economy: Developing design skills for productivity and innovation*. London: Design Council, p 40.
 - 3 Design Council. (2015) *The Design Economy: The value of design to the UK*. London: Design Council, p 18.
 - 4 Design Council. (2018) *Designing a Future Economy: Developing design skills for productivity and innovation*. London: Design Council, p 40.
 - 5 Design Council. (2015) *The Design Economy: The value of design to the UK*. London: Design Council, pp 27-28.
 - 6 Wolf, P. (2017) MSc thesis: Registered design rights as an innovation indicator. Unpublished manuscript submitted to the School of Management at Technical University of Munich, p 10.
 - 7 Ibid. p 11.
 - 8 Between 2013 and 2017, IPO tribunal heard 36 applications to declare a registered UK design right invalid. 21 were successful (58.3%). Two of them were invalid due to issues related to proprietorship, the rest due to not meeting requirements of novelty and individual character. (See Appendix 5.1).
 - 9 Filitz, R. et al. (2015) *Protecting Aesthetic Innovations? An exploration of the use of registered community designs in: research policy* 44, pp 1,192–1,206.

This research project contributes to the debate from a different perspective. It seeks to understand the attitudes and behaviour of designers and design right owners when they experience infringement of their design.

This approach provides an insight into motivations of design right owners to protect their designs, how and why registered and unregistered design rights are enforced, and the level of infringement experienced by design rights owners. It measures loss caused by infringement and consequently, the value of design rights to the design right owner.

It will enable policy makers to draw conclusions about how well the current system fulfils its ultimate purpose, whether changes are necessary and what kind of support is needed for design rights owners to effectively protect and enforce their rights.

The aim is to set out a repeatable methodology to track change of attitudes over time and shape UK policy on design protection and enforcement based on reliable evidence.

Acknowledgements and thanks

The research team comprising Matthias Hillner (Principal Investigator from 2015 to 2016), Silvia Baumgart (Trainee Solicitor, James Ware Stephenson), Nicholas Coutts (Visiting Tutor, Royal College of Arts, London) and Ruth Soetendorp (Professor Emerita, Bournemouth University), in conjunction with University of Hertfordshire, acknowledges the interest and support shown to the project by the design community and the IPO Research Advisory Committee.

We would like to thank Dave Green at the University of Hertfordshire, who helped us to navigate the challenging logistics of the research project, and Dr Steven Adams, Associate Dean for Research for the School of Creative Arts at the University of Hertfordshire, who managed the project.

Professor Joanna Gibson's critical comments helped shape our thinking and methodology in analyzing our data and drawing conclusions. Sarah Gavin assisted us in setting up and implementing the social media campaign, and Octavia Coutts researched the reporting of key design rights cases in the media. Their work added important insights and context to this report.

We would like to thank everybody who completed the questionnaire, took part in our focus group or assisted with our social media campaign for their time and support. Lastly, our thanks go to David Humphries, Head of Research at UK Intellectual Property Office, for his support and guidance.

Executive summary

The design economy is growing. According to the Design Council, more than half a million people are employed in UK design industries, while another million designers work in other sectors. In 2015, the UK design economy was worth 6% of the nation's total economy – the same as the building industry and the logistics sector combined. And yet, very few designers and design right owners are proactive about protecting their intellectual property.

The UK Intellectual Property Office (UK IPO) commissioned this research to address the lack of existing data on design infringement. This report measures the incidence of design rights infringement in the UK and looks at attitudes to design rights – and infringement – among designers and design right owners. In so doing it provides a snapshot of the UK's design industry, including a look at which rights designers value, the impact of infringement and what happens when designers go to court.

While measuring the extent and scale of design rights infringement in the UK, we aimed to produce a robust methodology that would improve future research in this area. So we have reported extensively on our methodology, and the thinking behind it, here.

Key findings

Most designers work either on their own or for small companies and studios. Nearly three-quarters of respondents to our Surveys were sole traders, or working for – including owning – a small company with fewer than ten employees.

Infringement is common, with most (98.3%) designer rights owners having experience of it. Innovative designs with a disruptive quality tended to be infringed more frequently than less innovative designs.

Perhaps it is unsurprising therefore that almost all design rights owners monitor for infringement, many by searching design rights registers, employing legal help or monitoring trade journals. Other methods mentioned included searching online and attending trade fairs to check out competitors. However, most rely on customers and suppliers to raise the alarm when their design rights are infringed.

When they do discover that their intellectual property rights have been infringed, the most common action is to send a letter to the other party. About one-third contact a lawyer, but many of our respondents (43%) reported that pursuing legal action was 'too costly'. From our telephone interviews, we learnt that some designers and design rights owners refrained from taking action because they didn't think the potential gain would justify the cost. This is despite the fact that a sizeable number of them had lost considerable sums in revenue due to infringement, and half had expended valuable staff time on defending their IP.

When designers do go to court, their primary motivation is defending their intellectual property as a matter of principle. We found that commercial considerations were not the main motivation to enforce rights, for either claimants or defendants.

However, it appears that disputes are not as common as the incidence of infringement itself. While most designers and design rights owners had experienced infringement – and experienced revenue losses as a consequence – fewer than 10% of our respondents had been involved in a dispute.

When it came to protection, respondents to our Surveys cited patents as being the most effective, followed by trade marks, registered design right, copyright, and unregistered design right. We had presupposed that litigation involving registered design rights was more common than that for unregistered design rights, but this proved not to be the case. This also confirms the analysis of court cases between 2013 and 2017 where unregistered design rights are more frequently at issue than registered design rights.

However, owners of registered design rights were more likely to seek legal advice on discovering their rights had been infringed, than owners of unregistered design rights. According to Survey respondents, registered designs seem to be easier to defend successfully than unregistered ones but in reality, court cases may involve both unregistered and registered design rights. An analysis of court cases involving design rights from 2013 to 2017 shows that only 50% of registered design rights are successfully defended, while the success rate for defending unregistered design rights is nearly 70%.

Most infringers will cease and desist when challenged by the design right owner, usually permanently. However, larger companies were more likely to ignore an infringement claim or allege that a design wasn't valid. As we had suspected, infringement occurs predominantly in relation to products that have proof of market, but we couldn't verify our hypothesis that the retail sector is flagrantly infringing design rights. If current law extended to unregistered design rights, 16% of all design right infringements experienced by respondents to our Surveys would be regarded as criminal offences.

In international disputes, China was the most frequently cited country among our respondents, followed by the USA. Some respondents had had design rights infringed in more than one foreign country, but only a small number reported international infringement of their design rights.

Recommendations

To build on the methodologies developed in this research, and by Weatherall and Webster for their 2010 study which measured patent infringement in Australia, in future studies of this kind, we recommend that:

- data should be collected regularly by the UK IPO through their communication channels and educational projects.
- any future research should aim to increase participation amongst potential owners of unregistered design rights.
- more consideration should be given to the wording in future questionnaires: it should be more precise to provoke more informative responses, or more granular detail.
- negative questioning (e.g. asking what respondents have not heard of) should be avoided.

To enable the design sector to better protect design rights, we recommend that the Intellectual Property build on its work in the following areas:

- **education:** using communications channels, and working with trade associations, to teach and inform designers and design rights owners about their design rights.
- **accessible guidance:** providing guidance in plain English to the court process that is specifically tailored to the design sector.
- **pro bono legal advice:** encouraging the legal profession to offer more pro bono advice to designers and design rights owners, and to always be clearer about long-term costs that may be incurred when defending design rights.

About the research

Aim and objectives

The UK Intellectual Property Office (UK IPO) commissioned this research to address the lack of existing data on design infringement.¹⁰ In this research project, we set out to:

- produce a robust research methodology suitable for replication.
- and measure the extent and scale of design rights infringement in the UK.

The report focuses on the incidence of infringement experienced by design rights owners and, where possible, provides a monetary value of that infringement. We also wanted to assess how frequently Surveys of this kind should be repeated so that trends of infringement can be recorded over time.

To this end, the wider objectives within the proposed methodology were to:

1. **Understand designers' attitudes and response to infringement.**
Our questions aimed to discover how design rights owners monitor the market for infringement, and their reactions to infringements – ranging from sending a letter to the alleged infringer, to court action. We wanted to discover more about their levels of confidence in registered and unregistered rights. Our enquiry extended to understanding how levels of knowledge of design rights influence the chosen method of protection, and how methods of enforcement correlate with the type of design, characteristics of the business or experience of designer. We also wanted to know how infringement is influenced by the size of a design business, the type of product, or the commercialisation stage of product.
2. **Understand how the type of design right (registered or unregistered) affects the incidence and level of infringement.**
Throughout the research, our questions and data analysis differentiated between registered and unregistered design rights where possible and appropriate.
3. **Understand the attitudes and behaviour of potential infringers towards design right infringement.**
Respondents had to state whether they were answering questions as claimants or defendants (alleged infringers). Their status was taken into account in the analysis of the data and differences highlighted.
4. **Produce an estimate for the incidence of design infringement against UK designers internationally.**
Questions about countries involved in design right infringements – and the level of incidents experienced by respondents involving international design – produced an estimate for the incidence of design infringement against UK designers internationally. However, we didn't have enough external data to underpin the findings.
5. **Distinguish between potentially criminal offences and civil infringement.**
We combined two questions – one about the quality of the infringing copy, and one about the motivation of the infringer as perceived by the respondents – to mirror the conditions in current legislation, which may lead to criminal sanctions for the infringement of registered design rights. Unlike current legislation, our questions did not distinguish between registered and unregistered design rights but produced a result for both taken together.

10 Moultrie, J. (2011) Design Economics, Chapter 3: Design right case studies. London: UK Intellectual Property Office, and Collopy, D. (2014) Measuring infringement of intellectual property rights. London: Intellectual Property Office, pp 81-82

Methodology

To get the fullest possible picture, the Design Rights Infringement Survey 2016 adopted a mixed method enquiry. This combined a questionnaire-based Survey with a series of telephone interviews.

We arrived at this methodology after considering Dennis Collopy's 2014 study, *Measuring infringement of intellectual property rights*.¹¹ This study looks at the different methodologies used and highlights 'the paucity of relevant research literature'¹² on design rights. Indeed, few studies to date have concentrated on this form of intellectual property (IP). The authors argue that measuring the infringement of design rights is difficult due to the number of factors – for example, registered and unregistered design rights, the small number of court cases, and the incidents of infringement happening outside of the UK – and because of the likelihood of design rights overlapping with the infringement of other rights such as copyright, trade marks, passing off, breach of confidence etc.

Collopy et al¹³ noted that 'the nature of most infringements [bears] striking parallels with patents (which in the US are described as 'design patents')' and 'all such infringement [is] based on business-to-business activity and rarely, if ever, [involves] the consumer'. For this reason, they recommended a methodology developed by Weatherall and Webster for their study of patent infringements in Australia.¹⁴

One key difference between a Survey into design rights infringement and a Survey into patent infringements, is that the owners of design rights are likely to be a larger, more diverse group, who are more difficult to reach than the proprietors of patents. Patents by their nature are registered rights. Their owners have made strategic business decisions to register patents. Design rights however, comprise registered and unregistered rights – with owners of unregistered rights sometimes unaware that they own such rights, or, as the Design Council UK found in 2010, 66% of designers Surveyed taking no action to protect their IP.¹⁵

While contact details of owners of patents are available through the registry, the contact details of owners of unregistered rights are not readily available. This makes it necessary to make assumptions about their identity and then develop a strategy to reach them, for example through social media or trade bodies.

11 Collopy, D. (2014) *Measuring infringement of intellectual property rights*. London: Intellectual Property Office.

12 Collopy, D. (2014) *Measuring infringement of intellectual property rights*. London: Intellectual Property Office, p 20.

13 Ibid.

14 Weatherall, K.G. and Webster, E. (2010) *Patent Infringement in Australia: Results from a Survey*. Melbourne: Intellectual Property Research Institute of Australia, University of Melbourne.

15 Design Council (2010) *Design Industry Research Report: Factsheets*, London: Design Council, p 1.

Survey stages

To ensure statistical validity, we needed to reach a sufficient number of owners of registered and unregistered design rights. For this reason, the design rights infringement Survey was rolled out in four stages:

1. Quantitative Survey 1: A postal questionnaire (see Appendix 1) targeted registered design companies who hold a registered design (RD) or a registered community design (RCD). We obtained contact details via registers held by the European Union Intellectual Property Office (EU IPO), formerly the Office for Harmonization in the Internal Market (OHIM), and the UK Intellectual Property Office (UK IPO).
2. Quantitative Survey 2: We extended the investigation to holders of UK unregistered design rights (UKUDR) and unregistered community design rights (UCDR). The questionnaire targeted potential design right owners whose contact details were obtained through Fame¹⁶ – a database of companies registered in the UK and Ireland.
3. Quantitative Survey 3: An online questionnaire targeted individual designers and micro businesses that are not incorporated entities and, therefore, not included in the Fame database. We promoted the opportunity to take part in the Survey through the media communication channels of design industry associations. This Survey was run in parallel to quantitative Survey 2.
4. Qualitative Survey: we had usable telephone interviews from 24 respondents which contributed to the research. We used the objectives as prescribed by the Intellectual Property Office to map the questions, with the aim of gathering data that were unlikely to emerge through the quantitative Surveys alone.

To help us develop the questionnaire, we held a focus group meeting. After feedback from participants, we included open questions (see Appendix 2.4) in the telephone follow-up Survey. This allowed respondents to address issues not covered by the questionnaires and to contextualise findings.

We also ran a pilot questionnaire before quantitative Survey 1, by posting it to a small number (300) of registered design right owners.

16 Fame is a database of companies in the UK and Ireland covering, among others, financial information, SIC codes and contacts of directors and key managers, published on the Bureau van Dijk website: <https://www.bvdinfo.com/en-gb/our-products/company-information/national-products/fame>

Questionnaire design

Focus group

Prior to targeting relevant design right owners and finalising the questionnaire, we organised a focus group comprising:

- a designer who owns a small to medium-sized design business.
- two legal representatives of design companies, one large and one small.
- and two representatives of different design stakeholder groups.

We established the focus group to discuss:

- important topics of research, as outlined in the tender document.
- appropriate questions and approaches to the Survey, that would meet the objectives of the research project and interests of the various stakeholders.

We documented key points made during the discussion by taking notes and audio recordings, which were reported to the IPO.¹⁷ The focus group raised the following issues, which we were then able to address in the questionnaire and telephone interviews.

Target audience and stakeholder groups

The focus group advised us to target designers of consumer goods, such as fashion, furniture, homewares, packaging, medical equipment etc and to include retailers and manufacturers of such products.

This still left us with a very wide range of business sectors. We therefore decided to select contacts from the EUIPO's and UKIPO's list of registered design rights holders randomly. Since design right applicants are not required to indicate their area of business in the applications (only an indication of the type of product to which the design is applied) it was not possible to identify the business sectors they represent without additional research. This would have exceeded our financial resources.

We used the Fame database¹⁸ for the first and second email campaign, targeting unregistered design rights holders because it allowed us to select contacts by 'standard industrial classification' (SIC) codes.¹⁹ (See Appendix 3.2.)

We used an analysis of a 2015 report by Trends Business Research Ltd – as well as a detailed analysis of companies involved in design rights disputes²⁰ – to choose a range of SIC codes for the first Fame database mailing.

The first selection method of SIC codes was based on reasonable assumptions rather than fact-based evidence, because it is difficult to target firms that do not know they have created unregistered design rights. For the second Fame email campaign, we decided to widen the range of SIC codes to include possible design rights holders in a range of industries. We only excluded service industries that were very unlikely to create three-dimensional products. We focussed on three-dimensional products because the

17 Baumgart, S., Coutts, N., and Soetendorp, R. (2015) Design rights infringement Survey 2016, Interim Report No 1 London: UK IPO and University of Hertfordshire, pp 2-10.

18 Fame is a database of companies in the UK and Ireland covering, among others, financial information, SIC codes and contacts of directors and key managers, published on the Bureau van Dijk website: <https://www.bvdinfo.com/en-gb/our-products/company-information/national-products/fame>

19 According to the Office for National Statistics, which publish them, SIC codes are 'The UK standard industrial classification of economic activities, abbreviated as UK SIC, is a 5-digit classification providing the framework for collecting and presenting a large range of statistical data according to economic activity.'

20 Hillner, M. (2016) Fame SIC Code Selection Process, submitted to the IPO.

requirements of UK unregistered design rights exclude surface decoration from protection.²¹ However, 'the shape or configuration (whether internal or external) of the whole or part of an article' is protected'.²²

We made these decisions because:

- the first mass distribution of emails targeting Fame contacts was categorised as spam and live link to the online questionnaire disabled
- we wanted to ensure that the mass distribution of emails is legal and, to reduce the risk of emails being classified as spam and repeatable in the future, we only used name-based emails from the list of contacts available from Fame, which considerably reduced the number of recipients (see Appendix 3.2)
- and we wanted to base the answer – to what kind of industry sectors may create unregistered design rights – on evidence rather than assumptions.

Understand attitudes towards infringement

The focus group felt it was important to target potential infringers as well as asking design right owners about their experience of having been infringed.

To meet this requirement, we designed our questionnaire to contain questions that can be answered from the perspective of an allegedly infringing party as well as an infringed party. Cross-referencing with certain questions (e.g. question 11 or question 12 which as about the status of the party to the dispute, i.e. claimant or defendant) allows us to identify whether the respondent answered the questions as an allegedly infringing party or an infringed party.

Relevant questions enquired about:

- actions taken when infringement was detected
- the reaction of the allegedly infringing party to the action e.g. did they stop infringing permanently? Was an agreement reached out of court?
- reasons for not taking any action
- and about the number of disputes experienced either as the allegedly infringing or infringed party.

The value and cost of design rights

The focus group believed that obtaining protection throughout the EU is comparatively good value for money, while worldwide protection or enforcement of existing rights is 'ridiculously expensive'. This made us want to understand more about designers', and design rights owners', perception of the current legal framework and system of protection.

So in the questionnaire we included questions about:

- the perceived value for money of registering rights
- costs of enforcements
- and perceived confidence in registered and unregistered rights.

It was assumed that the value of design is highest in the first four years after first marketing or sale. We tested this hypothesis by including a question about incidents of infringement occurring during shorter and longer periods after first bringing the new design to market. This would indicate the value of the design to others over time.

21 Copyright Designs and Patents Act 1988 (CDPA 1988), section 213(3)(c)

22 CDPA 1988, section 213(2)

Complexity of design rights

The focus group noted that it is often not clear whether a design is valid and enforceable. Several factors were mentioned, such as:

incremental changes to the design of a product may mean that it differs substantially from the design registered, i.e. it may fall outside the scope of the registered design

designs are not examined before they are registered, so the owner cannot know if it is valid until it is challenged

and, depending on the sophistication of the other party in infringement proceedings (e.g. access to professional legal advice), registered and unregistered designs are often challenged by claiming invalidity.

To discover more about these complexities, we asked respondents to compare and score their perceived level of protection offered by registered and unregistered design rights, compared with other intellectual property rights. This was followed by a question measuring confidence in registered and unregistered design rights.

We undertook a postal questionnaire for holders of registered rights, analysing all cases involving design rights before the IPO Tribunal, the Patents Court, the Patents County Court (PCC until September 2013), the Intellectual Property Enterprise Court (IPEC from 1 Oct 2013) and appeals from lower courts. (See Appendix 5.) The list excludes cases that solely determine costs. This allowed us to compare what happens in cases that are decided in court, and the perception of users of the rights management system.

Awareness of design rights

The focus group highlighted the extent to which designers lack awareness of design rights and their scope. For example, designers may expect that functionality or concepts are protected while design rights only protect the appearance of a product. Various aspects of products are protected by different rights. This system is perceived as rather complicated because there is no single right that would protect all aspects of a product.

Again, questions about knowledge of design rights compared to other rights, robustness and confidence, enabled us to make basic statements about awareness. The interviews, however, gave us an opportunity to explore the topic further.

As we had initially assumed, telephone responses indicated designers' perception of design right court decisions are more likely to be influenced by mass media than by legal reports or IPO guidelines. We commissioned a preliminary media study to find out more about how mass media reports on key design right court judgments may affect designers' decisions around design rights and confidence in the protection system.

International protection

The focus group pointed out that procedures to obtain design rights in Europe are relatively straightforward while international protection is expensive and can be complex and time consuming. Furthermore, there are some countries which do not respect IP rights.

We tested these assumptions by including questions in our interviews about:

- incidents of disputes occurring overseas
- and how designers may experience protection and enforcement procedures in the UK compared to other countries.

Do characteristics of the designer/design rights owner influence attitudes towards protection and/or enforcement of design rights?

The focus group helped us with the formulation of hypotheses that, in the absence of available research of similar scale, focused on incidents, attitudes and behaviours regarding design rights infringements.

These hypotheses were based on the team's own experiences and those shared by participants in the focus group. For example, can we assume that smaller businesses are more likely to rely on unregistered rights rather than registered rights? Or are they seeking other methods of protection? Or monitoring the market for potential infringements? (For a full list of research objectives and their corresponding hypotheses, go to Appendix 4.)

We included questions in the Survey which allow us to cross-reference answers to verify or reject certain hypotheses and included further questions on the issue in the interviews.

How designers make decisions about registration

The focus group saw this as an important question for the research project to address. So, during interviews we asked questions to gain a better understanding of the decision-making process.

The effect of design rights infringement on business and designer

The focus group pointed out that apart from cost and time, infringement may also cause emotional damage (stress and anxiety), which should not be ignored.

Because of this, we included the option, 'too stressful' the reasons for not taking action. We also gave respondents space for comments in the hard copy and online questionnaires, and discussed the issue in the interviews.

Length and structure of questionnaire

Participants in the focus group emphasised that the questionnaire should be as simple and short as possible, and that it should avoid legal jargon.

The questionnaire contains a total of 46 questions. The time needed to complete the Survey varies according to the characteristics of the respondent. Online, it was possible to answer the questionnaire in five to ten minutes, since the online Survey (using SurveyGizmo) only presented the respondent with questions that were relevant to them.

The Survey covered general questions about:

- the status of the respondent.
- characteristics of the business.
- commercialisation stage of the design product.
- incidents of infringements over length of time.
- cost and time involved in infringement claims.
- confidence in protection methods.
- and awareness/knowledge of design rights compared to other rights etc.

We also consulted the legal counsel of a major design company that has experienced many disputes. The feedback given prompted us to focus questions on attitudes and behaviour towards infringement in one particular dispute that maybe used as an example, and may involve registered and/or unregistered design rights.

Comparison with methodology developed by Weatherall and Webster

The methodology of the design right infringement Survey matches the approach taken by Weatherall and Webster's for their 2010 study which measured patent infringement in Australia.²³ Both studies combined a questionnaire with follow-up telephone interviews and focus on:

- the incident and scale of infringement.
- reactions to infringement.
- reasons why owners of intellectual property rights (IPRs) do, or do not, react to the infringement of their IPR.
- how alleged infringers respond to the allegation of infringement.
- levels of engagement with the court system to enforce IPRs.

Our focus of enquiry differs from Weatherall and Webster's approach, in that:

- it includes both registered and unregistered design rights – that is, as well as examining forms of intellectual property (IP) that require registration to exist (as with patents), our enquiry looks at forms of IP that exist automatically on creation provided that certain requirements are met.
- it seeks to assess the levels of awareness of design rights amongst owners.
- it seeks to assess the level of loss due to infringement, and the costs to design right owners of enforcing rights.
- some questions are aimed at those who regard their design rights as infringed, and those who have – or are alleged to have – infringed the design rights of others, (it is not always clear who the infringer and infringed party is, because similar designs can be developed simultaneously and independently)
- it examines the nature of infringement: to find out more about whether an infringement may be classified as a potentially criminal offence or civil claim only, it was necessary to ask whether designers perceived the infringement as deliberate or inadvertent, and whether the quality of the copied product was identical to the copy or had noticeable differences.

In addition, as stated above, we focussed questions on attitudes and behaviour towards infringement in one particular dispute. Weatherall and Webster asked inventors about up to five patent applications in the light of 82.5% having filed only one application.²⁴

23 Weatherall, K.G. and Webster, E. (2010) Patent Infringement in Australia: Results from a Survey. Melbourne: Intellectual Property Research Institute of Australia, University of Melbourne.

24 Weatherall, K.G. and Webster, E. (2010) Patent Infringement in Australia: Results from a Survey. Melbourne: Intellectual Property Research Institute of Australia, University of Melbourne, p.44.

Terminology

Collopy et al recommend the use of ‘clearly defined terminologies’.²⁵

Weatherall and Webster’s Survey used an informal definition of ‘copying’, defined as ‘conduct that the inventor/firm perceives as copying’.²⁶ As the subjects of the Survey were inventors – not people legally trained or dealing with legal issues on a regular basis – the Survey deliberately avoided legal terminology to increase its accessibility. Thus, the terminology in the telephone Survey and original mailout Survey referred to ‘copying’ and ‘infringement’.

However, we wanted to find out whether the perceived infringement of the design could be classified as a criminal offence, as introduced into UK law by the Intellectual Property Act 2014 for registered designs.²⁷ So, following Weatherall and Webster’s approach, we tested the respondents’ perception of the nature of infringement. (For example, did the respondent believe the infringement was deliberate or inadvertent? Did it concern an identical copy of the infringed product or a copy with noticeable differences?)

The Act concerns only registered designs, but we asked about the infringement of both registered and unregistered designs, because we wanted to learn more about the overall scale of potentially criminal offences in relation to the infringement of design rights.

The terminology used tried to mirror the provisions under the Intellectual Property Act 2014. Under the Act, it is a criminal offence to intentionally copy (without the permission of the right holder) a registered design ‘in the course of a business ... so as to make a product exactly to that design, or with features that differ only in immaterial details from that design’²⁸ where the infringer knows (or has reason to believe) that the design they have copied is registered.

The Design Rights Infringement Survey 2016 defines ‘dispute’ as ‘any infringement, whether or not this ended in legal proceedings’. This is the definition used by Greenhalgh et al in their 2010 report, Intellectual Property Enforcement in Smaller UK Firms.²⁹

In our Survey, we have defined ‘dispute’ as ‘any kind of awareness of, or correspondence (pre-court, in court or out-of- court) related to the actual or potential infringement of IP’. This, slightly wider, definition accommodates infringement, which may only have been perceived as such by one of the parties to the dispute.

Responses

We received 690 usable responses to Survey 1 targeting registered design rights holders, of which 660 (95.6%) are complete. The Survey using data from the UKIPO and EUIPO registers includes responses to the printed questionnaire that was sent by post and those who preferred to use the link to the electronic version of the Survey.

For Survey 2, we received a total of 166 usable responses – of which 103 (62%) are completed questionnaires from the Surveys targeting unregistered design rights holders, which were conducted mainly online and/or via email providing a link to the online questionnaire.

25 Collopy, D. (2014) *Measuring infringement of intellectual property rights*. London: Intellectual Property Office, p.11

26 Weatherall, K.G. and Webster, E. (2010) *Patent Infringement in Australia: Results from a Survey*. Melbourne: Intellectual Property Research Institute of Australia, University of Melbourne, p.6

27 Questions 35 and 36 address this research objective. Question 35 asks whether the respondent considers the infringed design as identical, nearly identical (with hardly noticeable differences compared to the original) or a copy with noticeable differences; question 36 then asks whether the respondent believed that the alleged infringer copied the design intentionally or inadvertently.

28 Registered Designs Act 1949, section 35ZA(1) inserted into the Intellectual Property Act 2014, section 13

29 Greenhalgh, C., et al. (2010) *Intellectual Property Enforcement in Smaller UK firms*. London: UK Intellectual Property Office, p 1

In addition, our research draws on responses from 24 telephone interviews with design rights holders. (See Appendix 2.4.)

Analysing the data

We also analysed the corpus of open-ended text comments from all Surveys – together with the transcriptions of the interviews – using the software, Repindex.³⁰ (See Appendix 2.5.)

This allowed us to test our hypotheses in more depth and to identify other trends that we may otherwise have overlooked, and which may be useful when developing questionnaires in the future.

Methodology based solely on a structured research framework, produced to answer specific questions, may ignore valuable insights. Grounded theory in research projects suggests that a non-structured approach (i.e. one that does not use a pre-defined framework) may identify information that is relevant and important, and which may then be incorporated in a structured framework.

³⁰ Developed by Dr Mark Perkins, the software is based on principles from Discourse Stream Analysis (DSA)
© created in his linguistic research

Recommendations for further development of the methodology.

Increase participation amongst potential owners of unregistered design rights.

While it is comparatively easy to reach owners of registered rights through data on the design register provided by the UK IPO and EU IPO, much closer co-operation between the research team and trade associations – or other networks that represent designers or design right owners – is required to reach a higher number of respondents and to therefore achieve statistical relevance of the data set.

Alternatively, data could be collected on a regular basis – very much like the National Student Survey, which is regularly undertaken by universities to measure students' satisfaction with their university courses. This could be led and managed by the UK IPO itself through their various communication channels and educational projects.

Further analysis of existing data

Question 8 of our questionnaire asks respondents which intellectual property rights they have not heard of. Remarkably, there is a significant difference in answers between respondents to Survey 1 and those to Survey 2. However, it is unclear whether the negative wording of this question may have influenced the way it was answered and therefore caused errors.

The figures in Survey 1 suggest a link between awareness/knowledge of IP rights and knowledge of creation of IP within the business. It would therefore have been interesting to cross reference areas of business (question 2), awareness of IP rights creation in the business (question 7), and knowledge of the various IP rights (question 8) – or even, more simply, to just cross reference questions 7 and 8. This would have revealed whether those who said they don't own or create IP rights were aware of the various forms of IP rights.

There is also a high risk that respondents ticked boxes incorrectly due to the negative wording of question 8, ('Which of the following Intellectual Property (IP) rights have you NOT heard of before?') A positive question would have revealed correlations between questions 7 and 8 more clearly, inviting further analysis and avoiding a higher risk of errors.

Without this further analysis, it is difficult to determine how the characteristics of the respondent's business correlate with their knowledge of IP, and their experiences of design right infringement – apart from saying that most respondents are in work.

To show the complexity of disputes in this area, it would have been useful to know how frequently the various forms of design rights were overlapping in any dispute, e.g. how many respondents ticked 'yes' in more than one category in question 10 or question 16.

It would be interesting to find out if there is a correlation between those who lost their case and those who were 'disappointed' with the outcome of a dispute, and between those who won their case and those who reported being 'pleased' or 'reasonably content' (question 25).

Further research

Further research is required to find out more about ways of solving disputes, for example by asking respondents to tell us about the chronological order of the steps they took to stop infringement. This would have allowed us to determine whether respondents to question 19 had taken legal advice before sending a letter of claim.

The responses to Survey 1 indicate that the sample was quite heterogeneous in terms of how they felt about the process of litigation, with a large group being 'extremely' disappointed, and a large group being content or very pleased with the process. It would be interesting to find out if there is a correlation with those that lost their case as being disappointed and those that won as being pleased or reasonably content (question 25).

It would have been useful to find out about the outcome of legal disputes in general and levels of satisfaction/success in relation to registered and unregistered design rights. This would have enabled us to test our hypothesis that registered design rights are easier to defend than unregistered design rights, since 'success' is in most cases is not achieved through court proceedings but through alternative means of dispute resolution.

Interestingly, the majority of claimants in Survey 1 reported that the opposing party was larger or very much larger. However, a similarly high proportion of defendants reported the same. This means, further research is needed to verify the assumption that potential infringers tend to infringe rights of smaller firms. Similarly, further research is needed about the business sector of potential infringers. Is it true that the retail sector is a major culprit or does infringement happen more frequently between similar competing businesses?

It may have been better to ask questions about what motivated designers to join a trade association (question 42) and give 'risk of design right infringement' as an option. This would have given us more detailed and more accurate data. On the other hand, since designers do not tend to join industry specific trade associations³¹, this question may also be redundant.

While we have results for the nature of infringement (i.e. whether the infringement can be classified as a potentially criminal offence) for both, registered and unregistered design rights, it may be beneficial to differentiate between registered and unregistered design rights in a future Survey.

Of those that experienced design right infringement overall, only a small number of respondents had experienced design right infringement on an international level. This made it nearly impossible to say something about the impact of international infringement level on the business of UK designers. Further research, and a greater number of respondents, is needed to get evidence that is solid enough to base policy on.

In the interviews, some of concepts identified by our analysis of open-ended text comments (see Appendix 2.5) – such as 'lack', 'need', 'copyright' and 'licence' – were not directly related to the Survey questions. This led us to consider formulating new and additional questions that might be included in a future Survey, such as:

- What are the main things you consider to be lacking in – or the things you feel you need from – the IPR protection system?
- Do you know the difference between a 'design right' and 'copyright'? Or a 'design right' and a 'patent'?
- How easy or difficult is it to avoid infringement and /or to obtain a licence?
- How often do you grant licences for/assign your designs?

31 Design Council (2010) Design Industry Research Report: Factsheets, London: Design Council, p 1.

Clarifying terminology

With hindsight, it is easy to see that the questionnaire contains certain terms that are not entirely clear, e.g. does the term 'litigation process' in question 26 include any action taken in a dispute (including proceedings in court)? Or is it limited to litigious proceedings (when a claim is issued in court), the same applies to the wording 'legal dispute' in question 27? Is a dispute legal when it involves a legal professional or court proceedings or both?

While size of a business is defined by the number of employees in question 4, there is no definition given in question 17 (business size of the party opposing you). It is therefore difficult to rely on the results as respondents may have based 'business size' on different concepts of 'size'.

Similarly, terms should not overlap when characteristics of respondents are defined, e.g. a designer or a design product retailer can be a design owner at the same time (question 1).

The very different responses to questions 33 (incidents of design right infringements experienced in the last five years) and question 10 (disputes experienced in the last five years involving design related IP rights) suggest that the respondents overlooked the very wide definition of 'dispute' – that is, 'any awareness of infringement or correspondence related to the actual or potential infringement', which correlates with an 'incident' of infringement.

It would have been clearer to talk about an 'incident' of infringement rather than a 'dispute' since responses to 'actions taken' (question 19) allow for further categorisation of the incident as 'dispute' involving correspondence or court action.

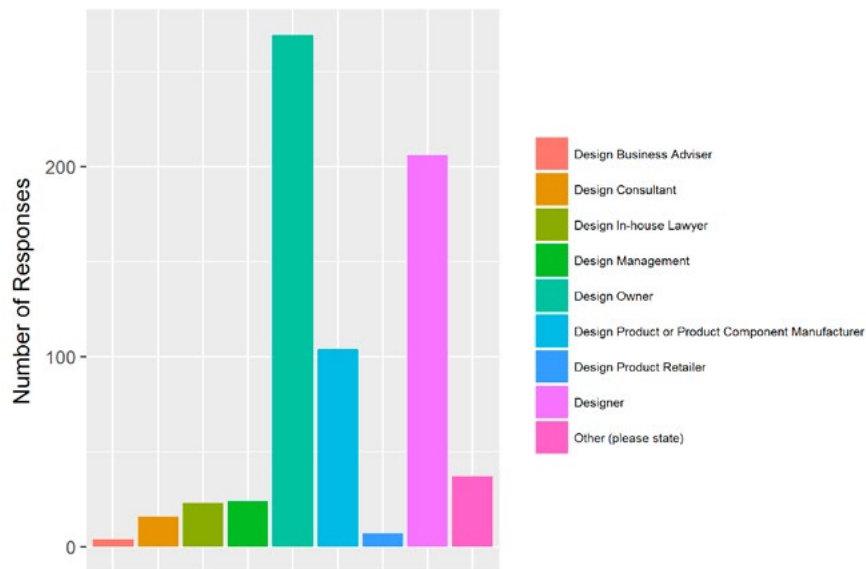
Responses to our questions about rights created, or rights involved in disputes, indicate that respondents were confused about the term 'community registered/unregistered design right' as they reported under the category 'other EU design right'. Any follow-up Survey should explain the term or use a term that includes an explanation, e.g. 'design rights registered in the EU or unregistered design rights valid throughout the EU'.

1. Respondents

A snapshot of the UK's design industry

Most respondents (68.4% of the combined sample) identified themselves as either 'designers' or 'design owners'. Nearly half of those who took part in our research identified themselves as product or industrial designers, with 75% of designers seeing themselves as 'innovators' or 'improvers of products'.

Figure 1. Primary design-related role of respondents – Survey 1



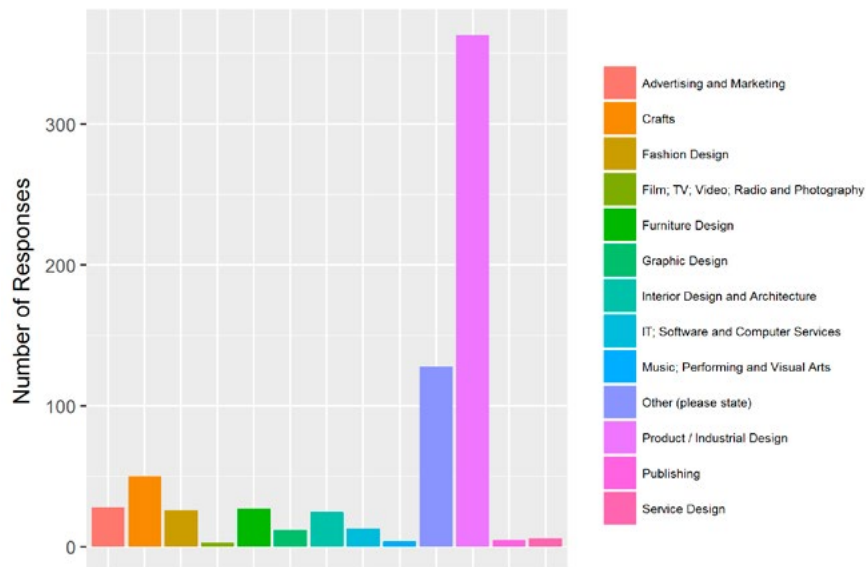
We expected that anyone who was targeted, and who was interested enough to complete our Survey, was a potential design owner. However, the term 'design owner' encompasses many different people with a relationship to design. For example, manufacturers of products and product components become design owners when they create or register valid designs or license them from designers. For this reason, we considered that the 'design owner' category should be added to the 'other' category, as it is not distinct.

Most respondents to both Surveys saw themselves as designers or design consultants (somebody providing design services). In the case of Survey 1 – which targeted companies who hold registered designs (RDs) or registered community designs (RCDs) – 32.3% of respondents identified as designers or design consultants. Even more respondents, 46.3%, identified in this way in Survey 2, which focused on unregistered design rights (UKUDR) and unregistered community design rights (UCDR).

Only 16.1% of respondents to Survey 1 and even fewer to Survey 2 (10.2%), fall into categories that potentially commission or license designs, such as 'design product or product component manufacturer' or 'design product retailer'.

Primary business area

Figure 2. Primary design-related business activity – Survey 1



Nearly half (47.7%) of respondents to both Surveys identified their area of business as ‘product/industrial design’. This was followed by 17.2% who ticked ‘other’ and 15% who ticked ‘crafts’, ‘fashion design’ or ‘furniture design’.

A much higher proportion of respondents to Survey 2 (41.8%) ticked areas of business that are not likely to produce 3D designs but may create surface designs such as packaging or branding. Only 10.3% of respondents to Survey 1 identified their business with these areas of trade. This differential suggests that owners of registered designs are more likely to be associated with traditional 3D products. However, respondents to Survey 2 – owners of unregistered designs – come from a wider field of design-related business areas that include not only 3D and 2D design, but also other innovations.

Asked what kind of intellectual property (IP) rights their company created or owned, 63.9% of respondents to Survey 2 ticked ‘copyright’ followed by ‘trade marks’ (45.5%). In comparison, most respondents (68.7%) to Survey 1 chose ‘UK registered design rights’ followed by ‘trade marks’ (55.9%).

More than a third of respondents to Survey 2 didn’t think that their company created or owned IP rights at all. (It may they simply didn’t know, because the option ‘don’t know’ wasn’t given in the relevant question.) This is compared to only 3% in Survey 1. Initially we thought that perhaps respondents to Survey 2 did not actively engage with the design right registration system. After all, they are mainly owners of unregistered design rights, which would mean they are less knowledgeable about IP rights than respondents to Survey 1.

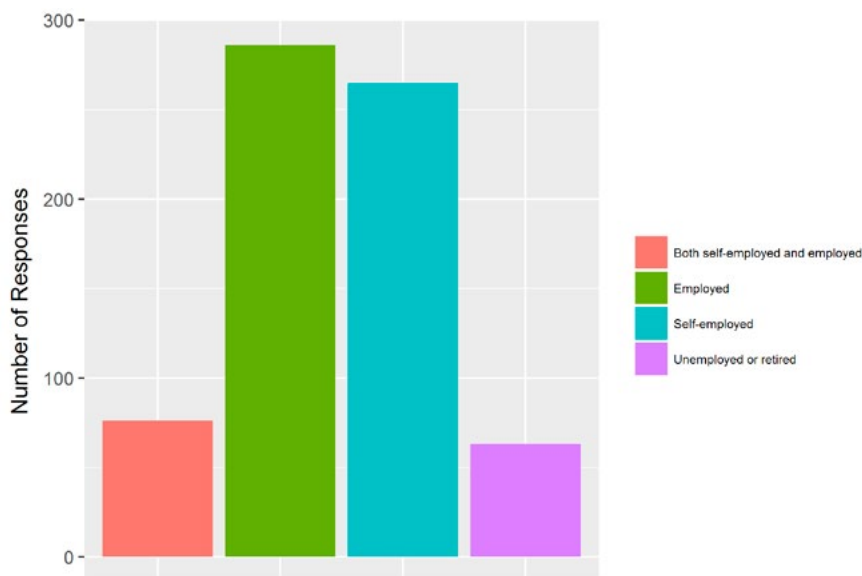
However, the data quickly flouted this assumption, since more than half of respondents in Survey 2 had heard of all IP rights (51.8%) compared to only 37.2 % of Survey 1 respondents. We look at this in more detail in Section 3, How the type of design right affects infringement.

Respondents involved with product, industrial, and furniture design were more likely to work in businesses that owned or created registered and unregistered design rights, than those from graphic, crafts and even fashion design. However, this pattern is not related to whether designs are 3D or 2D. More of those working in graphic design reported that their business owns or creates registered or unregistered design rights, than respondents in the fashion industry or the crafts sector.

Where designers work

We found that most designers work either on their own or for small companies and studios. Whilst designers were both employed and self-employed, nearly 70% of respondents identified themselves as either sole traders or working for/owning a company with fewer than ten employees.

Figure 3. Type of employment of respondents – Survey 1



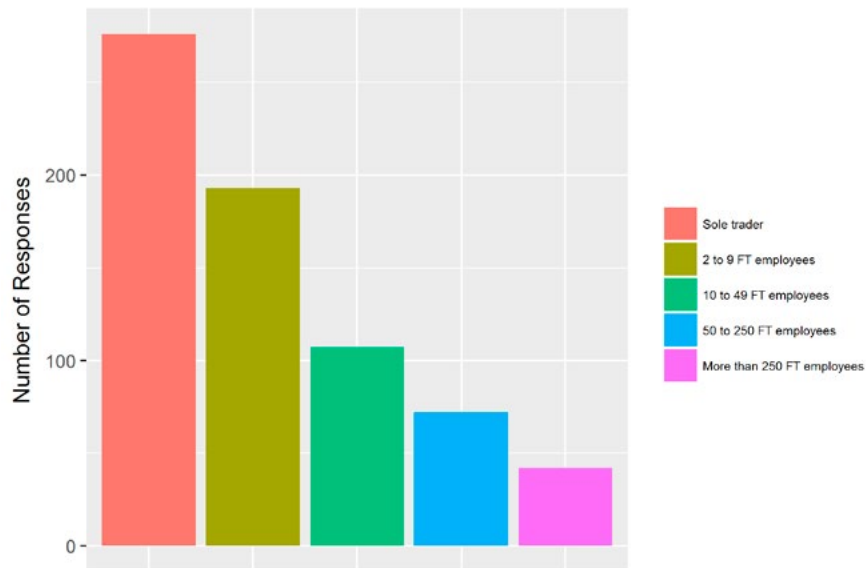
In fact, 40% of respondents to Survey 1 were sole traders – nearly double the percentage that identified as sole traders in Survey 2 (20.6%). Among respondents to Survey 1, 28% said they worked for, or owned, small businesses with fewer than ten employees compared to 50.9% working for or owning such small businesses in Survey 2.

The last time that characteristics of businesses in the design sector were the subject of a Survey, was 2010 when the Design Council researched the industry.³² They found that around 28% of UK designers are working for themselves as freelancers; just over 30% work for design consultancies, 87% of which employ fewer than ten members of staff; and the rest work for in-house design teams for companies with more than 100 employees.

Comparing these results with our findings, it seems that a higher percentage of sole traders than average responded to Survey 1 (which targeted owners of registered designs) while fewer than average responded to Survey 2 (which targeted owners of unregistered design rights). In relation to designers who work in or own small companies, the findings were reversed. Slightly fewer than average responded to Survey 1, but a higher percentage of sole traders responded to Survey 2.

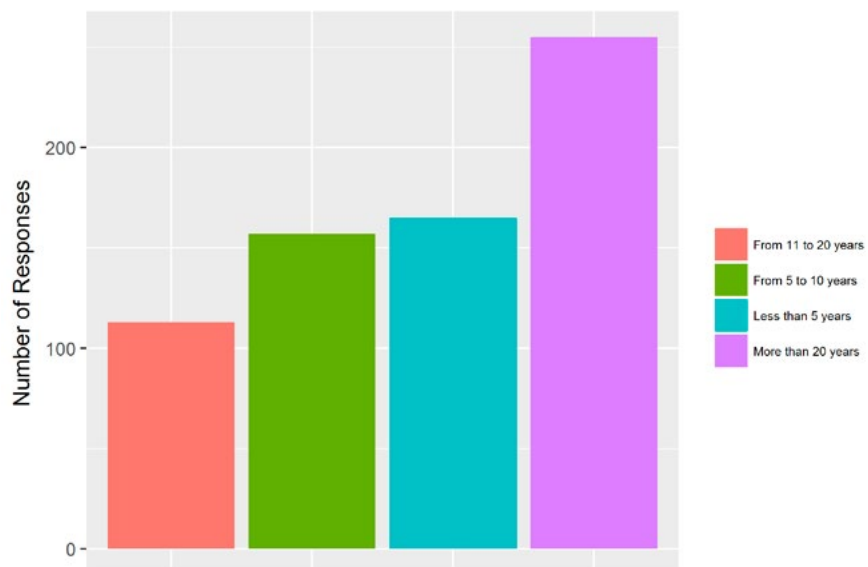
³² Design Council. (2010) Design Industry Insights: Comments and conversations on the business of design in the UK, London: Design Council

Figure 4. Size of organisation by number of employees – Survey 1



Some of those who took part (7.6%) were retired or unemployed, although this was fewer in Survey 2 (1.2%) than in the first Survey (9%). Over a third of respondents (36%) had worked in the design industry for more than 20 years – particularly those in Survey 2, which targeted holders of unregistered design rights. (See Appendix 1 for Survey responses.)

Figure 5. Length of time in years of involvement in design – Survey 1



2. Designers’ attitudes and responses to infringement

There is evidence that respondents who work in the design related sector for over five years tend to join a trade association because of the risk of design right infringement (see comments to Question 42, Appendix 1). But there is no statistically significant finding to suggest that more experienced designers report higher numbers of incidents.

Our research indicates that very few designer rights owners (1.7%) had never experienced infringement. Across all categories, 40.6% reported having experienced two to five incidents in the last five years, 31.6% had experienced more than five incidents while over 20% were infringed more than ten times. Those who have been in the field for over five years tended to report more than ten incidents of design right infringement over the last ten years. This is, of course, not surprising as they are bound to experience higher levels of infringements over time than somebody who is new to the profession.

Yet our Surveys also revealed that, whilst designers may be aware of intellectual property rights in their work, they are not necessarily fully aware of the range available to them. They are more likely to think of copyrights, trade marks and even possible patents than design rights. Even so, the registered right most designers actually owned was a registered design right (65%).

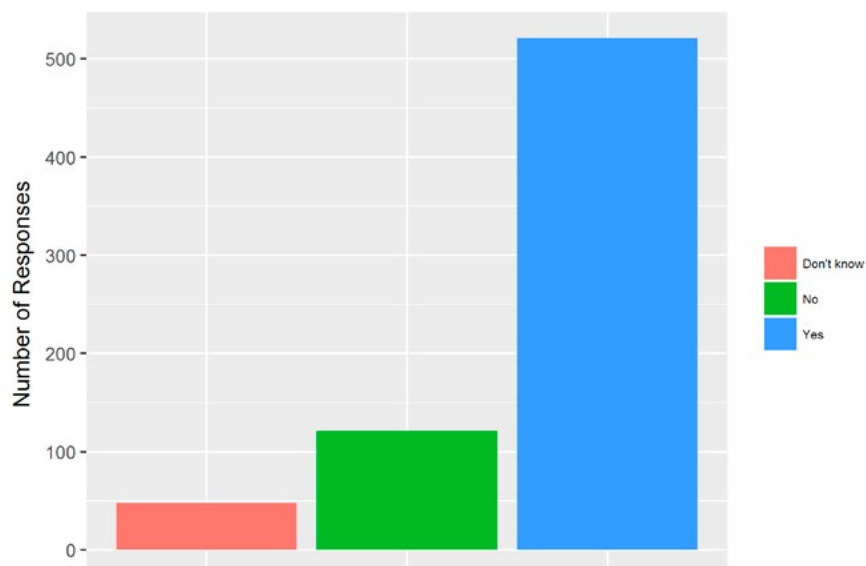
Designers consider patents and trade marks to be the most robust intellectual property (IP) rights, followed by copyright and registered design, with unregistered design right considered the least robust.

“Problems encountered from Search Engine Optimisation on Ebay. Joined Ebay VERO verified rights of owners programmes. It is useful, but takes time.”

Creating new products

In the last five years, more than two thirds of respondents (72.1%) believed that they – or the companies they worked for – had invented or developed new products.

Figure 6. Involvement in invention or development of new or improved products – Survey 1

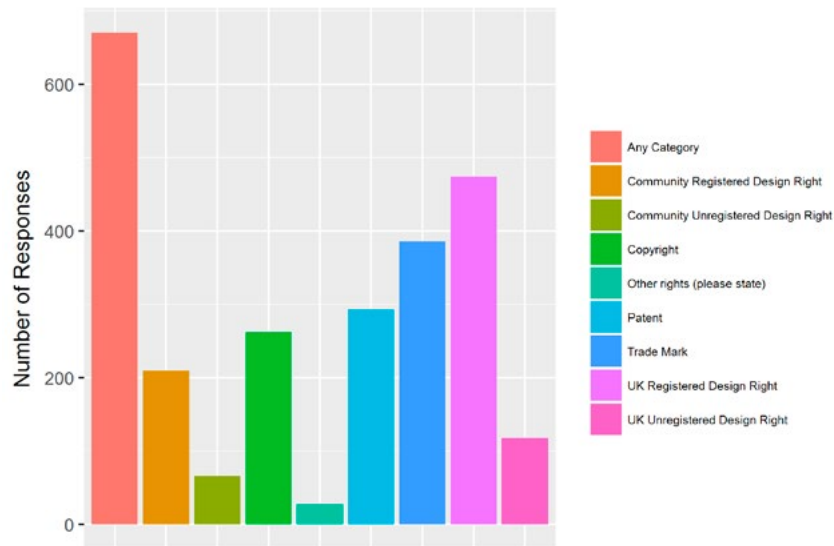


Designers and their companies were keen to protect their intellectual property, with 97% of respondents to Survey 1 (those who had registered design rights) stating that their company had created at least one form of intellectual property right including:

- UK registered design right (70.8%)
- trade marks (57.6%)
- patents (43.7%)
- copyright (39.1%)
- and community registered design rights (31.3%).

It is also worth noting that – while respondents to Survey 1 were selected because they had registered design rights – 17.6% of them reported that their business creates UK unregistered design rights and 9.9% reported creating community unregistered design rights.

Figure 7. Creation or ownership of intellectual property rights – Survey 1



The fact that approx. 2.9% did not tick any box may – in some cases – may be because the person completing the questionnaire wasn't aware of, or involved in, the IP management process undertaken by the business.

Copyright was the most popular form of intellectual property right among respondents to Survey 2, whose companies had created IPRs as follows:

- copyright (63.9%)
- trade marks (45.4%)
- and UK unregistered design rights (24.1%).

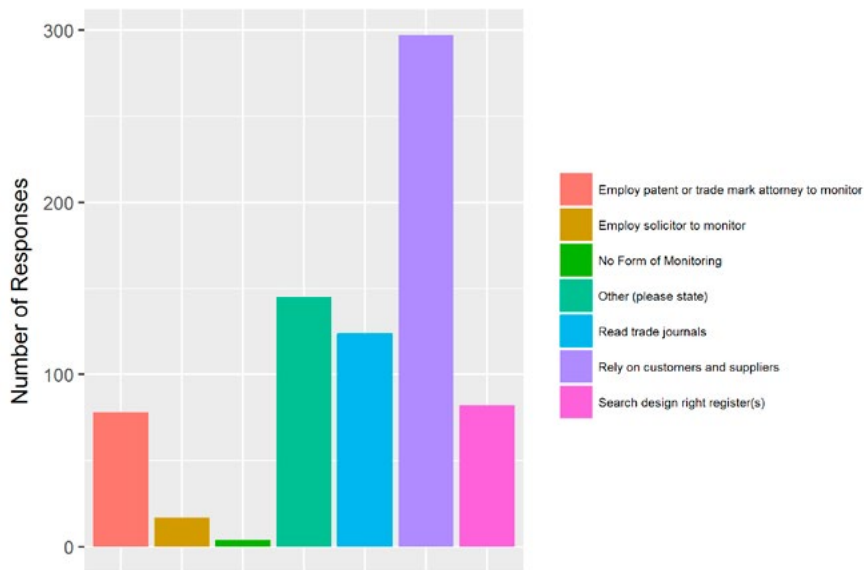
Again, this may reflect the diversity of industries that the respondents to Survey 2 came from, because copyright is likely to be relevant to protect visual artistic and graphic works. It must also be noted that UK unregistered design right does not cover surface decoration, but this kind of work is covered by UK and EU registered design rights and EU unregistered design right.

Monitoring infringement

Most designers monitor the market in some way; only 1.5% of respondents skipped this question.

The most common way for designers to find out about infringement is through ‘online searches’ (23.2%), followed by receiving alerts from customers (16.1%), hearing of breaches in emails from other people (15.9 %) and seeing their design in someone else’s catalogue (also 15.9%).

Figure 8. Activities used to monitor infringement – Survey 1



As our graph shows, design rights owners tend to rely on customers and suppliers to raise the alarm when their design rights are infringed, but they also use trade journals, employ solicitors and search the design rights registers. Other methods mentioned involved online searches or attending trade fairs to check out competitors.

‘Trading Standards don’t help. They confuse people. They muddy the water i.e. If I were infringing Disney would it be trading standards who take me to court or Disney?’

Data from Survey 1 indicated that – as a way of avoiding design right infringement – joining a trade association is more common among those who have worked in the field for more than five years, including in-house lawyers, design manufacturers and design consultants. This may in part be because some membership organisations, for example, Anti Copying in Design (ACID) offer a design registration service for unregistered design rights.

However over 90% respondents had not joined a trade association in response to the risk of infringements. There may be other reasons for designers to join an industry specific trade association.

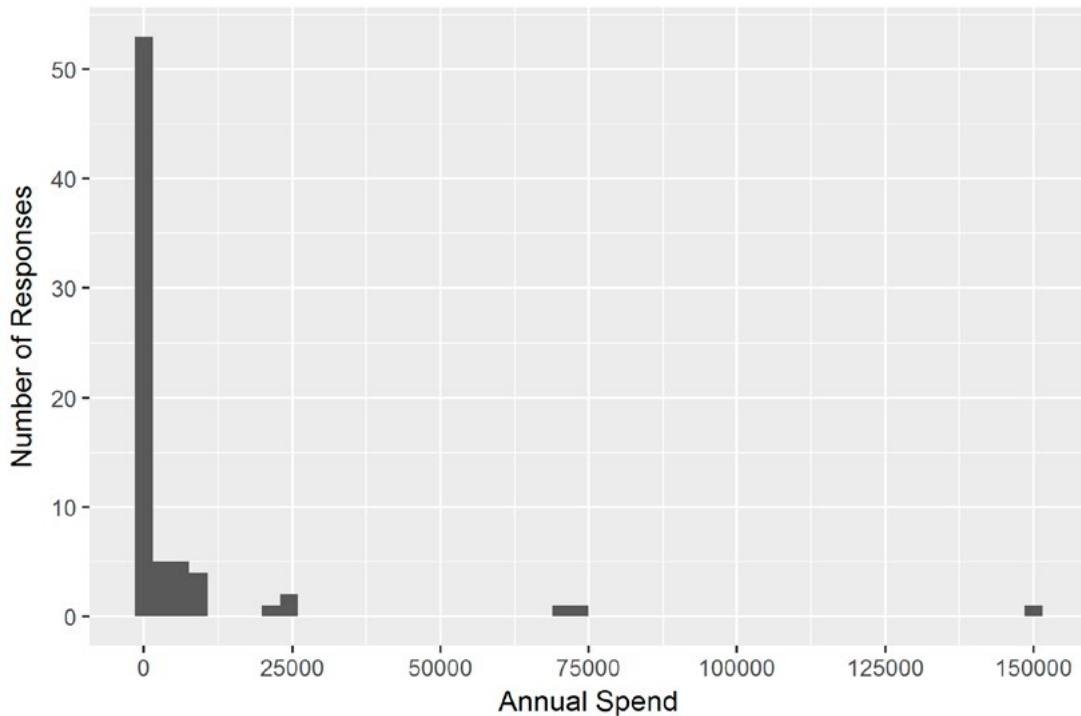
Further research is needed to get a better profile of those working in design related areas who join a trade association. Some trade associations offer support and advice on managing and enforcing design rights, and more research is needed to find out what role that kind of service plays in attracting members.

Investing money in protecting IP rights

We asked design rights owners how much in pounds sterling they, or their companies, spend each year on obtaining and maintaining the IP rights that they own. Among those who have registered design rights (Survey 1) 54% provided an estimated annual spend. The maximum spend reported was £10,000,000 (ten million pounds) and the minimum was zero. Of those who do invest in protecting their IP rights, annual costs range from £200 to over £100,000.

Overall, as the Design Council reported in 2010, 66% of designers do not take any action to protect their IP and it can be assumed that those who spend money on protecting IP rights are still in the minority.³³

Figure 9. Amount spent on enforcing registered and unregistered design rights – Survey 1



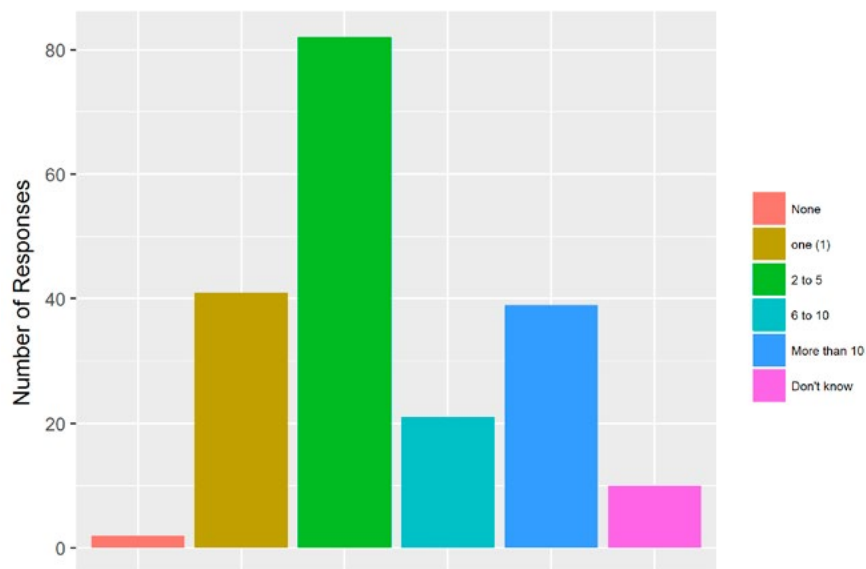
33 Design Council (2010) Design Industry Research Report: Factsheets, London: Design Council, p 1.

Reported incidents of infringement

To test our hypothesis that designers and companies who invented or developed innovative products experience infringement more often, we compared answers to this question with responses to question 33 – ‘How many incidents of design rights infringement have you experienced in the last five years?’

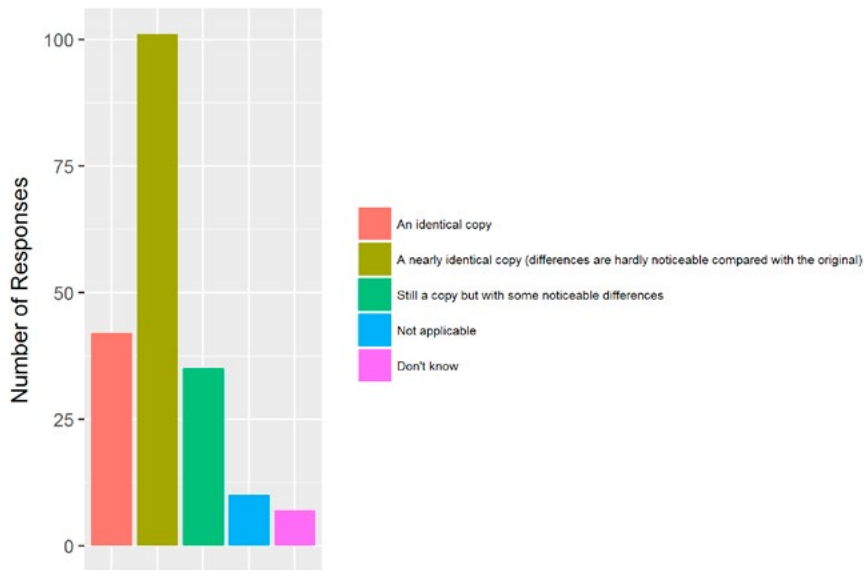
“Trying to prove our design was our own, we had to put a lot of effort into putting together a file with design history, internal meetings, discussions with factories, to prove when it was made, time stamps, who made it. That was quite challenging, but we got there in the end.”

Figure 10. Number of reported incidents within the last 5 years – Survey 1



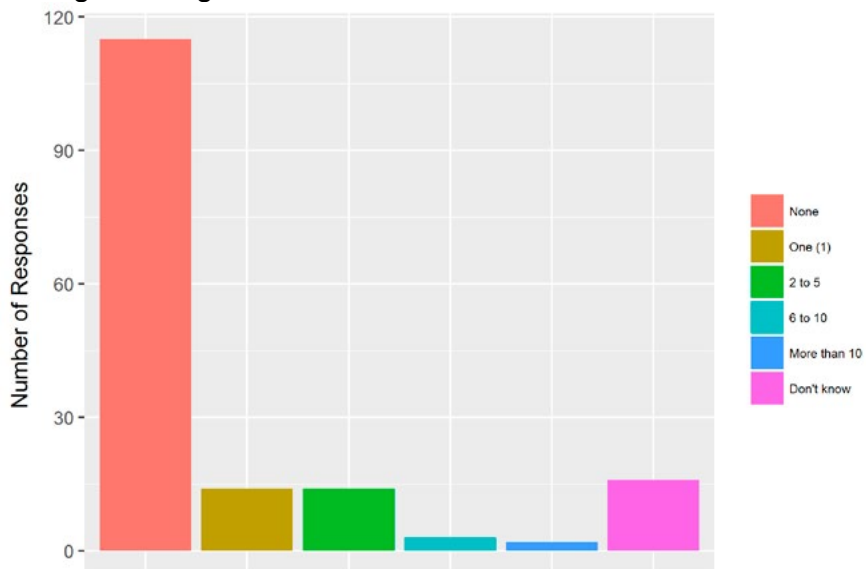
One half responded that the infringed designs should be considered ‘radical’ rather than ‘incremental’. The other half was either not sure about the quality of their design or considered the innovative quality incremental rather than radical. Innovative designs with a disruptive quality tended to be infringed more frequently than less innovative designs.

Figure 11. Type of alleged infringement – Survey 1



Designers (who we assume create designs) reported numbers of incidents of infringements roughly at the same percentages as the sample of a whole (taken from Survey 1). There is evidence that respondents who describe themselves as design owners – or design product or product component manufacturers – experience higher numbers of incidents of infringement than designers. These may be people who are not directly involved in the process of creating designs but may use or license designs. Further research is needed, and particularly better distinctions of roles, to verify this assumption.

Figure 12. Alleged infringement



Designers responses to infringement

‘Try and resolve dispute out of court, making contact with the company.’

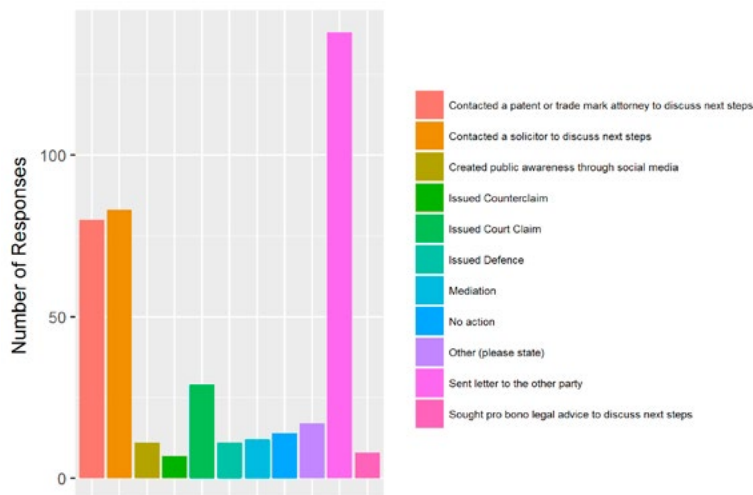
When respondents discover infringement, 60% of designers send a letter to the other party, and 33% contact a lawyer to discuss next steps. These responses suggest that there may be a correlation between advice received from a legal professional and letters sent, as the figures overlap. For 43%, pursuing legal action is ‘too costly’. Those who do take legal action however, are primarily motivated to defend their design rights and/or business as a matter of principle (68%).

However, it appears infringement disputes are not as common as the incidence of infringement cited earlier in this chapter.

In the past five years, 90.3% of respondents claimed not to have been involved in an infringement dispute, whereas 9.7% had. Of these, most (75.7%) were claimants, and a small percentage (8.6%) defendants. Just over half (51.4%) of the disputes were with a UK-based opponent but under half (43.6%) concerned a UK-registered design right. In 46% of cases, the opposing party was larger, in 20% smaller, and in 23% about the same size. Most commonly, (67%) the dispute concerned a design that related to a product sold by the designer, rather than one that had been licensed. (For a detailed breakdown of responses, see Questions 10-18 in Appendix 1.)

‘I feel very aggrieved. I contact people who have copied my product and none of them realised that I’ve got design rights. The three of them have said sorry, they didn’t realise. They have acted and taken down their listings.’

Figure 13. Type of action taken in response to an alleged infringement – Survey 1



Our research appears to verify our hypothesis that most design right disputes are not litigated in court. Only a small minority (11.6%) of respondents issued claims in court, which means most look for other ways to resolve disputes.

The responses to Survey 1 indicate that the respondents had a mixed reaction to the process of litigation. Only 27.8% were ‘content’ or ‘very pleased’ with the process while 38% were dissatisfied.

‘We stop people from copying and putting designs on Facebook or their own website. We are annoyed, frustrated and unhappy that we can’t quickly protect our IP.’

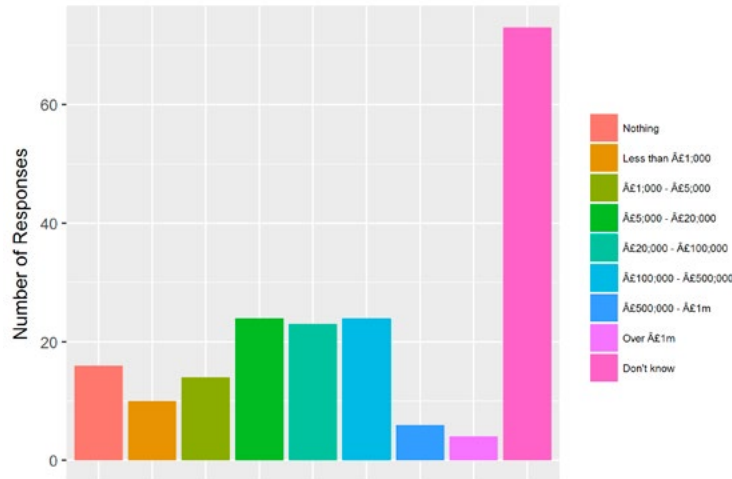
Impact

‘Most challenging is the emotional aspect. You lose sleep over it. Better not to think about it at times.’

Most respondents to our Surveys had experienced revenue losses due to infringement of registered and/or unregistered design rights. Only 7.9% reported having lost nothing at all. Losses worth up to £5,000 were reported by just over 12% of respondents, while 38% had suffered financially to the tune of £5,000 to £500,000. (For a more detailed breakdown of these figures, see Appendix 1, questions 30-32).

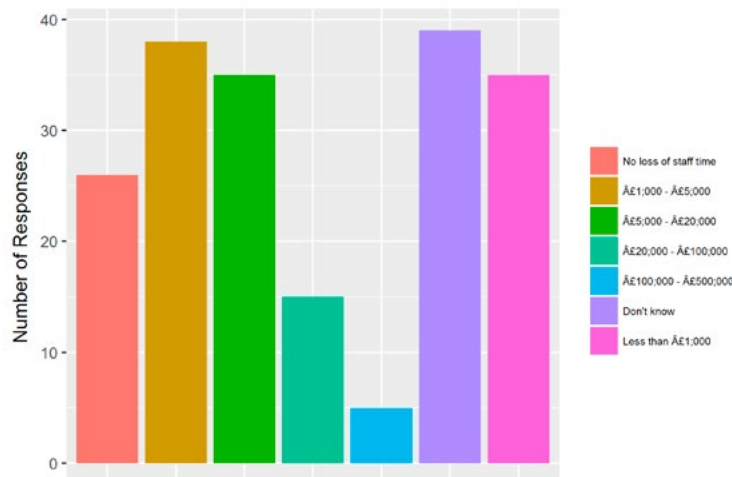
‘We employ six people in our product department. Infringement is very expensive for a company our size. We need to be able to challenge these copies, to make sure it doesn’t happen.’

Figure 14. Revenue lost due to infringement in the past 5 years – Survey 1



As well as loss of revenue, it’s important to remember that designers and design rights owners lose staff time while dealing with the infringement, and in most cases have to pay legal fees. The values reported for legal fees and staff time were overall lower but similar in distribution.

Figure 15. Value of the staff time lost due to infringement in the past 5 years – Survey 1



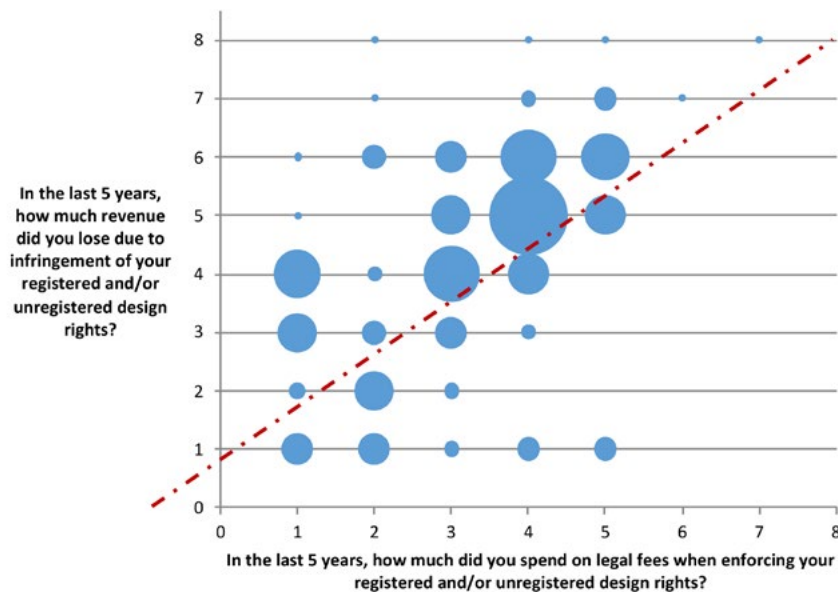
In preparing our research we had hypothesised that designers are more likely to incur legal fees (and very likely to litigate) when experiencing substantive revenue losses.

We tested this hypothesis by comparing data from questions 30 and 31. (See Appendix 1.). We compared the median and dominant categories for legal fees and revenue loss. The results of our Surveys demonstrated that spending on legal fees is much lower than loss in revenue which indicates that revenue loss must be high if design right owners incur legal costs.

| | Median | Dominant |
|--------------|-------------------|----------------------|
| Legal fees | £1,000 to £5,000 | £5,000 to £20,000 |
| Revenue loss | £5,000 to £20,000 | £100,000 to £600,000 |

This chart below shows the co-distribution of both variables. (Numbers refer to the amount of losses/spending. The size of the bubble depicts the frequency of answers.) Most of the answers – represented by the largest bubbles – are on or above the diagonal line. This means that, for most companies, the level of revenue loss was similar or higher than the amount they spent on legal fees. Many of the bubbles are very high above the diagonal indicating that, for some companies, revenue loss exceeded legal fees by a substantial amount. The opposite situation, represented by bubbles below the line, happened rarely.

Figure 16. Variation of revenue lost with spend of legal fees in the last 5 years – Survey 1



3. How the type of design right affects infringement

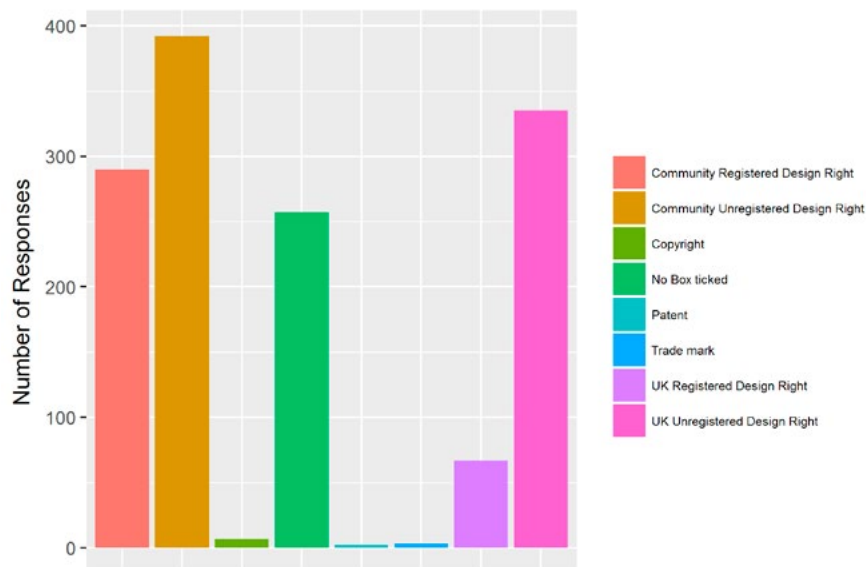
'I store © designs on personal cloud.'

Our research showed that knowledge or awareness of design rights is generally lower than of other intellectual property (IP) rights such as trade marks, patents or copyright. Those who are aware of design rights, are more likely to know about registered than unregistered design rights.

Survey 1 targeted owners of registered design rights, who tended to be more aware of the different rights than respondents to Survey 2 – owners of unregistered design rights. In Survey 1, over a third (37.2%) of respondents had heard of all the different types of IP rights. However, community registered design rights (CRDRs) and UK and community unregistered design rights (UKCUDRs) were the least known. Respondents to Survey 2 were most familiar with UK registered design rights and least aware of UKCUDRs.

'I'm aware of copyright, so your unregistered rights can be protected (sic), but I've never used it.'

Figure 17. Understanding of level of protection (robustness) by type of right – Survey 1

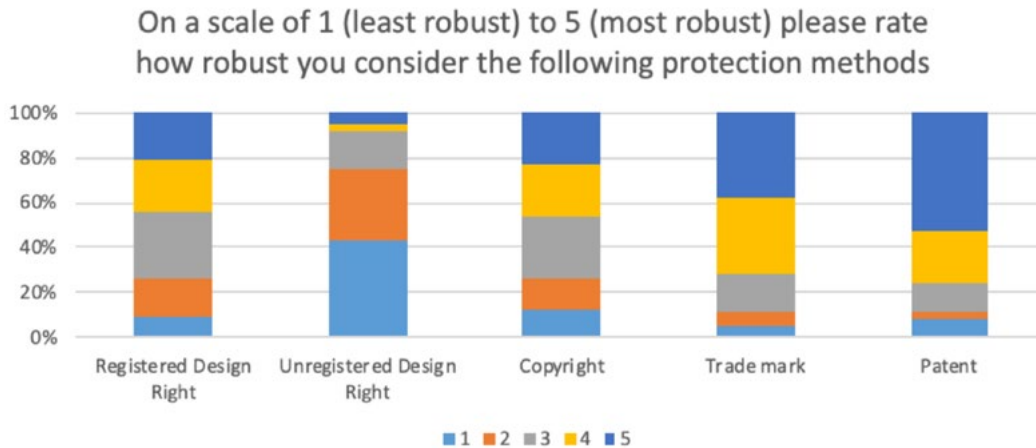


Designers' confidence in protection methods

As indicated by the graph below (using data taken from Survey 1), designers and design rights owners believe that the most effective intellectual property right – that is, the one that offers the best level of protection – is a patent. This is followed by trade mark, registered design right, copyright, and unregistered design right. Designers had more confidence in registered than unregistered design rights, with 75% considering them to be good or very good value for money.

Figure 18. Understanding of level of protection (robustness) by type of right – Survey 1

Confidence in unregistered design rights is low, with most respondents rating them at ‘1’ and over a third giving them a ‘3’ or less.



‘First to market is as good as any IP these days, apparently.’

However, post hoc tests using the Bonferroni correction found significant differences between all protection methods apart from between registered design rights and copyright, which were deemed equally robust. It is important to note that large proportions of the sample did respond with ‘don’t know’ to several of the suggested choices and these responses were not considered in the comparisons.

Registered or unregistered design rights?

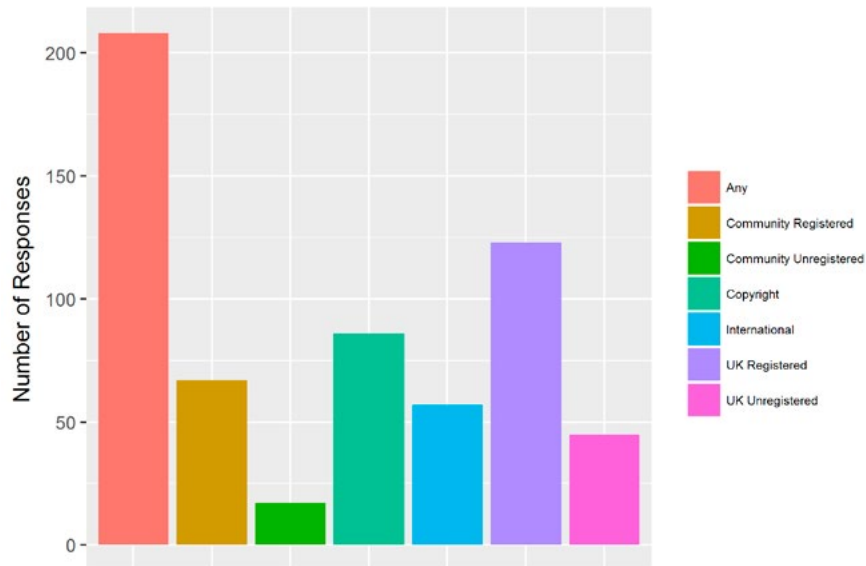
Those owning registered design rights reported that in their experience infringement occurs early in the life of the right – 52% within less than three years from registration. Slightly less (40.9%) reported unregistered designs being infringed within three years from first marketing, while only a small number (8.7%) of unregistered designs are infringed after five years of being brought to market.

In addition, when we asked respondents to base answers on a particular dispute, most selected a case where registered design rights had been infringed. Only 18.7% chose a dispute involving unregistered design rights on their own or in addition. It is however notable that nearly 10% of companies reported that the dispute involved international design rights. (We will look at international disputes in more detail in Section 5.)

‘I have registered one item. By the time I got it to market it was already stolen. Before it came out on the market, the idea was already ripped off. It was registered, but other companies just had no respect for it and made exact copies.’

Disputes

Figure 19. Involvement in dispute by type of right – Survey 1



We posed a series of questions, in both Surveys, asking respondents to frame their answers in the context of a particular dispute that they felt represented their experience. In both Surveys, the overwhelming majority (89.5%) were claimants.

In Survey 1, respondents named UK registered design right (50.5%), copyright (31.3%) and community registered design right (25%) as the IP rights most frequently involved in the dispute they considered representative. This is in contrast to Survey 2, where almost two-thirds of respondents (61.2%) were defending copyright.

Is litigation more common for registered or unregistered design rights?

We hypothesised that litigation involving registered design rights is more common than that for unregistered design rights. To test this, we looked at the data from claimants in Survey 1 about involvement of IP rights in their dispute, and the actions they took.

‘Contact my solicitors, who I met through a British Library course’

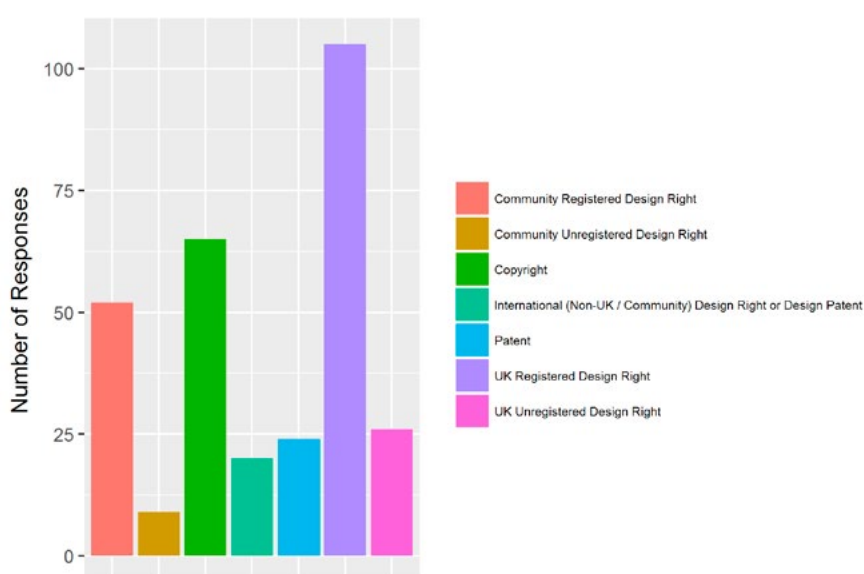
As is evident from the responses to Survey 1, there are no grounds to believe litigation involving registered design rights is more common. In the sample, a much higher percentage of claimants issued court proceedings involving UK unregistered design rights (36% and 25%) than UK registered design rights (13.5% and 20%). To verify our findings, we compared the findings to court statistics (available in Appendices 2 and 3) which also demonstrated that it is more common for disputes involving unregistered rights to go to court.

‘Talk to the other company directly (director, or legal team) – avoids legal fees and challenges.’

Initial reactions to infringement may have had some influence on how disputes evolved. Most claimants (over 80%) who discovered their registered design rights had been infringed, were more likely to seek legal advice – either by contacting a solicitor (39.9%), a patent or trade mark attorney (38.5%) or by seeking pro bono legal advice (3.8%). Two-thirds also sent letters, although we are unable to say whether this was before or after receiving legal advice.

On the other hand, of those who found unregistered rights had been infringed, less than two-thirds sought legal advice (62% - 32% contacted a solicitor, 24% contacted a patent or trade mark attorney and 6% sought pro bono legal advice). More than half (54%) sent letters to the alleged infringer.

Figure 20. Involvement in dispute by type of right – Survey 1



'We regularly send cease and desist letters but they just get laughed at because prosecution [sic] of infringers is long-winded and expensive... Publicise the IPA 2014 more. IP doesn't get discussed. We've had six years trying to fight people. It's death by a thousand cuts.'

Are registered design rights easier to defend?

We used responses in Survey 1 to test our hypothesis that registered designs are easier to defend successfully than unregistered ones. Our research shows that infringed design rights, which were subject of court proceeding, were defended successfully in:

- 40% of cases involving UK registered design rights and 33% of cases involving community registered design rights
- 22% of cases involving UK unregistered design rights and 50% of cases involving community unregistered design rights.

This seems to confirm our hypothesis, but the low number of responses does not allow us to draw firm conclusions. When we compared this data to actual cases involving design rights that have been before the English courts between 2013 and 2017, it seems that the numbers are misleading. In fact, only 50% of registered rights were found to have been infringed, while nearly 70% of unregistered design rights were defended successfully.

When we asked respondents if they were satisfied with the outcome of the legal dispute, they reported similar results. (See question 27, Appendix 1.) However, in these cases ‘satisfaction’ may have arisen from some means of dispute resolution other than the courts.

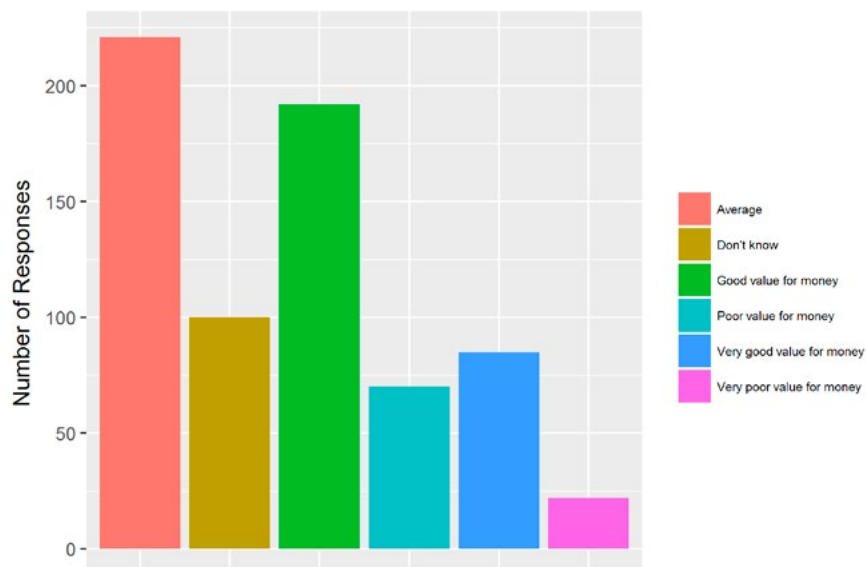
‘When a registration goes live it is tantamount to advertising ‘come and copy me’. It gives a bit of protection, but cost lots to defend.’

Survey results confirmed our hypothesis that confidence in the system for protection of design rights is low. It is particular low with respect to unregistered design rights. Unsurprisingly perhaps, respondents to Survey 1, which targeted those who had registered design rights, were more enthusiastic about the value for money associated with the registration process, with more than a quarter (27.8%) agreeing this was ‘good value for money’ and another 12.3% thinking it was ‘very good’. Respondents to both Surveys rated the value for money in registering design as ‘average’ or ‘better’ with only 13% considering it ‘poor value for money’ or worse.

It is surprising to find that respondents overall rate the registration system as value for money when they know that enforcing rights can be volatile and costly. In our telephone interviews we asked why respondents registered design rights. Some stated that they see this as a preventative measure and as a means to add to the reputation of the business.

‘It doesn’t seem fair that I’ve already paid the money to protect my design but there is no back up for people like me, really small businesses who want to protect that design.’

Figure 21. Perception of value for money of registration – Survey 1



‘In our experience, the system works well. It’s fine as it is.’

4. Potential infringers’ attitudes

‘We have 300 registered designs, but people see our designs on the internet and try to infringe our rights – about 30 to 40 times since we began.’

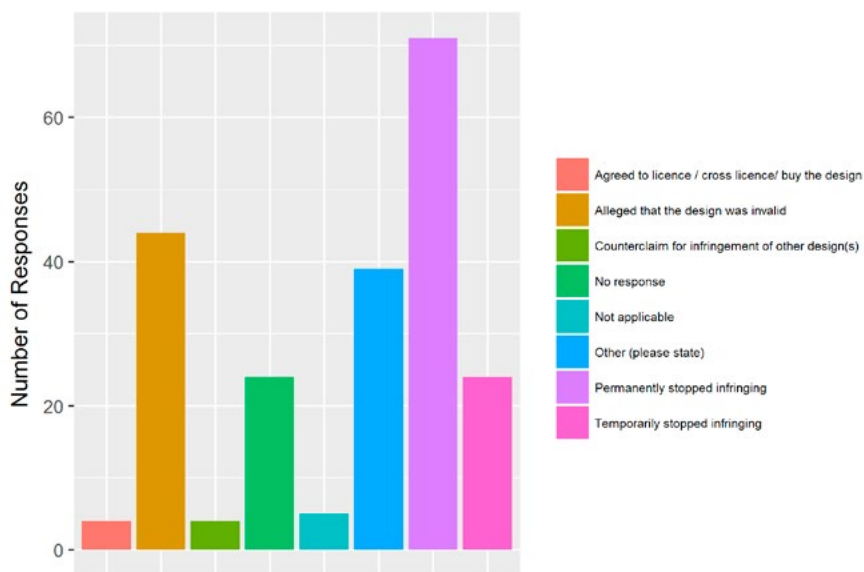
Our Surveys show that in by far the majority of cases, when a designer challenged an infringer, the latter stopped infringing – usually permanently (40.6%) although sometimes only temporarily (13.7%).

At times, infringers claimed that the design was invalid (25%). Among our respondents who were allegedly the infringing party, 33% alleged the design was invalid, but 22% permanently stopped infringing. The majority of claimants (62%) did not know why their allegation of infringement was ignored.

Response to alleged infringement from allegedly infringing party

For defendant companies in Survey 1, a negative reaction to infringement claims was more likely and, in a third of cases, potential infringers alleged that the design was invalid. Overall, claimants gave different explanations for their claims being ignored, including ‘could not care less’, ‘in financial trouble, or ‘they [designs] would not be sold in Europe’.

Figure 22. Type of action taken in response to an infringement – Survey 1



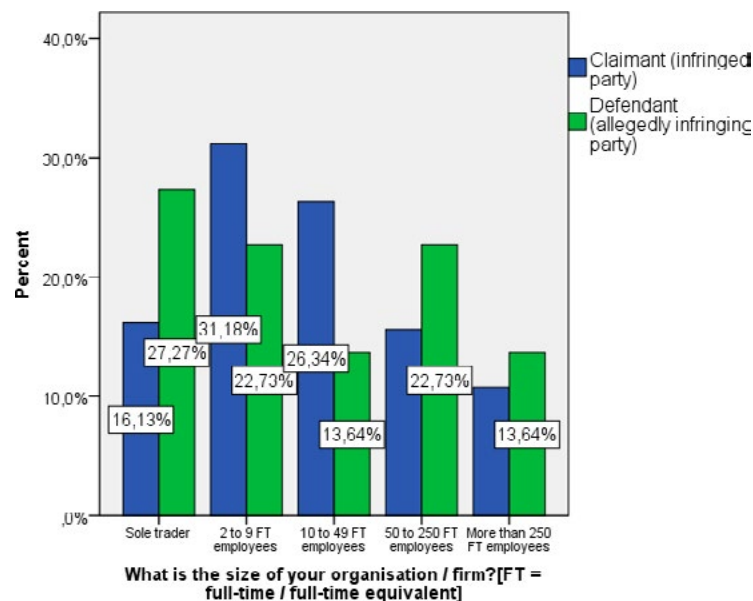
Where allegations of infringements were ignored, respondents most commonly did not know why. This is not surprising since the question invited respondents to speculate. However, there was one response from an allegedly infringing party, who gave their reasons as believing that the design was invalid, and that the infringed party was too small to be a threat.

Does the size of a company influence their attitude to infringement? The sample was too small to draw any firm answers to this question. It seems however, that micro companies were more likely to stop permanently infringing after they have been approached by claimants. Very large companies tended to ignore the claim or alleged that the design was invalid.

Negative reactions – i.e. no response, alleging that the design was invalid or making a counterclaim – were not related to the size of the claimant’s business. However, they were more frequently experienced by the smallest companies (with between ten and 49 full-time employees) and the largest companies (more than 250 full-time employees) in our Surveys.

We didn’t find any confirmation of our hypothesis that infringing parties tend to be larger businesses than the claimant, at least in this sample. Defendants were more often medium-sized to large companies and more often sole traders, while most claimants were micro to small businesses.

Figure 23. Size of organisation involved in a dispute by number of employees – Survey 1



About 45% of disputes were reported to have taken place with companies larger or very much larger than the respondents who took part in our Surveys. While fewer than 20% took place with businesses that were smaller than our respondents.

Our hypothesis that infringers tend not to respond to letters of infringement claims if the opposing parties are smaller could not be verified.

It seems that where the defendant is smaller they always responded to the claim. The small number of defendants that responded to this question in Survey 1 (which targeted owners of registered design rights) reported that in general they responded to claims of infringement. Only 20% of cases, where the other party was the same size, resulted in no response.

Claimants on the other hand reported that they received no response to their claims in 10% of cases when the other allegedly infringing company was the same size or in 36% of cases, where the other company was larger or very much larger.

Claimants reported that most defendants (or alleged infringers) were about the same size or larger. In only 23.5% of reported disputes was the other party to the dispute smaller than the claimant. Alleged infringers reported that in nearly 60% of disputes the other company was larger or very much larger than them.

We had hypothesised that the larger a defendant’s business, the more likely they are to ignore infringement claims. This could not be verified however, as the decision not to take action was more commonly taken by defendants who identified themselves as sole traders. Cases were rare among larger companies. However, the sample of defendants was too small to draw any firm conclusions.

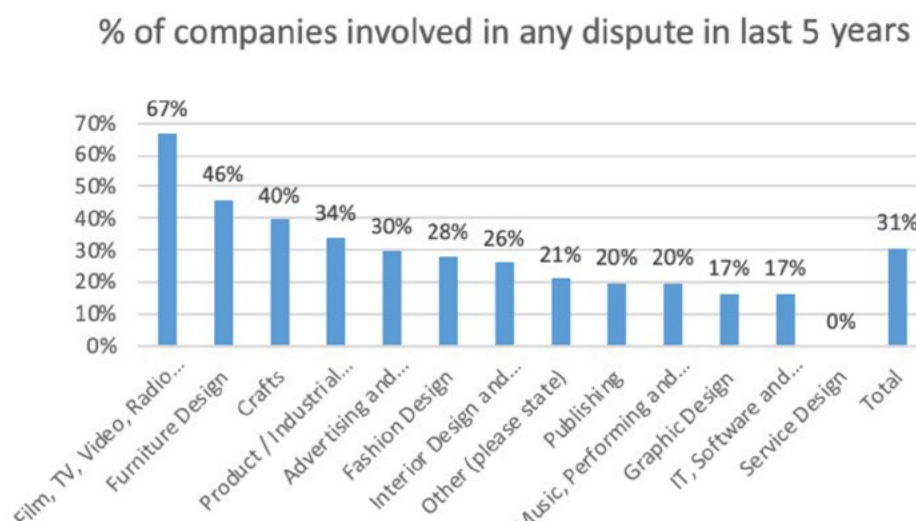
Is infringement of products that have proof of market more common?

The majority of respondents to Surveys 1 and 2 stated that at the time when the dispute occurred the design was used in a product the business was selling. In Survey 1, more than three quarters reported that their product was on the market for sale by the respondent.

This shows that infringement occurs predominantly in relation to products that have proof of market, as we hypothesised prior to our research. Yet, our hypothesis that the retail sector is notoriously infringing design rights could not be verified or dismissed, because we don't have any information about which sectors the allegedly infringing companies worked in.

We do have data on how often companies have experienced design rights infringement over the last five years, however, which has been segmented by design business sector. Surprisingly, design right infringements are most frequently reported by companies in the film, television, video and radio sectors, followed by furniture design, crafts and product/industrial design.

Figure 24. Percentage of companies involved in a dispute in the past 5 years by market sector – Survey 1



Do design businesses that create innovative products experience more design infringements?

There is no evidence that this is the case. We compared and cross-referenced answers to several questions in Survey 1, including:

question 7, which asked about the creation and ownership of types of intellectual property (IP) rights

question 33, 'To the best of your knowledge, how many incidents of design rights infringement have you experienced in the last five (5) years?'

and question 37: 'Would you describe the innovative quality of your infringed designs as radical or incremental?'

It seems that there is no correlation between the number of incidents of infringement experienced and the innovative quality of the products. It is worth noting that the numbers in the relevant categories are too small to draw any firm conclusions, but this finding was also supported by a chi-square test.³⁴

³⁴ A chi-square test is a statistical hypothesis test used either to determine whether a sample data matches a population (chi-square goodness of fit test), or to compare two variables in a contingency table to find out

5. Incidence of international infringement

If we combined both Surveys, at least three quarters (78.8%) of those involved in disputes were claimants. Only a small number (8.2%) reported being defendants in an infringement dispute, while around 12% reported that they were both. Where disputes involving international design rights are concerned, respondents reported similar percentages across the categories.

We wanted to measure the incidence of design infringement experienced by UK designers internationally over the last five years. Our research showed that, of our sample 69 companies had been affected by international infringement of their design rights, which constituted only a small percentage (8.4%) of all companies who reported involvement in a dispute. The vast majority of respondents (91.6%) did not believe that their companies had been involved in an international dispute, or were unaware of it.

‘Write to them. Almost everybody says ‘sorry’ if they are private traders. Not if they are on Ebay, or Amazon and based overseas.’

Of these 69 companies, 53 were claimants, six defendants and nine had found themselves in both roles. (The remainder ticked the ‘don’t know’ option). The country most frequently named in international disputes was China, followed by the USA. In 17 cases, respondents had had design rights infringed in more than one country.

Other countries named included Belgium, Brazil, Bulgaria, Canada, Denmark, Germany, Hong Kong, India, Israel, Italy, New Zealand, Philippines, Russia, South Africa, South Korea, Spain, Sweden, Taiwan and Turkey.

We also wanted to find out more about individual disputes. To this end we asked respondents to both of our Surveys to frame their answers in the context of a particular dispute that they felt represented their experience. In this context, just under half (45.8%) had experienced international disputes.

‘I’m uncertain how effective enforcement will be, even if I get a judgement. I’m not sure about costs of enforcement.’

There is not much information or research on the impact of international design right infringement on UK designers available to either support or contradict these findings.

However, according to reports published by the Anti-Counterfeiting Intelligence Support Tool (ACIST),³⁵ there were 892 detentions along the UK border between 2012 and 2015, involving products that infringed design rights. The estimated retail value of the original goods is given at just over €6 million. Most of these goods were imported from China or Hong Kong (just over 94 %), a tiny percentage (3.02%) from Pakistan, and the rest from other countries.

At the same time, 69,068 incidents of detention were reported involving infringements of trade marks at the border. The estimated retail value of the original products in these cases is approximately €360 million.

Much more research is needed on the impact of infringement of design rights on an international level, not only concerning counterfeit products that may be imported into the UK but also infringement of UK products elsewhere.

if they’re related.

35 The Anti Counterfeiting Intelligence Support Tool (ACIST) is an online database that reports data on counterfeit goods that are at the borders of the EU or within the internal market, relevant rights infringed by these products and country of origin: <https://www.tmdn.org/enforcementintelligence-webapp/reports> (accessed on 14 June 2018)

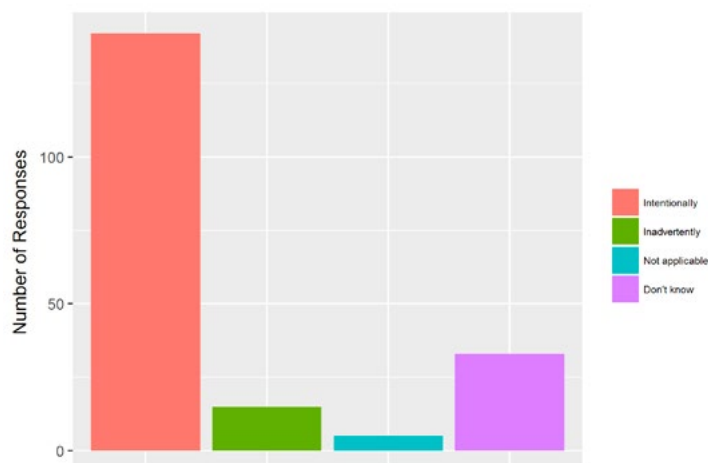
6. Distinguish between potentially criminal offences and civil infringement

We wanted to find out whether most infringements of design rights reported would be regarded as criminal offences if current law extended to unregistered design rights. So we compared the two data sets from questions 35 and 36 (see Appendix 1).

The terminology used for the questions mirrored terminology used in the Intellectual Property Act 2014. Under the Act, it is a criminal offence to intentionally copy (without the permission of the right holder) a registered design ‘in the course of a business ... so as to make a product exactly to that design, or with features that differ only in immaterial details from that design’³⁶ where the infringer knows (or has reason to believe) that the design they have copied is registered.

In this section, we have not distinguished between incidents involving registered and unregistered design right. Where their rights had been infringed, 73% of respondents considered it to have been by an identical, or nearly identical, copy. The same percentage (73%) of respondents believed the infringement had been intentional. If these data are overlapping this may indicate that most design right owners perceive their infringement to fall under the category of a potentially criminal offence.

Figure 25. Intentional or inadvertent infringement by type – Survey 1



We asked whether respondents would describe their infringed designs as ‘an identical copy’ or ‘nearly identical’, that is, where ‘differences are hardly noticeable compared with the original’. Only 5% of all respondents thought that the infringing design was ‘identical’ to their own and that the infringement was intentional. More than twice that (11.1%) thought that the infringing design was ‘nearly identical’ and that the infringement was intentional.

Considering that ‘nearly identical – differences are hardly noticeable compared with the original’ still requires a subjective assessment of the nature of the copy, we can assume that between 5% and 16% of incidents of design right infringement experienced by respondents would be regarded as a criminal offence if current legislation were extended to unregistered designs.

‘We’ve challenged Amazon: writing, phoning trying to get them to recognise they are selling our registered designs. How does a small business have time to impress the illegality of their actions (per Intellectual Property Act 2014) on Amazon?’

36 Registered Designs Act 1949, section 35ZA(1) inserted into the Intellectual Property Act 2014, section 13

7. Designers and the courts

'I get a solicitor recommended by the Giftware Association because it is less expensive and the solicitor knows the industry, and they know IPR procedures.'

Designers are not obliged to register a right to attain design right protection. UK unregistered design rights and/or community unregistered design rights subsist automatically. This means that designers and inventors do not have an equal need to develop a relationship with a legally qualified attorney to protect their innovations. Applicants for a patent are more likely to engage with a legal professional due to the elaborate examination process than a designer who applies to register a design. Since design right applications are not examined substantially, it is easy for a designer to register designs without the help of a legal professional. As a result, designers' experience of the legal context is diverse.

Designers' responses to the questionnaires and in the telephone interviews suggested that their first engagement with 'design law' is when choosing:

- whether or not to register a design
- whether or not to treat their design as an 'unregistered design right', and protect it accordingly
- whether to rely on copyright
- or whether to try for a patent if the design is inventive.

Designers engage with the litigation process when:

- deciding whether to pursue an infringer of their design
- deciding whether to defend their design against an infringement action by a competitor
- having to decide whether to defend their design registration against a validity challenge by a competitor.

Registering a design

We asked designers whether they register all their designs, and if not all, how did they decide which to register. Respondents said that they register 'key designs', for example, where:

- 'the design is new and whizzy'
- 'we have done something a bit more inventive and unique'
- 'the designs are commercially important to us'
- and 'have a market edge'.

They also told us that obtaining design registration gives a designer 'credibility and backbone'.³⁷

However, the decisions of the Intellectual Property Office Tribunal, in relation to applications for invalidations of designs already registered, present one of the most often articulated concerns of designers. Respondents to our Surveys were afraid that, having applied for and obtained a registered design, their design still remained vulnerable.³⁸ Those who took part in our telephone interviews suggested that the IPO could do more.³⁹ 'IPO should stay

37 Telephone interviews questions 4 and 4a.

38 IPO Tribunal Registered Design decisions 2013-2017, see Appendix 5.1

39 Telephone questionnaire q.3: 'Do you think that there is a greater role for government to prevent or reduce infringement of design rights?'

involved, not just take your money, including for renewals, and not get involved if there is an infringement.’ said one. Another thought the system should ‘make it less easy for people to copy, and make it less expensive to follow [an infringer].’

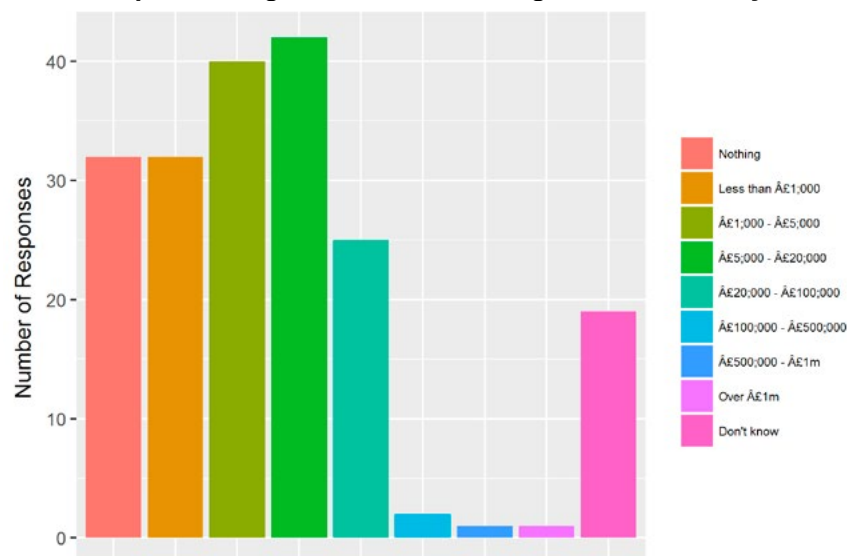
‘All our designs are registered. But our solicitor warned us off litigation because the infringer had more money. I feel that I have wasted all my money registering everything’

Reasons for avoiding court action

Designers’ decisions on whether to engage with design law and the legal system, including the possibility of pursuing an infringement dispute through the court system, are shaped by a number of factors.⁴⁰ Of the 24 respondents to the question ‘Why did you choose not to take legal action’,⁴¹ nearly half (42.2%) cited a ‘fear of cost of legal proceedings, that the cost would not justify the potential benefit’.

This confirms our hypothesis that claimants are worried about the costs incurred when taking a case to court and it may be that experience has stoked this fear. When asked about the costs of legal fees to enforce registered and/or unregistered design rights, more than a third (35.1%) of respondents to both Surveys had spent up to £5,000, and about a fifth (20.2%) had spent between £5,000 to £20,000 over the previous five years. Our telephone interviews revealed that some designers and design rights owners refrained from taking action because they didn’t believe the potential gain would justify the cost. However, 37% of respondents had lost sums varying from £1,000 to £500,000 in revenue due to infringement of their design rights, and 50% had lost £1,000- £500,000 in value of staff time.

Figure 26. Amount spent on legal fees to enforce rights in the last 5 years – Survey 1



40 Telephone questionnaire, and Surveys 1 and 2 questions 21, 22, 30, 31, 32.

41 Survey 1, q 21. There were too few respondents to Survey 2.

Another common reason for not taking action, cited by almost a fifth of respondents to our Surveys (17.8%), was the ‘fear of time it will take the designer away from their business’. Again, designers’ experience appears to validate this fear. Of the disputes cited, that were resolved in court, 36% took up to a year to reach final judgement, 41% took between one and two years, while 23% took more than two years to resolve. This means court proceedings took an average of 20.5 months, with the median length of proceedings being 18 months.

‘I would use social media to shame them (infringers) if we can’t get into conversation.’

Reasons for taking court action

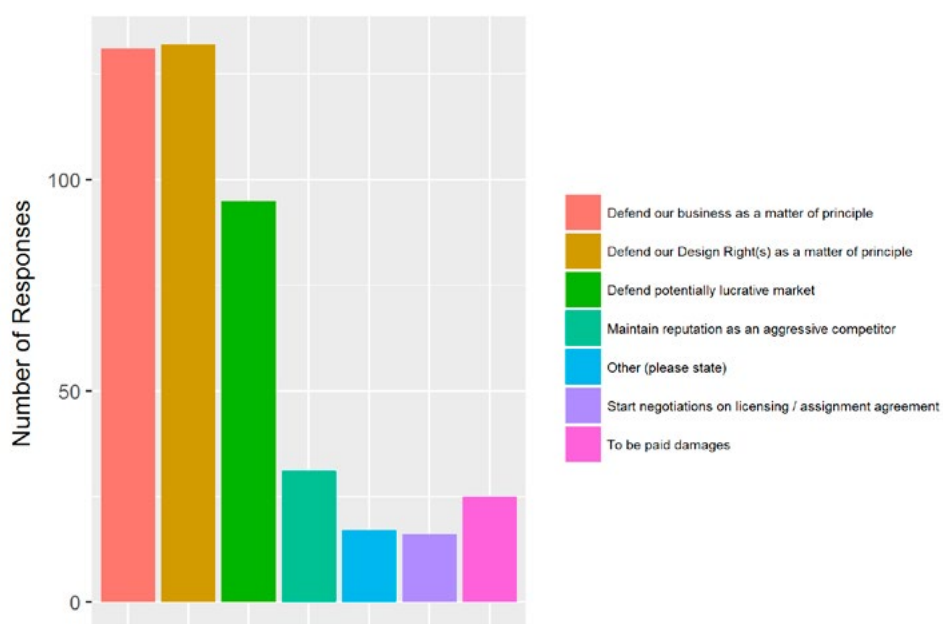
A high percentage (nearly 70%) of those respondents who had taken action in a dispute stated that their motivation was to defend design rights and/or their business as a matter of principle. Only about 50% stated that they wanted to defend a potentially lucrative market. This means that commercial considerations were in most cases not the main motivation to enforce rights. Interestingly, this applied to both, claimants and defendants.

Only a small minority (11.6%) of respondents issued claims in court, which means most look for other ways to resolve disputes. Issuing a court claim resulted in a slightly higher share of the defendant stopping infringement either permanently or temporarily – supporting our hypothesis that the threat of litigation stops the infringement.

We found that larger firms are more likely to litigate than smaller ones. Among respondents to our Surveys, 35% of companies with more than 250 full-time employees (that responded to the question) had issued court claims, constituting a significantly higher percentage than the sample overall (15.7%). Between 6.9% and 25% of smaller companies had also issued court claims.

When no court claim was issued, the defendant was more likely to ‘allege that the design was invalid’.

Figure 27. Reason for action taken in response to infringement – Survey 1



Designers' experience of the court system

We consider the legal context in which designers work to be relevant to understanding the attitudes and behaviour of designers and owners of designs towards infringement, and to understanding the impact infringement has on businesses and designers.⁴² A catalogue of decisions of the UK IPO Tribunal decisions on validity of registered designs – and of decisions of the Intellectual Property Enterprise Court concerning design law – contributes to that understanding.

In the period reviewed (August 2013 to December 2017), the IPO tribunal heard 36 disputes. The value of costs awarded were between £100 to £1,800, and in two cases no costs were sought.⁴³

'It's the enforcement that's lacking. I haven't protected abroad. If I can't even protect it at home, why on earth would I spend thousands of pounds trying to protect abroad?'

Fewer design disputes reach the courts than disputes involving patents.⁴⁴ The Intellectual Property Enterprise Court was established to:

*handle smaller, shorter, less complex, less important and lower value actions' aiming 'to provide cheaper, speedier and more informal procedures to ensure that SMEs and private individuals are not deterred by the potential cost of litigation.'*⁴⁵

Of the 98 cases heard between January 2013 and March 2017, 17 involved disputes concerning registered or unregistered design rights. The fact that only 20% of IPEC cases concern design disputes may be due to designer attitudes as represented questionnaire responses.⁴⁶

42 UK IPO tender document

43 IPO Tribunal Registered Design decisions 2013-2017, see Appendix 5.1

44 Weatherall, K.G. and Webster, E. (2010) Patent Infringement in Australia: Results from a Survey. Melbourne: Intellectual Property Research Institute of Australia, University of Melbourne. Collopy, D. (2014) Measuring infringement of intellectual property rights. London: Intellectual Property Office.

45 de Werra, J. (2016) Specialised Intellectual Property Courts. Geneva: International Centre for Trade and Sustainable Development (ICTSD) p 35, footnote 120

46 Telephone questionnaire, and questionnaire 1 & 2 questions 21, 22, 30, 31, 32,

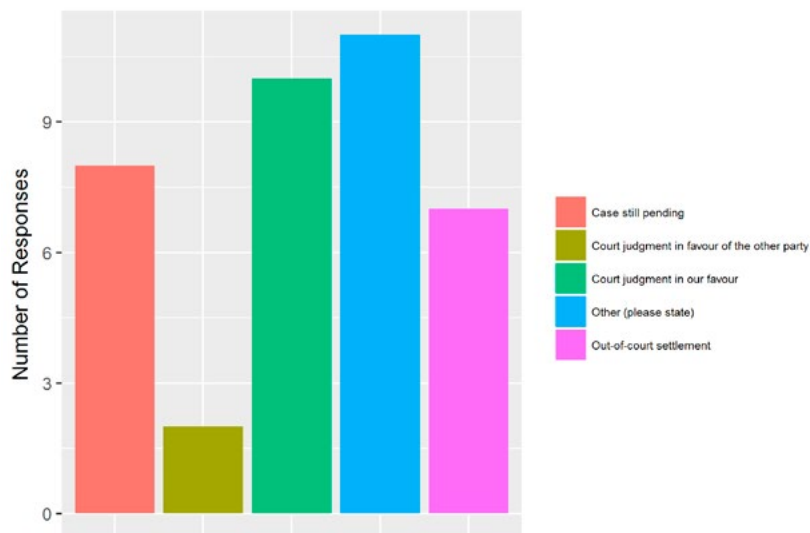
Court outcomes

Among respondents to our Surveys, 39⁴⁷ were involved in claims involving litigation, of which only two were cases where the court found in the opposing party’s favour.

The outcome of court proceedings, once started, was resolved in respondents’ favour in 25.6% of cases. Nearly a fifth (17.9%) settled out of court, while nearly a quarter of respondents (23.1%) reported that their cases were still pending.

Of those respondents that went to court 39% were disappointed with the litigation process, whereas 28% were pleased. Asked about the outcome of the dispute, 25% were either ‘extremely’ or ‘rather’ disappointed, but nearly half (44.5%) were either ‘reasonably content’ or ‘very pleased’.

Figure 28. Outcome of court proceedings – Survey 1



47 38 respondents to Survey 1 and 1 respondent to Survey 2.

8. Media analysis

Because designers referred to the way in which design decisions are presented in the popular print and digital media,⁴⁸ we reviewed media presentations of high-profile design decisions. These included the Apple v Samsung⁴⁹ and Dyson v Vax cases that went to the Court of Appeal in 2011, and the PMS International Limited v Magmatic 2016 – known as the ‘Trunki’ case, which went to the Supreme Court.

Of the traditional news media, The Guardian, BBC and The Telegraph published regular articles on all three cases. There was also considerable coverage on lawyers’ blogs and a lot of news articles were mentioned or re-tweeted by law and intellectual property firms in the UK and USA.

I register all my designs but if there is an infringement there is nothing we can do. We have lost faith in the system following Trunki.

PMS International Limited v Magmatic

The Trunki case was perhaps the most significant case on UK design rights in recent years. Trunki – a small suitcase on wheels designed for young children – and its inventor, Rob Law, already had a strong media profile by the time of the 2016 court case.

Law first came to public attention in 2006, after trying to secure investment for Trunki on the BBC prime time television programme, Dragon’s Den – where inventors pitch products to well known potential investors. In this episode, for various reasons, none of them ended up investing in Trunki, but Law made a huge success of the product, selling over 3 million suitcases worldwide by 2016. Trunki was a household name, and Law appeared regularly on television.

It is likely that Law’s profile, and his somewhat ‘David and Goliath’ appearance on Dragon’s Den, contributed to the sympathetic nature of the media coverage he received when defending his product against infringement.

When Apple and Samsung were in dispute, and Dyson was in court against Vax, press coverage – in the UK and US media – was neutral (see Appendix 6). But companies like Apple and Dyson are seen as big faceless corporates. Law on the other hand, is seen as a human being who invented a much loved product.

Consequently, he was widely quoted in articles covering the case and the cost of defending his product (£500,000) in ‘design infringement battles’ was frequently mentioned. Law was quoted in the media talking about what the case would mean for designers and creative businessess in the UK.

Despite the fact that opinion amongst legal professionals is divided on PMS International Limited v Magmatic, others quoted in coverage of the case included sympathetic lawyers, and even the judge who ruled on the case expressing his ‘regret’.

48 Media Survey, see Appendix 6

49 www.bailii.org/ew/cases/EWHC/Patents/2012/1882.html.

James & Wells @jaws_IP · 9 Mar 2016
 #Trunki vs Kiddee in UK Supreme Court: good illustration that #copyright and #design laws don't protect ideas bbc.in/1M7V2Hj SA



Trunki loses ride-on animal suitcase court case - BBC News
 Children's luggage firm Trunki loses a court battle over the design of its ride-on animal suitcases.
bbc.com

← ↻ ❤️ 2

Dyson vs Vax

The Dyson vs Vax case has a much lower online presence compared to the other cases both through news and social media. We only found two articles on Dyson vs Vax that were published during the case, and we didn't find any tweets about it from major media corporations.

Apple v Samsung

Apple v Samsung had several ongoing cases, not all of which were design cases. We found three articles dated between 2012 and 2016. These cases were also the most written about by designers, bloggers and independent journalists etc. However, most of the tweets regarding the Apple vs Samsung cases were based in the USA.

The Apple v Samsung case was the only one with a Wikipedia page. However it had fewer links to major articles. Most of the top links were from American media corporations, such as USA Today: https://en.wikipedia.org/wiki/Apple_Inc._v._Samsung_Electronics_Co.

9. Conclusion and recommendations

Methodology

We considered Dennis Collopy's 2014 study, Measuring infringement of intellectual property rights, and borrowed from the methodology designed by Weatherall and Webster for their 2010 study which measured patent infringement in Australia. This gave us a good springboard to conduct our Surveys, and enabled to put together a picture of design infringement in the UK today, as well as the behaviour and attitudes of design rights owners towards infringement.

All of our findings would have greatly benefited from yet more evidence. For this reason, any future research should aim to increase participation amongst potential owners of unregistered design rights. It is easy to reach owners of registered rights, but closer co-operation between the research team and trade associations – or other networks that represent designers or design right owners – is required to reach more unregistered rights owners.

Data could also be collected regularly by the UK IPO through their communication channels and educational projects.

Some of the data that emerged from the research prompted further questions and in retrospect, some of the wording of questions might have been better phrased to provoke more informative responses, or more granular detail. For example, our research indicates that 'disputes' are not as common as the incidence of infringement itself. We gave 'dispute' a very broad definition, that included awareness of infringement, which means that the figures should roughly overlap – but don't.

In the same way, negative phrasing proved to be unhelpful. For example, question 8 of our questionnaire asks respondents which intellectual property rights they have not heard of. Remarkably, there is a significant difference in answers between respondents to Survey 1 and those to Survey 2. However, it is unclear whether the negative wording of this question may have influenced the way it was answered and therefore caused errors.

Further research is also required on the exact steps and procedures designers and design rights owners take to solve disputes. For some questions, more precise, less vague wording would have provoked a more useful response.

To improve ongoing research:

- data should be collected regularly by the UK IPO through their communication channels and educational projects
- any future research should aim to increase participation amongst potential owners of unregistered design rights
- more consideration should be given to the wording in future questionnaires: it should be more precise to provoke more informative responses, or more granular detail
- negative questioning (e.g. asking what respondents have not heard of) should be avoided.

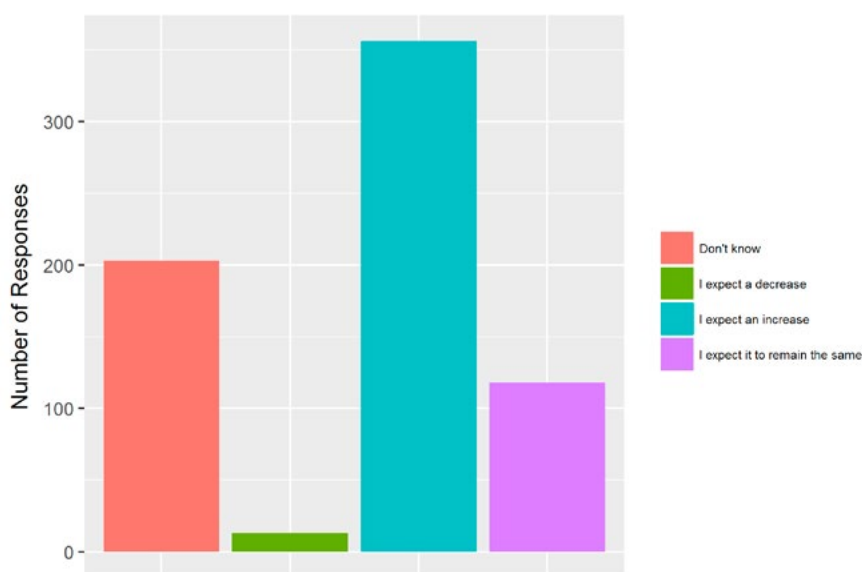
Supporting the design sector

Infringement is common and most designers work either alone or in small companies. It is not surprising therefore that they are uneasy about how well their design rights are being protected.

Almost all designers and design rights owners are constantly monitoring for infringement of their rights – using an array of methods to do so – and they are pessimistic about the future, with half expecting the situation to get worse and only 2% believing it will improve.

In telephone interviews designers expressed a sense of despair, describing themselves as ‘confused’, ‘aggrieved’, ‘annoyed, frustrated and unhappy’. Many are finding that protecting design rights is fearfully expensive in legal fees and staff time and they are frustrated at the process of having to prove ownership of their design rights. One told us, ‘Trying to prove our design was our own, we had to put a lot of effort into putting together a file.’ One described the impact of infringement: ‘Most challenging is the emotional aspect. You lose sleep over it.’

Figure 29. Expectations of trends in infringement – Survey 1



To improve this situation, we recommend three steps to give designers and design rights owners more confidence in the system, and to help them to use it better.

Education: Our Surveys show that many designers and design rights owners, are still not aware of design rights (registered and unregistered). The Intellectual Property Office could do more – either by working alone or in conjunction with professional bodies (See Appendix ...) – to raise awareness in this area through communications campaigns, including via social media.


Accessible guidance: There is a paucity of guidance for designers in plain English on how they can defend their design rights in court. This is particularly true when it comes to the small claims track at the Intellectual Property and Enterprise Court (IPEC). The Intellectual Property Office could offer such guidance – perhaps through its website as an online resource – to assist designers and design rights owners who are affected by infringement.

Pro bono legal advice: As stated above, most designers are sole traders or working in small companies which do not have huge reserves of cash. For this reason, more provision of low-cost and pro-bono legal advice is necessary. Whether this is provided through trade associations or perhaps in conjunction with the legal profession, or both, designers and design rights owners need better access to the law, and – especially where cases take months and years to resolve – a fair indication of the costs that will be involved.

There should be an easy simple process, above and beyond the courts, that allows us to protect what is ours.

Appendices


Appendix 1: Questionnaire



Intellectual
Property
Office

DRI

**DESIGN RIGHTS
INFRINGEMENT
SURVEY**



It should take only a few minutes to complete the survey. You should not need to look up or refer to other sources of information. Your best reasonable guess will be better than leaving a question unanswered. You are welcome to complete the questionnaire online through scanning the QR code above or by using the following weblink: <http://sgiz.mobi/s3/IPO-Research-into-Designs-Infringement>

YOUR DETAILS

Q1 Which one of the following describes your primary work or role relating to Designs?
[Please select one only]

| | |
|--|---|
| <input type="checkbox"/> Designer | <input type="checkbox"/> Design Product or Product Component Manufacturer |
| <input type="checkbox"/> Design Owner | <input type="checkbox"/> Design Management |
| <input type="checkbox"/> Design In-house Lawyer | <input type="checkbox"/> Design Consultant |
| <input type="checkbox"/> Design Business Adviser | <input type="checkbox"/> Other (please state below) |
| <input type="checkbox"/> Design Product Retailer | |

Q2 Which one of the following describes your primary work or role relating to Designs?
[Please select one only]

| | |
|---|---|
| <input type="checkbox"/> Advertising and Marketing | <input type="checkbox"/> IT, Software and Computer Services |
| <input type="checkbox"/> Interior Design and Architecture | <input type="checkbox"/> Publishing |
| <input type="checkbox"/> Crafts | <input type="checkbox"/> Museums, Galleries and Libraries |
| <input type="checkbox"/> Product / Industrial Design | <input type="checkbox"/> Music, Performing and Visual Arts |
| <input type="checkbox"/> Furniture Design | <input type="checkbox"/> Service Design |
| <input type="checkbox"/> Graphic Design | <input type="checkbox"/> Other (please state below) |
| <input type="checkbox"/> Fashion Design | |
| <input type="checkbox"/> Film, TV, Video, Radio and Photography | |

Q3 In your work relating to Design are you: [Please select one only]

| | |
|--|--|
| <input type="checkbox"/> Self-employed | <input type="checkbox"/> Both self-employed and employed |
| <input type="checkbox"/> Employed | <input type="checkbox"/> Unemployed or retired |

Q4 What is the size of your organization/firm
FT=full-time / full-time equivalent
[Please select one only]

| | |
|---|--|
| <input type="checkbox"/> Sole trader | <input type="checkbox"/> 50-250 FT employees |
| <input type="checkbox"/> 2-9 FT employees | <input type="checkbox"/> >250 FT employees |
| <input type="checkbox"/> 10-49 FT employees | |

Q5 How long have you been involved in Design related work?
[Please select one only]

| | |
|---|--|
| <input type="checkbox"/> Less than 5 years | <input type="checkbox"/> From 11 to 20 years |
| <input type="checkbox"/> From 5 to 10 years | <input type="checkbox"/> More than 20 years |

Q6 Have you or your company invented or developed products that are significantly improved or completely new to the market in the last five (5) years?
[Please select one only]

| |
|-------------------------------------|
| <input type="checkbox"/> Yes |
| <input type="checkbox"/> No |
| <input type="checkbox"/> Don't Know |

01

YOUR BUSINESS / THE BUSINESS YOU WORK FOR

Q7 Do you / Does your company create or own any of the following Intellectual Property (IP) rights?
 [Select all that apply. If none applies, please skip and move to the next question]

| | |
|--|--|
| <input type="checkbox"/> Patent | <input type="checkbox"/> UK Unregistered Design Right |
| <input type="checkbox"/> Trade Mark | <input type="checkbox"/> Community Unregistered Design Right |
| <input type="checkbox"/> Copyright | <input type="checkbox"/> Other rights (please state below) |
| <input type="checkbox"/> UK Registered Design Right | _____ |
| <input type="checkbox"/> Community Registered Design Right | |

Q8 Which of the following Intellectual Property (IP) rights have you NOT heard of before?
 [Select all that apply. If none applies, please skip and move to the next question]

| | |
|---|--|
| <input type="checkbox"/> Patent | <input type="checkbox"/> Community Registered Design Right |
| <input type="checkbox"/> Trade Mark | <input type="checkbox"/> UK Unregistered Design Right |
| <input type="checkbox"/> Copyright | <input type="checkbox"/> Community Unregistered Design Right |
| <input type="checkbox"/> UK Registered Design Right | |

Q9 Approximately how much (in Pound Sterling) does your company spend each year on obtaining and maintaining IP rights it owns?
 [registration fees, renewal fees, searches, legal fees etc. — approximate figure acceptable]

Don't Know

INCIDENCE OF INFRINGEMENT

In the following "dispute" means any kind of awareness of, or correspondence (pre court, in court or out-of-court) related to the actual or potential infringement of IP.

Q10 Have you or your company been involved in any dispute involving any of the following design related rights in the past five (5) years? [Please select one option for each category]

| yes | no | don't know | |
|--------------------------|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 1. Copyright |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 2. UK Registered Design Right |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 3. Community Registered Design Right |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 4. UK Unregistered Design Right |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 5. Community Unregistered Design Right |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 6. International (Non-UK/Community) Design Right or Design Patent |

Q11 If you have ticked YES for any of the questions 10 (1-5) – were you a claimant or a defendant?
 [Please select one only]

| | |
|---|-------------------------------------|
| <input type="checkbox"/> Claimant (infringed party) | <input type="checkbox"/> Both |
| <input type="checkbox"/> Defendant (allegedly infringing party) | <input type="checkbox"/> Don't Know |

Q12 If you have ticked YES for question 10 (6) – were you a claimant or a defendant?
 [Please select one only]

| | |
|---|-------------------------------------|
| <input type="checkbox"/> Claimant (infringed party) | <input type="checkbox"/> Both |
| <input type="checkbox"/> Defendant (allegedly infringing party) | <input type="checkbox"/> Don't Know |

Q13 If you have ticked YES for question 10 (6) – which countries were involved? [please state whether you or your company were defendant or claimant or both in each case]

If you have been involved in more than one (1) dispute surrounding design right infringement - irrespective of the country in which the infringement occurred - **please answer Q14 to 29 with respect to one particular dispute and preferably the dispute which best represents those you have been involved with.**
 If you have not been involved in any dispute as per above definition, please jump to Q41 on page 7.

Q14 In respect of the particular dispute you are using to answer the following questions were you a claimant or defendant?

Claimant (infringed party)

Defendant (allegedly infringing party)

Q15 ... was the other party based in the UK or overseas? [Please select one only]

UK Overseas

EU Don't Know

Q16 ... which of the following IPRs were involved: [Please select all that apply]

Copyright Community Unregistered Design Right

UK Registered Design Right International (Non-UK/Community) Design Right

Community Registered Design Right Patent

UK Unregistered Design Right

Q17 ... and in relation to your company, was the business size of the (main) party opposing you: [Please select one only]

Very much larger Smaller

Larger Very much smaller

About the same size Don't Know

Q18 At the time of infringement, was the design ... [Please select all that apply]

Licensed to another business Don't know

Used in a product, which you or your business were selling Other (please state below)

Published but not yet licensed _____

REACTIONS TO INFRINGEMENT

Q19 In respect of the particular dispute what action(s) did you take? [Please select all that apply]

1. No action [Please go to Q21]

2. Contacted a solicitor to discuss next steps

3. Contacted a patent or trade mark attorney to discuss next steps

4. Sought pro bono legal advice to discuss next steps

5. Created public awareness through social media

6. Sent letter to the other party

7. Mediation

8. Issued Court Claim

9. Issued Defence

10. Issued Counterclaim

11. Other (please state below)

| | | |
|--|---|--|
| <p>Q20 If a claim was issued in court, which court(s) were involved: [Please select all that apply and go to Q22]</p> <p>Note: IPEC was previously the Patents County Court or PCC</p> | <input type="checkbox"/> Intellectual Property Enterprise Court (IPEC) <input type="checkbox"/> Intellectual Property Enterprise Court (IPEC) — Small Claims Track <input type="checkbox"/> Patents Court (High Court Chancery Division) | <input type="checkbox"/> Court of Appeal <input type="checkbox"/> Court in another country <input type="checkbox"/> Other (please state below) _____ |
| <p>Q21 If you answered NONE to Q19 (1), why did you choose NOT to take action? [Please select all that apply]</p> | <input type="checkbox"/> The infringement was trivial <input type="checkbox"/> Uncertainty about validity of the design <input type="checkbox"/> Too costly <input type="checkbox"/> Too time consuming <input type="checkbox"/> Too stressful <input type="checkbox"/> Advised not to by lawyer / legal advisor <input type="checkbox"/> The other party was too big <input type="checkbox"/> The other party was too small | <input type="checkbox"/> The other party was overseas <input type="checkbox"/> It would be difficult to prove <input type="checkbox"/> It would have damaged the relationship with actual or potential business partners <input type="checkbox"/> Rely on other rights e.g. trade mark to defend our interests <input type="checkbox"/> Other (please state below) _____ _____ |
| <p>Q22 If you have ticked any of the options 2-10 for question Q19, what was / were the reason(s)? [Please select all that apply]</p> | <input type="checkbox"/> Defend potentially lucrative market <input type="checkbox"/> Start negotiations on licensing / assignment agreement <input type="checkbox"/> Defend our Design Right(s) as a matter of principle <input type="checkbox"/> Defend our business as a matter of principle | <input type="checkbox"/> Maintain reputation as an aggressive competitor <input type="checkbox"/> To be paid damages <input type="checkbox"/> Other (please state below) _____ _____ |
| <p>Q23 What response did you (as infringed party) receive from the other party? OR How did you (as allegedly infringing party) respond to the claim? [Please select all that apply]</p> | <input type="checkbox"/> Agreed to license / cross license / buy or sell the design <input type="checkbox"/> Permanently stopped infringing <input type="checkbox"/> Temporarily stopped infringing <input type="checkbox"/> No response <input type="checkbox"/> Alleged that the design was invalid | <input type="checkbox"/> Counterclaim for infringement of other designs <input type="checkbox"/> Does not apply <input type="checkbox"/> Other (please state below) _____ |
| <p>Q24 As infringed party: If the allegations of infringement were ignored, why do you think that was? OR As allegedly infringing party: If you ignored the allegations what were your reason(s)? [Please select all that apply]</p> | <input type="checkbox"/> Didn't think there was infringement <input type="checkbox"/> Thought the other party was too small to be a threat <input type="checkbox"/> Believed that the design was right invalid | <input type="checkbox"/> Don't know <input type="checkbox"/> Other (please state below) _____ _____ |
| <p>Q25 If court proceedings were started, what was the outcome? [Select one only. If not applicable skip and move to question 29]</p> | <input type="checkbox"/> Case still pending <input type="checkbox"/> Court judgment in our favour <input type="checkbox"/> Court judgment in favour of the other party <input type="checkbox"/> Out-of-court settlement | <input type="checkbox"/> Other (please state below) _____ _____ _____ |

Q26 If a claim was issued in court, how do you feel about the litigation process?
 [Please select one only]

Very pleased Rather disappointed
 Reasonably content Extremely disappointed
 Not sure

Q27 How do you feel about the outcome of the legal dispute?
 [Please select one only]

Very pleased Rather disappointed
 Reasonably content Extremely disappointed
 Not sure

Q28 How long were legal proceedings from issuing the claim to final court judgment?
 [Please complete]

_____ years _____ months

Q29 If you chose not to start proceedings, why?
 [Please select all that apply. If not applicable, please skip and move to the next question]

Potential gains didn't justify the cost Would take too long
 Not worth damaging the relationship with actual or potential business partners Uncertain about the validity of the unregistered design
 Uncertain about the validity of the registered design Other (please state below)

SCALE OF INFRINGEMENT

In the following questions, please refer to multiple incidents of infringement if you have experienced more than one (1) dispute surrounding design right infringement (including Community Design Rights/foreign Design Rights).

Q30 In the last five (5) years, how much did you spend on legal fees when enforcing registered and / or unregistered design rights?
 [Please select one only. If none applies, please skip and move to the next question.]

Nothing £20,000 – £100,000
 Less than £1,000 £100,000 – £500,000
 £1,000 – £5,000 £500,000 – £1m
 £5,000 – £20,000 Over £1m
 Don't know

Q31 In the last five (5) years, how much profit did you lose due to infringement of your registered and / or unregistered design rights?
 [Please select one only. If none applies, please skip and move to the next question.]

Nothing £20,000 – £100,000
 Less than £1,000 £100,000 – £500,000
 £1,000 – £5,000 £500,000 – £1m
 £5,000 – £20,000 Over £1m
 Don't know

Q32 In the last five (5) years, what was the value of staff time lost due to infringement of your registered or unregistered design rights?
 [Please select one only. If none applies, please skip and move to the next question.]

No loss of staff time £20,000 – £100,000
 Less than £1,000 £100,000 – £500,000
 £1,000 – £5,000 £500,000 – £1m
 £5,000 – £20,000 Over £1m
 Don't know

Q33 To the best of your knowledge, how many incidents of design rights infringements have you experienced in the last 5 years?
 [Please select one only]

| | |
|----------------------------------|---------------------------------------|
| <input type="checkbox"/> None | <input type="checkbox"/> 6-10 |
| <input type="checkbox"/> One (1) | <input type="checkbox"/> More than 10 |
| <input type="checkbox"/> 2-5 | <input type="checkbox"/> Don't know |

Q34 To the best of your knowledge, how many designs (involving design rights) have you allegedly infringed in the last 5 years?
 [Please select one only]

| | |
|----------------------------------|---------------------------------------|
| <input type="checkbox"/> None | <input type="checkbox"/> 6-10 |
| <input type="checkbox"/> One (1) | <input type="checkbox"/> More than 10 |
| <input type="checkbox"/> 2-5 | <input type="checkbox"/> Don't know |

Q35 If any of your designs have been allegedly infringed, would you describe the majority of the infringing design(s) as:
 [Please select one only]

| | |
|---|--|
| <input type="checkbox"/> An identical copy | <input type="checkbox"/> Still a copy but with some noticeable differences |
| <input type="checkbox"/> A nearly identical copy (differences are hardly noticeable compared with the original) | <input type="checkbox"/> Don't know |
| | <input type="checkbox"/> Does not apply |

Q36 If any of your designs have been allegedly infringed, was this mostly done intentionally or inadvertently?
 [Please select one only]

| | |
|--|---|
| <input type="checkbox"/> Intentionally | <input type="checkbox"/> Don't know |
| <input type="checkbox"/> Inadvertently | <input type="checkbox"/> Does not apply |

CONTEXT OF INFRINGEMENT

Q37 Would you describe the innovative quality of your infringed design(s) as radical or incremental?
 [radical innovation relates here to designs which have a disruptive impact]
 [Please select one only]

| |
|---|
| <input type="checkbox"/> Definitely radical |
| <input type="checkbox"/> Rather radical |
| <input type="checkbox"/> Not sure |
| <input type="checkbox"/> Rather incremental |
| <input type="checkbox"/> Definitely incremental |

Q38 If you have ever had any REGISTERED design infringed approximately how many years after registration did the infringements occur?
 [Please select one only]

| | |
|---|--|
| <input type="checkbox"/> Less than one (1) year | <input type="checkbox"/> From 5 up to and including 10 years |
| <input type="checkbox"/> From 1 up to and including 2 years | <input type="checkbox"/> More than 10 years |
| <input type="checkbox"/> From 2 up to and including 3 years | |
| <input type="checkbox"/> From 3 up to and including 5 years | |

Q39 If you have ever had any UNREGISTERED design infringed, approximately how many years after first marketing the design in public did the infringement occur?
 [Please select one only]

| | |
|---|--|
| <input type="checkbox"/> Less than one (1) year | <input type="checkbox"/> From 5 up to and including 10 years |
| <input type="checkbox"/> From 1 up to and including 2 years | <input type="checkbox"/> More than 10 years |
| <input type="checkbox"/> From 2 up to and including 3 years | |
| <input type="checkbox"/> From 3 up to and including 5 years | |

ATTITUDES AND BEHAVIOURS TOWARDS DESIGN RIGHT INFRINGEMENT

Q40 If your design(s) have ever been infringed, how did you find out about the infringement?
 [Please select all that apply. If none applies, please skip and move to the next question]

| | |
|---|--|
| <input type="checkbox"/> Seen at trade fairs | <input type="checkbox"/> From suppliers |
| <input type="checkbox"/> Emails from others | <input type="checkbox"/> Regularly monitoring the market |
| <input type="checkbox"/> Seen in someone else's catalogue | <input type="checkbox"/> Other (please state below) |
| <input type="checkbox"/> Online search | _____ |
| <input type="checkbox"/> Seen at retail store(s) | _____ |
| <input type="checkbox"/> From customers | |

Q41 What kind of activities do you employ to monitor the market for infringement?
 [Please select all that apply. If none applies, please skip and move to the next question]

| | |
|--|--|
| <input type="checkbox"/> Search design rights register(s) | <input type="checkbox"/> Rely on customers and suppliers |
| <input type="checkbox"/> Employ solicitor to monitor | <input type="checkbox"/> Other (please state below) |
| <input type="checkbox"/> Employ patent or trade mark attorney to monitor | _____ |
| <input type="checkbox"/> Read trade journals | _____ |

Q42 Have you / has your company joined a trade association in response to the risk of Design Right infringement?

| | |
|-----------------------------|--|
| <input type="checkbox"/> No | <input type="checkbox"/> Yes, member of (list all that apply): |
| | _____ |
| | _____ |
| | _____ |

ATTITUDES TOWARDS DESIGN RIGHTS

Q43 IP robustness is understood here as the level of protection offered by the type of right. On a scale of 1 (least robust) - 5 (most robust) please rate how robust you consider the following protection methods:
 [Please select one option for each category]

| | 1 | 2 | 3 | 4 | 5 | Don't know |
|---------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| Registered Design Right | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Unregistered Design Right | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Copyright | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Trade mark | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Patent | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Q44 How do you rate your confidence in the system for protection of REGISTERED and UNREGISTERED Design Rights on a scale of 1 (least confident) - 5 (most confident)?
 [Please select one option for each of the two categories]

| | 1 | 2 | 3 | 4 | 5 | Don't know |
|----------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| Registered Design Rights | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Unregistered Design Rights | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Q45 How do you rate the costs involved in registering a Design Right?
 [Please select one only]

| | |
|--|--|
| <input type="checkbox"/> Very good value for money | <input type="checkbox"/> Poor value for money |
| <input type="checkbox"/> Good value for money | <input type="checkbox"/> Very poor value for money |
| <input type="checkbox"/> Average | <input type="checkbox"/> Don't know |

Q46 Do you expect Design Rights infringement to increase or to decrease in the next 5 years?
 [Please select one only]

| | |
|---|-------------------------------------|
| <input type="checkbox"/> I expect an increase | <input type="checkbox"/> Don't know |
| <input type="checkbox"/> I expect a decrease | |
| <input type="checkbox"/> I expect it to remain the same | |

Q47 Would you be available for a 20-minute telephone interview on the topic of Design Right infringement?
 [The telephone interviews are scheduled for June / July 2016]

| | |
|---|-------|
| <input type="checkbox"/> Yes, my number is: | _____ |
| my email address is: | _____ |
| <input type="checkbox"/> No | |

Q48 Would you like to receive a copy of the survey report?
 [to be issued towards the end of 2016]

| |
|--|
| <input type="checkbox"/> Yes, my email address is as above |
| <input type="checkbox"/> Yes, my email address is: _____ |
| <input type="checkbox"/> No |

If you have any comments to any of the questions or the questionnaire in general, please use the following text box. [feel free to continue on a separate sheet if required]

Thank you! Please post the completed survey to the following address by 19 February 2016:

Dave Green
 School of Creative Arts
 University of Hertfordshire
 Todd Building
 College Lane
 Hatfield
 Herts AL10 9AB
 UK

All Information received will be treated in strictest confidence:

Safeguarding your data is important to us. Only anonymised summaries of data will be published in reports resulting from the survey. Your contact details have been selected at random from the publicly available register of UK companies or the UK IPO's register of Registered Design holders. Your replies will play a crucial role in making evidence-based policy relating to Design Rights infringement and protection.

School of Creative Arts
University of Hertfordshire
 College Lane
 Hatfield AL10 9AB

in collaboration with the
UK Intellectual Property Office
 Intellectual Property Office is an operating name of the Patent Office

Appendix 2: Survey data

2.1 Data on characteristics of the respondent, e.g. role of individual, size of business etc.

Q1: Which one of the following describes your primary work or role relating to designs? [Please select one only]

| | Survey 1 | | Survey 2 | | Combined Data | |
|--|------------|---------------------------|------------|---------------------------|---------------|---------------------------|
| | Count | Percentage of respondents | Count | Percentage of respondents | Count | Percentage of respondents |
| Design Business Adviser | 4 | 0.6% | 1 | 0.6% | 5 | 0.6% |
| Design Consultant | 16 | 2.3% | 15 | 9.0% | 31 | 3.6% |
| Design In-house Lawyer | 23 | 3.3% | 1 | 0.6% | 24 | 2.8% |
| Design Management | 24 | 3.5% | 9 | 5.4% | 33 | 3.9% |
| Design Owner | 269 | 39.0% | 49 | 29.5% | 318 | 37.1% |
| Design Product or Product Component Manufacturer | 104 | 15.1% | 8 | 4.8% | 112 | 13.1% |
| Design Product Retailer | 7 | 1.0% | 9 | 5.4% | 16 | 1.9% |
| Designer | 206 | 29.9% | 62 | 37.3% | 268 | 31.3% |
| Other (please state) | 37 | 5.4% | 12 | 7.2% | 49 | 5.7% |
| Total | 690 | 100.0% | 166 | 100.0% | 856 | 100.0% |

Q2: Which one of the following describes your primary business area relating to designs? [please select one only]

| | Survey 1 | | Survey 2 | | Combined Data | |
|--|------------|---------------------------|------------|---------------------------|---------------|---------------------------|
| | Count | Percentage of respondents | Count | Percentage of respondents | Count | Percentage of respondents |
| Advertising and Marketing | 28 | 4.1% | 10 | 6.1% | 38 | 4.4% |
| Crafts | 50 | 7.2% | 10 | 6.1% | 60 | 7.0% |
| Fashion Design | 26 | 3.8% | 9 | 5.5% | 35 | 4.1% |
| Film, TV, Video, Radio and Photography | 3 | 0.4% | 3 | 1.8% | 6 | 0.7% |
| Furniture Design | 27 | 3.9% | 6 | 3.6% | 33 | 3.9% |
| Graphic Design | 12 | 1.7% | 22 | 13.3% | 34 | 4.0% |
| Interior Design and Architecture | 25 | 3.6% | 7 | 4.2% | 32 | 3.7% |
| IT, Software and Computer Services | 13 | 1.9% | 25 | 15.2% | 38 | 4.4% |
| Music, Performing and Visual Arts | 4 | 0.6% | 1 | 0.6% | 5 | 0.6% |
| Other (please state) | 128 | 18.6% | 19 | 11.5% | 147 | 17.2% |
| Product / Industrial Design | 363 | 52.6% | 45 | 27.3% | 408 | 47.7% |
| Publishing | 5 | 0.7% | 3 | 1.8% | 8 | 0.9% |
| Service Design | 6 | 0.9% | 5 | 3.0% | 11 | 1.3% |
| Total | 690 | 100.0% | 165 | 100.0% | 855 | 100.0% |

| Q2 - Which one of the following describes your primary business area relating to Designs? | Q7 - Do you / Does your company create or own any of the following Intellectual Property (IP) rights? | | | | | | | | |
|---|---|------------|------------|------------|-------------------|--------------|---------------------|-----------------------------|------------|
| | Patent | Trade Mark | Copyright | UK Reg. DR | Community Reg. DR | UK Unreg. DR | Community Unreg. DR | Other rights (please state) | ANY |
| Advertising and Marketing | 37% | 67% | 44% | 67% | 41% | 11% | 0% | 4% | 96% |
| Interior Design and Architecture | 22% | 39% | 17% | 70% | 17% | 17% | 0% | 0% | 91% |
| Crafts | 17% | 25% | 42% | 58% | 15% | 13% | 6% | 2% | 98% |
| Product / Industrial Design | 54% | 64% | 37% | 73% | 35% | 21% | 15% | 4% | 98% |
| Furniture Design | 42% | 50% | 38% | 73% | 31% | 31% | 8% | 4% | 100% |
| Graphic Design | 25% | 42% | 67% | 67% | 17% | 33% | 8% | 0% | 100% |
| Fashion Design | 16% | 64% | 36% | 60% | 28% | 4% | 4% | 4% | 100% |
| Film, TV, Video, Radio and Photography | 0% | 67% | 67% | 67% | 33% | 0% | 0% | 0% | 100% |
| IT, Software and Computer Services | 67% | 67% | 42% | 42% | 8% | 17% | 8% | 8% | 92% |
| Publishing | 20% | 80% | 60% | 20% | 40% | 0% | 0% | 0% | 100% |
| Music, Performing and Visual Arts | 20% | 40% | 80% | 60% | 20% | 20% | 0% | 20% | 100% |
| Service Design | 40% | 40% | 60% | 80% | 0% | 0% | 0% | 0% | 100% |
| Other (please state) | 36% | 51% | 34% | 64% | 30% | 9% | 3% | 6% | 94% |
| Total | 43% | 57% | 38% | 68% | 31% | 17% | 9% | 4% | 97% |

Q3: In your work relating to design are you: [Please select one only]

| | Survey 1 | | Survey 2 | | Combined Data | |
|---------------------------------|------------|---------------------------|------------|---------------------------|---------------|---------------------------|
| | Count | Percentage of respondents | Count | Percentage of respondents | Count | Percentage of respondents |
| Both self-employed and employed | 76 | 11.0% | 27 | 16.4% | 103 | 12.0% |
| Employed | 286 | 41.4% | 76 | 46.1% | 362 | 42.3% |
| Self-employed | 265 | 38.4% | 60 | 36.4% | 325 | 38.0% |
| Unemployed or retired | 63 | 9.1% | 2 | 1.2% | 65 | 7.6% |
| Total | 690 | 100.0% | 165 | 100.0% | 855 | 100.0% |

Q4: What is the size of your organisation/firm? FT = full-time/full-time equivalent [Please select one only]

| | Survey 1 | | Survey 2 | | Combined Data | |
|----------------------------|------------|---------------------------|------------|---------------------------|---------------|---------------------------|
| | Count | Percentage of respondents | Count | Percentage of respondents | Count | Percentage of respondents |
| Sole trader | 276 | 40.0% | 34 | 20.6% | 310 | 36.3% |
| 2 to 9 FT employees | 193 | 28.0% | 84 | 50.9% | 277 | 32.4% |
| 10 to 49 FT employees | 107 | 15.5% | 31 | 18.8% | 138 | 16.1% |
| 50 to 250 FT employees | 72 | 10.4% | 11 | 6.7% | 83 | 9.7% |
| More than 250 FT employees | 42 | 6.1% | 5 | 3.0% | 47 | 5.5% |
| Total | 690 | 100.0% | 165 | 100.0% | 855 | 100.0% |

Q5: How long have you been involved in design related work? [Please select one only]

| | Survey 1 | | Survey 2 | | Combined Data | |
|---------------------|------------|---------------------------|------------|---------------------------|---------------|---------------------------|
| | Count | Percentage of respondents | Count | Percentage of respondents | Count | Percentage of respondents |
| Less than 5 years | 165 | 23.9% | 29 | 17.60% | 194 | 22.7% |
| From 5 to 10 years | 157 | 22.8% | 32 | 19.40% | 189 | 22.1% |
| From 11 to 20 years | 113 | 16.4% | 51 | 30.90% | 164 | 19.2% |
| More than 20 years | 255 | 37.0% | 53 | 32.10% | 308 | 36.0% |
| Total | 690 | 100.0% | 165 | 100.0% | 855 | 100.0% |

| Q33 - To the best of your knowledge, how many incidents of design rights infringements have you experienced in the last 5 years? | | Q5 - How long have you been involved in design related work? | | | | |
|--|-------------|--|--------------------|---------------------|--------------------|-----------|
| | | Less than 5 years | From 5 to 10 years | From 11 to 20 years | More than 20 years | Total |
| None | N | 0 | 0 | 1 | 1 | 2 |
| | % in column | 0.0% | 0.0% | 2.3% | 1.3% | 1.1% |
| one (1) | N | 7 | 6 | 7 | 19 | 39 |
| | % in column | 33.3% | 15.0% | 16.3% | 24.7% | 21.5% |
| 2 to 5 | N | 11 | 16 | 18 | 36 | 81 |
| | % in column | 52.4% | 40.0% | 41.9% | 46.8% | 44.8% |
| 6 to 10 | N | 2 | 4 | 6 | 9 | 21 |
| | % in column | 9.5% | 10.0% | 14.0% | 11.7% | 11.6% |
| More than 10 | N | 1 | 14 | 11 | 12 | 38 |
| | % in column | 4.8% | 35.0% | 25.6% | 15.6% | 21.0% |

Q6: Have you or your company invented or developed products that are significantly improved or completely new to the market in the last five (5) years? [Please select one only]

| | Survey 1 | | Survey 2 | | Combined Data | |
|--------------|------------|---------------------------|------------|---------------------------|---------------|---------------------------|
| | Count | Percentage of respondents | Count | Percentage of respondents | Count | Percentage of respondents |
| Don't know | 48 | 7.0% | 21 | 12.80% | 69 | 8.1% |
| No | 121 | 17.5% | 48 | 29.30% | 169 | 19.8% |
| Yes | 521 | 75.5% | 95 | 57.90% | 616 | 72.1% |
| Total | 690 | 100.0% | 164 | 100.0% | 854 | 100.0% |

2.2 Knowledge of IP rights

Q7: Do you/Does your company create or own any of the following Intellectual Property (IP) rights? Select all that apply. If none applies, please skip and move to the next question.

| | Survey 1 | | | Survey 2 | | | Combined Data | | |
|---|------------|---------------------------|---------------------|------------|---------------------------|----------------------|---------------|---------------------------|----------------------|
| | Count | Percentage of respondents | Percentage of right | Count | Percentage of respondents | Percentage of rights | Count | Percentage of respondents | Percentage of rights |
| Patent | 293 | 43.7% | 15.9% | 23 | 21.3% | 10.5% | 316 | 40.6% | 15.4% |
| Trade Mark | 386 | 57.6% | 21% | 49 | 45.4% | 22.4% | 435 | 55.9% | 21.2% |
| Copyright | 262 | 39.1% | 14.3% | 69 | 63.9% | 31.5% | 331 | 42.5% | 16.1% |
| UK Registered Design Right | 474 | 70.8% | 25.8% | 24 | 22.2% | 11.0% | 498 | 64.0% | 24.2% |
| Community Registered Design Right | 210 | 31.3% | 11.4% | 14 | 13.0% | 6.4% | 224 | 28.8% | 10.9% |
| UK Unregistered Design Right | 118 | 17.6% | 6.4% | 26 | 24.1% | 11.9% | 144 | 18.5% | 7.0% |
| Community Unregistered Design Right | 66 | 9.9% | 3.6% | 11 | 10.2% | 5.0% | 77 | 9.9% | 3.7% |
| Other rights (please state below) | 28 | 4.2% | 1.5% | 3 | 2.8% | 1.4% | 31 | 4% | 1.5% |
| Any Category | 1837 | | 100% | 219 | | 100.0% | 2056 | | 100.0% |
| No box ticked | 20 | | | 57 | | | 77 | | |
| Number of respondents, who ticked a category | 670 | | | 108 | | | 778 | | |

Q8: Which of the following Intellectual Property (IP) rights have you NOT heard of before? [Select all that apply. If none applies, please skip and move to the next question.]

| | Survey 1 | | | Survey 2 | | | Combined Data | | |
|-------------------------------------|------------|------------------------|---------------------------|------------|------------------------|---------------------------|---------------|------------------------|---------------------------|
| | Count | Percentage of category | Percentage of respondents | Count | Percentage of category | Percentage of respondents | Count | Percentage of category | Percentage of respondents |
| Patent | 2 | 0.2% | 0.3% | 3 | 0.9% | 2.7% | 5 | 0.3% | 0.6% |
| Trade mark | 3 | 0.3% | 0.4% | 1 | 0.3% | 0.9% | 4 | 0.3% | 0.5% |
| Copyright | 7 | 0.6% | 1.0% | 4 | 1.2% | 3.6% | 11 | 0.8% | 1.4% |
| UK Registered Design Right | 67 | 6.1% | 9.7% | 67 | 19.4% | 60.9% | 134 | 9.3% | 16.8% |
| Community Registered Design Right | 290 | 26.5% | 42.0% | 88 | 25.43% | 80.0% | 378 | 26.2% | 47.3% |
| UK Unregistered Design Right | 335 | 30.6% | 48.6% | 85 | 24.6% | 77.3% | 420 | 29.1% | 52.5% |
| Community Unregistered Design Right | 392 | 35.8% | 56.8% | 98 | 28.3% | 89.1% | 490 | 34.0% | 61.3% |
| Any category | 1096 | 100.0% | | 346 | 100.0% | | 1,442 | 100.0% | |
| No box ticked | 257 | | 37.2% | 57 | | 51.8% | 314 | | 39.3% |
| Count | 690 | | | 110 | | | 800 | | |

Q9: Approximately how much (in Pound Sterling) does your company spend each year on obtaining and maintaining IP rights it owns? [Registration fees, renewal fees, searches, legal fees, etc.]

| | Survey 1 | Survey 2 | Combined Data |
|--|--------------|------------|---------------|
| Maximum value | £10,000,000 | £150,000 | £10,000,000 |
| Minimum value | £0 | £0 | £0 |
| Median | £5,000,000 | £75,000 | £5,000,000 |
| Range (= MAX value - MIN value) | £10,000,000 | £150,000 | £10,000,000 |
| First quartile | £200 | £0 | £100 |
| Third quartile | £12,000 | £2,000 | £10,000 |
| Count >=£100,000 | 29 | 1 | 30 |
| £0 = | 47 | 40 | 87 |
| >£0 | 328 | 34 | 362 |
| Interquartile range | £200-£12,000 | £0-£2,000 | £100-£10,000 |
| Respondents providing an estimate (including zero) | 375 | 74 | 449 |
| Don't know | 310 | 68 | 378 |
| Total | 685 | 142 | 827 |

2.3 Experience of disputes

Q10: Have you or your company been involved in any dispute involving any of the following design related rights in the past five (5) years? [Please select one option for each category]

| | Copyright | % | UK Registered Design Right | % | Community Registered Design Right | % | UK Unregistered Design Right | % | Community Unregistered Design Right | % | International (Non-UK/Community) Design Right or Design Patent | % | Totals | % |
|----------------------------|-----------|-------|----------------------------|-------|-----------------------------------|-------|------------------------------|-------|-------------------------------------|-------|--|-------|--------|-------|
| Q10 S1 | | | | | | | | | | | | | | |
| Don't know | 29 | 4.2 | 35 | 5.1 | 43 | 6.2 | 48 | 7.0 | 50 | 7.2 | 43 | 6.2 | 248 | 6.0 |
| No | 575 | 83.3 | 532 | 77.1 | 580 | 84.1 | 597 | 86.5 | 623 | 90.3 | 590 | 85.5 | 3497 | 84.5 |
| Don't know & No | 604 | 87.5 | 567 | 82.2 | 623 | 90.3 | 645 | 93.5 | 673 | 97.5 | 633 | 91.7 | 3745 | 90.5 |
| Yes | 86 | 12.5 | 123 | 17.8 | 67 | 9.7 | 45 | 6.5 | 17 | 2.5 | 57 | 8.3 | 395 | 9.5 |
| Totals | 690 | 100.0 | 690 | 100.0 | 690 | 100.0 | 690 | 100.0 | 690 | 100.0 | 690 | 100.0 | 4140 | 100.0 |
| Q10 S2 | | | | | | | | | | | | | | |
| No | 8 | 6.1 | 13 | 10.2 | 15 | 11.8 | 15 | 11.9 | 16 | 12.7 | 14 | 10.9 | 81 | 10.6 |
| Don't know | 89 | 67.4 | 106 | 83.5 | 105 | 82.7 | 96 | 76.2 | 105 | 83.3 | 102 | 79.7 | 603 | 78.7 |
| No & Don't know | 97 | 73.5 | 119 | 93.7 | 120 | 94.5 | 111 | 88.1 | 121 | 96.0 | 116 | 90.6 | 684 | 89.3 |
| Yes | 35 | 26.5 | 8 | 6.3 | 7 | 5.5 | 15 | 11.9 | 5 | 4.0 | 12 | 9.4 | 82 | 10.7 |
| Totals | 132 | 100.0 | 127 | 100.0 | 127 | 100.0 | 126 | 100.0 | 126 | 100.0 | 128 | 100.0 | 766 | 100.0 |
| Q10 Combined | | | | | | | | | | | | | | |
| Don't know | 37 | 4.5 | 48 | 5.9 | 58 | 7.1 | 63 | 7.7 | 66 | 8.1 | 57 | 7.0 | 329 | 6.7 |
| No | 664 | 80.8 | 638 | 78.1 | 685 | 83.8 | 693 | 84.9 | 728 | 89.2 | 692 | 84.6 | 4100 | 83.6 |
| Don't know & No | 701 | 85.3 | 686 | 84.0 | 743 | 90.9 | 756 | 92.6 | 794 | 97.3 | 749 | 91.6 | 4429 | 90.3 |
| Yes | 121 | 14.7 | 131 | 16.0 | 74 | 9.1 | 60 | 7.4 | 22 | 2.7 | 69 | 8.4 | 477 | 9.7 |
| Totals | 822 | 100 | 817 | 100.0 | 817 | 100.0 | 816 | 100.0 | 816 | 100.0 | 818 | 100.0 | 4906 | 100.0 |

Q11: If you have ticked YES for any of the questions 10 (1-5) – were you a claimant or a defendant? [Please select one only]

Q12: If you have ticked YES for any of the questions 10 (6) – were you a claimant or a defendant? [Please select one only]

| | Survey 1 | | | |
|--|---------------|---------------------------|---------------------------------------|---------------------------|
| | Options (1-5) | | Option 6 (international Design Right) | |
| | Count | Percentage of respondents | Count | Percentage of respondents |
| Claimant (infringed party) | 152 | 77.6% | 45 | 77.6% |
| Defendant (allegedly infringing party) | 16 | 8.2% | 3 | 5.2% |
| Both | 26 | 13.3% | 8 | 13.8% |
| Don't know | 2 | 1.0% | 2 | 3.4% |
| Total | 196 | 100.0% | 58 | 100.0% |

| | Survey 2 | | | |
|--|---------------|---------------------------|---------------------------------------|---------------------------|
| | Options (1-5) | | Option 6 (international Design Right) | |
| | Count | Percentage of respondents | Count | Percentage of respondents |
| Claimant (infringed party) | 41 | 83.7% | 8 | 66.7% |
| Defendant (allegedly infringing party) | 4 | 8.2% | 3 | 25.0% |
| Both | 3 | 6.1% | 1 | 8.3% |
| Don't know | 1 | 2.0% | 0 | 0.0% |
| Total | 49 | 100.0% | 12 | 100.0% |

| | Combined Data | | | |
|--|---------------|---------------------------|---------------------------------------|---------------------------|
| | Options (1-5) | | Option 6 (international Design Right) | |
| | Count | Percentage of respondents | Count | Percentage of respondents |
| Claimant (infringed party) | 193 | 78.8% | 53 | 75.7% |
| Defendant (allegedly infringing party) | 20 | 8.2% | 6 | 8.6% |
| Both | 29 | 11.8% | 9 | 12.9% |
| Don't know | 3 | 1.2% | 2 | 2.9% |
| Total | 245 | 100.0% | 70 | 100.0% |

Q13: If you have ticked YES for question 10 (6) – which countries were involved? Please state whether you or your company were defendant or claimant or both in each case

| Q13 as claimants | Count | Count | Count |
|---|-------|-------|-------|
| China | 18 | 1 | 19 |
| USA | 11 | 0 | 11 |
| Australia | 3 | 0 | 3 |
| France | 3 | 0 | 3 |
| Italy | 3 | 0 | 3 |
| Respondents listing two or more countries | 17 | 0 | 17 |

| Q13 as defendants | Count | Count | Count |
|-------------------|-------|-------|-------|
| China | 2 | 0 | 2 |
| France | 2 | 0 | 2 |
| USA | 2 | 0 | 2 |

| Q13 as both | Count | Count | Count |
|-------------|-------|-------|-------|
| China | 3 | 0 | 3 |
| USA | 3 | 0 | 3 |

| | |
|---|--|
| Survey 1 – as claimants | Survey 2 |
| Other countries named: Brazil; Bulgaria; Canada; Denmark; Germany; Hong Kong; India; Israel; New Zealand; Philippines; Russia; South Africa, South East Asia; South Korea; Spain; Sweden; Taiwan and Turkey | Other countries named: Europe (?); Russia; Belgium |
| Survey 1 – as defendants | Survey 2 |
| Other countries: Canada; Italy; Russia and Taiwan | Germany |
| Survey 1 – as both | Survey 2 |
| Other countries: Australia; Belgium; France; Italy; South Korea and Turkey | |

Q14: In respect of the particular dispute you are using to answer the following questions were you a claimant or defendant?

| | Survey 1 | | Survey 2 | | Combined Data | |
|--|------------|---------------------------|-----------|---------------------------|---------------|---------------------------|
| | Count | Percentage of respondents | Count | Percentage of respondents | Count | Percentage of respondents |
| Claimant (infringed party) | 188 | 90.4% | 43 | 86.0% | 231 | 89.5% |
| Defendant (allegedly infringing party) | 20 | 9.6% | 7 | 14.0% | 27 | 10.5% |
| Total | 208 | 100.0% | 50 | 100.0% | 258 | 100.0% |

Q15: ...was the other party based in the UK or overseas? [Please select one only]

| | Survey 1 | | Survey 2 | | Combined Data | |
|--------------|-----------|---------------------------|-----------|---------------------------|---------------|---------------------------|
| | Count | Percentage of respondents | Count | Percentage of respondents | Count | Percentage of respondents |
| Don't know | 2 | 2.3% | 1 | 5.0% | 3 | 2.8% |
| EU | 10 | 11.5% | 2 | 10.0% | 12 | 11.2% |
| Overseas | 30 | 34.5% | 7 | 35.0% | 37 | 34.6% |
| UK | 45 | 51.7% | 10 | 50.0% | 55 | 51.4% |
| Total | 87 | 100.0% | 20 | 100.0% | 107 | 100.0% |

Q16: ...which of the following IPRs were involved? [Please select all that apply]

| | Survey 1 | | Survey 2 | | Combined Data | |
|--|----------|---------------------------|----------|---------------------------|---------------|---------------------------|
| | Count | Percentage of respondents | Count | Percentage of respondents | Count | Percentage of respondents |
| Copyright | 65 | 31.3% | 30 | 61.2% | 95 | 37.0% |
| UK Registered Design Right | 105 | 50.5% | 7 | 14.3% | 112 | 43.6% |
| Community Registered Design Right | 52 | 25.0% | 5 | 10.2% | 57 | 22.2% |
| UK Unregistered Design Right | 26 | 12.5% | 10 | 20.4% | 36 | 14.0% |
| Community Unregistered Design Right | 9 | 4.3% | 3 | 6.1% | 12 | 4.7% |
| International (Non-UK / Community) Design Right or Design Patent | 20 | 9.6% | 5 | 10.2% | 25 | 9.7% |
| Patent | 24 | 11.5% | 5 | 10.2% | 29 | 11.3% |
| Count (number of respondents) | 208 | | 49 | | 257 | |

| Q16 - In respect of the particular dispute you are using to answer the following questions which of the following IP rights were involved? | Q19 - In respect of the particular dispute what action(s) did you take? | | | | | | | | | | | | | | | | | |
|--|---|------------|---|-------------|---|-------------|--|------------|--------------------------------|-------------|---|------------|-----------|------------|--------------------|-------------|----------------|------------|
| | No action | | Contacted a solicitor to discuss next steps | | Contacted a patent or trade mark attorney to discuss next steps | | Sought pro bono legal advice to discuss next steps | | Sent letter to the other party | | Created public awareness through social media | | Mediation | | Issued Court Claim | | Issued Defence | |
| | # | % | # | % | # | % | # | % | # | % | # | % | # | % | # | % | # | % |
| Copyright | 8 | 13.6 | 26 | 44.1 | 15 | 25.4 | 2 | 3.4 | 38 | 64.4 | 4 | 6.8 | 2 | 3.4 | 9 | 15.3 | 2 | 3.4 |
| UK Registered Design Right | 6 | 6.7 | 31 | 34.8 | 33 | 37.1 | 3 | 3.4 | 61 | 68.5 | 6 | 6.7 | 5 | 5.6 | 12 | 13.5 | 5 | 5.6 |
| Community Registered Design Right | 2 | 4.4 | 18 | 40.0 | 25 | 55.6 | 4 | 8.9 | 34 | 75.6 | 3 | 6.7 | 3 | 6.7 | 9 | 20.0 | 1 | 2.2 |
| UK Unregistered Design Right | 3 | 12.0 | 12 | 48.0 | 5 | 20.0 | 0 | 0.0 | 21 | 84.0 | 2 | 8.0 | 3 | 12.0 | 9 | 36.0 | 0 | 0.0 |
| Community Unregistered Design Right | 0 | 0.0 | 3 | 37.5 | 3 | 37.5 | 0 | 0.0 | 8 | 100 | 0 | 0.0 | 2 | 25.0 | 2 | 25.0 | 0 | 0.0 |
| International (Non-UK / Community) Design Right or Design Patent | 0 | 0.0 | 7 | 41.2 | 13 | 76.5 | 0 | 0.0 | 12 | 70.6 | 0 | 0.0 | 2 | 11.8 | 5 | 29.4 | 0 | 0.0 |
| Patent | 1 | 4.8 | 8 | 38.1 | 17 | 81.0 | 2 | 9.5 | 13 | 61.9 | 1 | 4.8 | 2 | 9.5 | 5 | 23.8 | 1 | 4.8 |
| Total | 13 | 7.2 | 72 | 39.8 | 73 | 40.3 | 7 | 3.9 | 126 | 69.6 | 11 | 6.1 | 12 | 6.6 | 29 | 16.0 | 6 | 3.3 |

Q17: ...and in relation to your company, was the business size of the (main) party opposing you: [Please select one only]

| | Survey 1 | | Survey 2 | | Combined Data | |
|---------------------|------------|---------------------------|-----------|---------------------------|---------------|---------------------------|
| | Count | Percentage of respondents | Count | Percentage of respondents | Count | Percentage of respondents |
| Very much smaller | 9 | 4.3% | 4 | 8.0% | 13 | 5.0% |
| qSmaller | 30 | 14.4% | 9 | 18.0% | 39 | 15.1% |
| About the same size | 48 | 23.1% | 11 | 22.0% | 59 | 22.9% |
| Larger | 38 | 18.3% | 12 | 24.0% | 50 | 19.4% |
| Very much larger | 57 | 27.4% | 11 | 22.0% | 68 | 26.4% |
| Don't know | 26 | 12.5% | 3 | 6.0% | 29 | 11.2% |
| Total | 208 | 100.0% | 50 | 100.0% | 258 | 100.0% |

| Q17...and in relation to your company was the business size of the (main) party opposing you | | Q14 - In respect of the particular dispute you are using to answer the following questions were you a claimant or defendant? | | Total |
|--|-------------|--|---------------|---------------|
| | | Claimant | Defendant | |
| Very much larger | # | 49 | 6 | 55 |
| | % in column | 30.2% | 31.6% | 30.4% |
| Larger | # | 32 | 5 | 37 |
| | % in column | 19.8% | 26.3% | 20.4% |
| About the same size | # | 43 | 6 | 49 |
| | % in column | 26.5% | 31.6% | 27.1% |
| Smaller | # | 29 | 1 | 30 |
| | % in column | 17.9% | 5.3% | 16.6% |
| Very much smaller | # | 9 | 1 | 10 |
| | % in column | 5.6% | 5.3% | 5.5% |
| Total | # | 162 | 19 | 181 |
| | % in column | 100.0% | 100.0% | 100.0% |

| Q17 ...and in relation to your company was the business size of the (main) party opposing you | Q14 - In respect of the particular dispute you are using to answer the following questions were you a claimant or defendant? | | | |
|---|--|---------------------------|--|------------------------|
| | Claimant (infringed party) | | Defendant (allegedly infringing party) | |
| | Total number | % of no response received | Total number | % of no response given |
| Very much larger | 47 | 13% | 6 | 0% |
| Larger | 31 | 23% | 5 | 0% |
| About the same size | 42 | 10% | 5 | 20% |
| Smaller | 28 | 14% | 1 | 100% |
| Very much smaller | 9 | 0% | 1 | 0% |
| Total | 157 | 13% | 18 | 11% |

Q18: At the time of the infringement, was the design... [Please select all that apply]

| | Survey 1 | | Survey2 | | Combined Data | |
|--|----------|---------------------------|---------|---------------------------|---------------|---------------------------|
| | Count | Percentage of respondents | Count | Percentage of respondents | Count | Percentage of respondents |
| Licensed to another business | 12 | 5.8% | 7 | 14.0% | 19 | 7.4% |
| Used in a product, which you or your business were selling | 162 | 77.9% | 30 | 60.0% | 192 | 74.4% |
| Published but not yet licensed | 11 | 5.3% | 4 | 8.0% | 15 | 5.8% |
| Don't know | 22 | 10.6% | 4 | 8.0% | 26 | 10.0% |
| Other (please state below) | 12 | 5.8% | 9 | 18.0% | 21 | 8.1% |
| Number of replies | 219 | | 54 | | 273 | |
| Number of respondents | 208 | 100.0% | 50 | 100.0% | 258 | 100.0% |

Q19: In respect of the particular dispute what action(s) did you take? [Please select all that apply]

| | Survey 1 | | Survey 2 | | Combined Data | |
|---|----------|---------------------------|----------|---------------------------|---------------|---------------------------|
| | Count | Percentage of respondents | Count | Percentage of respondents | Count | Percentage of respondents |
| No action Please go to Q21 | 14 | 6.7% | 2 | 4% | 16 | 6.2% |
| Contacted a solicitor to discuss next steps | 83 | 39.9% | 16 | 32% | 99 | 38.4% |
| Contacted a patent or trade mark attorney to discuss next steps | 80 | 38.5% | 12 | 24% | 92 | 35.7% |
| Sought pro bono legal advice to discuss next steps | 8 | 3.8% | 3 | 6% | 11 | 4.3% |
| Sent letter to the other party | 138 | 66.3% | 27 | 54% | 165 | 64.0% |
| Created public awareness through social media | 11 | 5.3% | 3 | 6% | 14 | 5.4% |
| Mediation | 12 | 5.8% | 3 | 6% | 15 | 5.8% |
| Issued Court Claim | 29 | 13.9% | 1 | 2% | 30 | 11.6% |
| Issued Defence | 11 | 5.3% | 0 | 0% | 11 | 4.3% |
| Issued Counterclaim | 7 | 3.4% | 0 | 0% | 7 | 2.7% |
| Other (please state below) | 17 | 8.2% | 9 | 18% | 26 | 10.1% |
| Number of respondents | 208 | 100.0% | 50 | | 258 | |

| Q19 - In respect of the particular dispute what action(s) did you take? | | Q4 - What is the size of your organisation / firm? | | | | | Total |
|---|-------------|--|---------------------|-----------------------|------------------------|----------------------------|--------|
| | | Sole trader | 2 to 9 FT employees | 10 to 49 FT employees | 50 to 250 FT employees | More than 250 FT employees | |
| No action | Unchecked # | 25 | 54 | 46 | 29 | 18 | 172 |
| | % in column | 83.3% | 93.1% | 95.8% | 100.0% | 90.0% | 93.0% |
| | Checked # | 5 | 4 | 2 | 0 | 2 | 13 |
| | % in column | 16.7% | 6.9% | 4.2% | 0.0% | 10.0% | 7.0% |
| TOTAL | # | 30 | 58 | 48 | 29 | 20 | 185 |
| | % in column | 100.0% | 100.0% | 100.0% | 100.0% | 100.0% | 100.0% |

Q20: If a claim was issued in court, which court(s) were involved? [Please select all that apply and go to Q22] [Note: IPEC was previously the Patents County Court or PCC]

| | Survey 1 | | Survey 2 | | Combined Data | |
|--|----------|---------------------------|----------|---------------------------|---------------|---------------------------|
| | Count | Percentage of respondents | Count | Percentage of respondents | Count | Percentage of respondents |
| Intellectual Property Enterprise Court (IPEC) | 5 | 13.9% | 0 | 0 | 5 | 13.9% |
| Intellectual Property Enterprise Court (IPEC) - Small Claims Track | 1 | 2.8% | 0 | 0 | 1 | 2.8% |
| Patents Court (High Court Chancery Division) | 7 | 19.4% | 0 | 0 | 7 | 19.4% |
| Court of Appeal | 3 | 8.3% | 0 | 0 | 3 | 8.3% |
| Court in another country | 11 | 30.6% | 1 | 100.0% | 12 | 32.4% |
| Other (please state below) | 15 | 41.7% | 0 | 0 | 15 | 41.7% |
| Number of respondents | 36 | 100.0% | 1 | 100.0% | 37 | 100% |

Q21: If you answered NONE to Q19 (1), why did you choose NOT to take action? [Please select all that apply]

| | Survey 1 | | Survey 2 | | Combined Data | |
|---|----------|---------------------------|----------|---------------------------|---------------|---------------------------|
| | Count | Percentage of respondents | Count | Percentage of respondents | Count | Percentage of respondents |
| The infringement was trivial | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% |
| Uncertainty about validity of the design | 1 | 7.1% | 1 | 50.0% | 2 | 12.5% |
| Too costly | 6 | 42.9% | 1 | 50.0% | 7 | 43.8% |
| Too time consuming | 3 | 21.4% | 1 | 50.0% | 4 | 25.0% |
| Too stressful | 1 | 7.1% | 0 | 0.0% | 1 | 6.3% |
| Advised not to by lawyer/legal adviser | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% |
| The other party was too big | 2 | 14.3% | 0 | 0.0% | 2 | 12.5% |
| The other party was too small | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% |
| The other party was overseas | 1 | 7.1% | 1 | 50.0% | 1 | 6.3% |
| It would have been difficult to prove | 1 | 7.1% | 0 | 0.0% | 1 | 6.3% |
| It would have damaged the relationship with actual or potential business partners | 2 | 14.3% | 1 | 50.0% | 3 | 18.8% |
| Rely on other rights, e.g. trade mark to defend our interests | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% |
| Other (please state) | 7 | 50.0% | 0 | 0.0% | 7 | 43.8% |
| Number of respondents | 14 | 100.0% | 2 | 100.0% | 16 | 100.0% |

Q22: If you have ticked any of the options 2-10 for question Q19, what was/were the reason(s)? [Please select all that apply]

| | Survey 1 | | Survey 2 | | Combined Data | |
|--|----------|---------------------------|----------|---------------------------|---------------|---------------------------|
| | Count | Percentage of respondents | Count | Percentage of respondents | Count | Percentage of respondents |
| Defend potentially lucrative market | 95 | 49.0% | 20 | 45.5% | 115 | 48.3% |
| Start negotiations on licensing / assignment agreement | 16 | 8.2% | 6 | 13.6% | 22 | 9.2% |
| Defend our Design Right(s) as a matter of principle | 132 | 68.0% | 32 | 72.7% | 164 | 68.9% |
| Defend our business as a matter of principle | 131 | 67.5% | 30 | 68.2% | 161 | 67.6% |
| Maintain reputation as an aggressive competitor | 31 | 16.0% | 7 | 15.9% | 38 | 16.0% |
| To be paid damages | 25 | 12.9% | 5 | 11.4% | 30 | 12.6% |
| Other (please state below) | 17 | 8.8% | 1 | 2.3% | 18 | 7.6% |
| Number of respondents | 194 | 100.0% | 44 | 100.0% | 238 | 100.0% |

| Q22 - What was / were your reason(s) for taking action? | Q14 - In respect of the particular dispute you are using to answer the following questions were you a claimant or defendant? | | | | | |
|---|--|-------------|-----------|-------------|-------|-------------|
| | Claimant | | Defendant | | Total | |
| | # | % in column | # | % in column | # | % in column |
| Defend potentially lucrative market | 91 | 52.6% | 5 | 23.8% | 96 | 49.5% |
| Start negotiations on licensing / assignment agreement | 16 | 9.2% | 0 | 0.0% | 16 | 8.2% |
| Defend our Design Right(s) as a matter of principle | 122 | 70.5% | 9 | 42.9% | 131 | 67.5% |
| Defend our business as a matter of principle | 120 | 69.4% | 10 | 47.6% | 130 | 67.0% |
| Maintain reputation as an aggressive competitor | 27 | 15.6% | 3 | 14.3% | 30 | 15.5% |
| To be paid damages | 23 | 13.3% | 1 | 4.8% | 24 | 12.4% |
| Other (please state) | 9 | 5.2% | 7 | 33.3% | 16 | 8.2% |

Q23: What response did you (as infringed party) receive from the other party? OR – see below. [Please select all that apply]

| | Survey1 | | Survey 2 | | Combined Data | |
|---|---------|---------------------------|----------|---------------------------|---------------|---------------------------|
| | Count | Percentage of respondents | Count | Percentage of respondents | Count | Percentage of respondents |
| Agreed to license / cross license/ buy or sell the design | 4 | 2.3% | 2 | | 6 | |
| Permanently stopped infringing | 71 | 40.6% | 5 | | 76 | |
| Temporarily stopped infringing | 24 | 13.7% | 14 | | 38 | |
| No response | 24 | 13.7% | 10 | | 34 | |
| Alleged that the design was invalid | 44 | 25.1% | 13 | | 57 | |
| Counterclaim for infringement of other designs | 4 | 2.3% | 0 | | 4 | |
| Does not apply | 5 | 2.9% | 2 | | 7 | |
| Other (please state below) | 39 | 22.3% | 9 | | 48 | |
| Count | 175 | 100.0% | 44 | | 219 | |

| Q23 - What response did you (as infringed party) receive from the other party? | Q4 - What is the size of your organisation / firm? [FT = full-time / full-time equivalent] | | | | | | | | | | | |
|--|--|-------------|---------------------|-------------|-----------------------|-------------|------------------------|-------------|----------------------------|-------------|-------|-------------|
| | Sole trader | | 2 to 9 FT employees | | 10 to 49 FT employees | | 50 to 250 FT employees | | More than 250 FT employees | | Total | |
| | # | % in column | # | % in column | # | % in column | # | % in column | # | % in column | # | % in column |
| Agreed to licence / cross licence/ buy the design | 0 | 0.0% | 1 | 1.9% | 1 | 2.1% | 1 | 3.4% | 1 | 5.6% | 4 | 2.3% |
| Permanently stopped infringing | 7 | 28.0% | 17 | 31.5% | 21 | 44.7% | 18 | 62.1% | 8 | 44.4% | 71 | 41.0% |
| Temporarily stopped infringing | 3 | 12.0% | 6 | 11.1% | 9 | 19.1% | 2 | 6.9% | 4 | 22.2% | 24 | 13.9% |
| No response | 4 | 16.0% | 8 | 14.8% | 6 | 12.8% | 3 | 10.3% | 3 | 16.7% | 24 | 13.9% |
| Alleged that the design was invalid | 6 | 24.0% | 15 | 27.8% | 15 | 31.9% | 1 | 3.4% | 5 | 27.8% | 42 | 24.3% |
| Counterclaim for infringement of other design(s) | 0 | 0.0% | 1 | 1.9% | 1 | 2.1% | 0 | 0.0% | 2 | 11.1% | 4 | 2.3% |
| Not applicable | 1 | 4.0% | 1 | 1.9% | 2 | 4.3% | 1 | 3.4% | 0 | 0.0% | 5 | 2.9% |
| Other (please state) | 9 | 36.0% | 14 | 25.9% | 5 | 10.6% | 6 | 20.7% | 3 | 16.7% | 37 | 21.4% |

| Q14 - What is the size of your organisation / firm? [FT = full-time / full- time equivalent] | Q19 - In respect of the particular dispute what action(s) did you take? | | | TOTAL |
|--|---|--------------------|-------|-------|
| | No claim issued | Issued court claim | | |
| Sole trader | N | 27 | 3 | 30 |
| | % in row | 90.0 % | 10% | 100% |
| 2 to 9 FT employees | N | 53 | 5 | 58 |
| | % in row | 91.4% | 8.6% | 100% |
| 10 to 49 FT employees | N | 36 | 12 | 48 |
| | % in row | 75% | 25% | 100% |
| 50 to 250 FT employees | N | 27 | 2 | 29 |
| | % in row | 93.1% | 6.9% | 100% |
| More than 250 FT employees | N | 13 | 7 | 20 |
| | % in row | 65% | 35% | 100% |
| Total | N | 156 | 28 | 185 |
| | % in row | 84.3% | 15.7% | 100% |

Q23: OR How did you (as allegedly infringing party) respond to the claim? [Please select all that apply]

| | Survey 1 | | Survey 2 | | Combined Data | |
|---|----------|---------------------------|----------|---------------------------|---------------|---------------------------|
| | Count | Percentage of respondents | Count | Percentage of respondents | Count | Percentage of respondents |
| Agreed to license / cross license/ buy or sell the design | 0 | 0% | | | | |
| Permanently stopped infringing | 4 | 22.2% | | | | |
| Temporarily stopped infringing | 1 | 5.6% | | | | |
| No response | 2 | 11.1% | | | | |
| Alleged that the design was invalid | 6 | 33.3% | | | | |
| Counterclaim for infringement of other designs | 2 | 11.1% | | | | |
| Does not apply | 18 | 27.8% | | | | |
| Other (please state below) | 5 | | | | | |
| Count | 18 | 100% | | | | |

| Q23 - OR - How did you (as allegedly infringing party) respond to the claim? | Q4 - What is the size of your organisation / firm? [FT = full-time / full-time equivalent] | | | | | | | | | | | |
|--|---|-------------|---------------------|-------------|-----------------------|-------------|------------------------|-------------|----------------------------|-------------|-------|-------------|
| | Sole trader | | 2 to 9 FT employees | | 10 to 49 FT employees | | 50 to 250 FT employees | | More than 250 FT employees | | Total | |
| | # | % in column | # | % in column | # | % in column | # | % in column | # | % in column | # | % in column |
| Agreed to licence / cross licence/ buy the design | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% |
| Permanently stopped infringing | 0 | 0.0% | 3 | 60.0% | 0 | 0.0% | 1 | 20.0% | 0 | 0.0% | 4 | 19.0% |
| Temporarily stopped infringing | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% | 1 | 20.0% | 0 | 0.0% | 1 | 4.8% |
| No response | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% | 2 | 66.7% | 2 | 9.5% |
| Alleged that the design was invalid | 2 | 40.0% | 1 | 20.0% | 3 | 100.0% | 0 | 0.0% | 1 | 33.3% | 7 | 33.3% |
| Counterclaim for infringement of other design(s) | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% | 2 | 40.0% | 0 | 0.0% | 2 | 9.5% |
| Not applicable | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% |
| Other (please state) | 3 | 60.0% | 1 | 20.0% | 0 | 0.0% | 1 | 20.0% | 0 | 0.0% | 5 | 23.8% |

Q24: As the infringed party: If the allegations of infringements were ignored why do you think that was? OR⁵⁰ [Please select all that apply]

| | Survey 1 | | Survey 2 | | Combined Data | |
|--|----------|---------------------------|----------|---------------------------|---------------|---------------------------|
| | Count | Percentage of respondents | Count | Percentage of respondents | Count | Percentage of respondents |
| Didn't think there was infringement | 3 | 23.1% | 0 | | 3 | |
| Thought the other party was too small to be a threat | 2 | 15.4% | 0 | | 2 | |
| Believed that the design right was invalid | 1 | 7.7% | 0 | | 1 | |
| Don't know | 8 | 61.5% | 2 | | 10 | |
| Other (please state below) | 4 | 30.8% | 4 | | 8 | |
| Number of respondents | 13 | 100.0% | | | | |

Q24: OR As allegedly infringing party: If you ignored the allegations what were your reason(s)? Please select all that apply

| | Survey 1 | | Survey 2 | | Combined Data | |
|--|----------|---------------------------|----------|---------------------------|---------------|---------------------------|
| | Count | Percentage of respondents | Count | Percentage of respondents | Count | Percentage of respondents |
| Didn't think there was infringement | | | | | | |
| Thought the other party was too small to be a threat | 1 | 100.0% | | | | |
| Believed that the design right was invalid | 1 | 100.0% | | | | |
| Don't know | 0 | | | | | |
| Other (please state below) | 0 | | | | | |
| Count | 1 | 100.0% | | | | |

| Q24 - As infringed party: If the allegations of infringement were ignored, why do you think that was? OR As allegedly infringing party: If you ignored the allegations what were your reason(s)? | Claimant | | Defendant | | Total | |
|--|----------|-------------|-----------|-------------|-------|-------------|
| | # | % in column | # | % in column | # | % in column |
| They / we didn't think there was infringement | 3 | 23.1% | 0 | 0.0% | 3 | 21.4% |
| They / we thought that we were /the infringed party was too small to be a threat | 2 | 15.4% | 1 | 100.0% | 3 | 21.4% |
| They / we believed that the design right was invalid | 1 | 7.7% | 1 | 100.0% | 2 | 14.3% |
| Don't know | 8 | 61.5% | 0 | 0.0% | 8 | 57.1% |
| Other (please state) | 4 | 30.8% | 0 | 0.0% | 4 | 28.6% |

⁵⁰ Option to answer Q24: OR As allegedly infringing party: If you ignored the allegations what were your reason(s)?

Q25: If court proceedings were started, what was the outcome? [Select one only. If not applicable, please skip and move to question 29]

| | Survey 1 | | Survey 2 | | Combined Data | |
|---|-----------|---------------------------|----------|---------------------------|---------------|---------------------------|
| | Count | Percentage of respondents | Count | Percentage of respondents | Count | Percentage of respondents |
| Case still pending | 8 | 21.1% | 1 | 100.0% | 9 | 23.1% |
| Court judgment in favour of the other party | 2 | 5.3% | 0 | 0.0% | 2 | 5.1% |
| Court judgment in our favour | 10 | 26.3% | 0 | 0.0% | 10 | 25.6% |
| Other (please state) | 11 | 28.9% | 0 | 0.0% | 11 | 28.2% |
| Out-of-court settlement | 7 | 18.4% | 0 | 0.0% | 7 | 17.9% |
| Total | 38 | 100.0% | 1 | 100.0% | 39 | 100.0% |

Responses of claimants only:

| Q16 - In respect of the particular dispute you are using to answer the following questions which of the following IP rights were involved? | Q25 - If court proceedings were started what was the outcome? | | | | | | | | | |
|--|---|------------|------------------------------|------------|---|-----------|-------------------------|------------|----------------------|------------|
| | Case still pending | | Court judgment in our favour | | Court judgment in favour of the other party | | Out-of-court settlement | | Other (please state) | |
| | # | % in row | # | % in row | # | % in row | # | % in row | # | % in row |
| Copyright | 3 | 30% | 3 | 30% | 1 | 10% | 1 | 10% | 2 | 20% |
| UK Registered Design Right | 2 | 13% | 6 | 40% | 0 | 0% | 3 | 20% | 4 | 27% |
| Community Registered Design Right | 3 | 33% | 3 | 33% | 2 | 22% | 0 | 0% | 1 | 11% |
| UK Unregistered Design Right | 4 | 44% | 2 | 22% | 1 | 11% | 1 | 11% | 1 | 11% |
| Community Unregistered Design Right | 1 | 50% | 1 | 50% | 0 | 0% | 0 | 0% | 0 | 0% |
| International (Non-UK / Community) Design Right or Design Patent | 1 | 20% | 3 | 60% | 0 | 0% | 0 | 0% | 1 | 20% |
| Patent | 1 | 20% | 2 | 40% | 0 | 0% | 1 | 20% | 1 | 20% |
| Total no. of cases | 7 | 21% | 11 | 33% | 2 | 6% | 5 | 15% | 8 | 24% |

Q26: If a claim was issued in court, how do you feel about the litigation process? [Please select one only]

| | Survey 1 | | Survey 2 | | Combined Data | |
|------------------------|-----------|---------------------------|----------|---------------------------|---------------|---------------------------|
| | Count | Percentage of respondents | Count | Percentage of respondents | Count | Percentage of respondents |
| Extremely disappointed | 9 | 25.0% | 0 | | 9 | |
| Rather disappointed | 5 | 13.9% | 0 | | 5 | |
| Not sure | 12 | 33.3% | 1 | | 13 | |
| Reasonably content | 9 | 25.0% | 0 | | 9 | |
| Very pleased | 1 | 2.8% | 0 | | 1 | |
| Total | 36 | 100.0% | 1 | | 37 | |

Q27: How do you feel about the outcome of the legal dispute? [Please select one only]

| | Survey 1 | | Survey 2 | | Combined Data | |
|------------------------|-----------|---------------------------|----------|---------------------------|---------------|---------------------------|
| | Count | Percentage of respondents | Count | Percentage of respondents | Count | Percentage of respondents |
| Extremely disappointed | 7 | 19.4% | 0 | | 7 | |
| Rather disappointed | 2 | 5.6% | 0 | | 2 | |
| Not sure | 5 | 13.9% | 0 | | 5 | |
| Reasonably content | 11 | 30.6% | 0 | | 11 | |
| Very pleased | 5 | 13.9% | 0 | | 5 | |
| Case still pending | 6 | 16.7% | 1 | | 7 | |
| Total | 36 | 100.0% | 1 | | 27 | |

Q28: How long were legal proceedings from issuing the claim to final court judgment/ settlement? [Please complete]

| Months | # |
|--------|---|
| 2 | 1 |
| 5 | 1 |
| 6 | 4 |
| 8 | 1 |
| 12 | 2 |
| 16 | 1 |
| 18 | 3 |
| 24 | 4 |
| 25 | 1 |
| 42 | 1 |
| 48 | 2 |
| 60 | 1 |

Q29: If you chose not to start proceedings, why? Please select all that apply. If not applicable, please skip and move to the next question.

| | Survey 1 | | Survey 2 | | Combined Data | |
|--|----------|-------------------------|----------|-------------------------|---------------|---------------------------|
| | Count | Percentage of responses | Count | Percentage of responses | Count | Percentage of respondents |
| Potential gains didn't justify the cost | 59 | 58.4% | 19 | 55.9% | 78 | 42.2% |
| Not worth damaging the relationship with actual or potential business partners | 10 | 9.9% | 2 | 5.9% | 12 | 6.5% |
| Would take too long | 25 | 24.8% | 8 | 23.5% | 33 | 17.8% |
| Uncertain about the validity of the registered design | 9 | 8.9% | 3 | 8.8% | 12 | 6.5% |
| Uncertain about the validity of the unregistered design | 3 | 3.0% | 3 | 8.8% | 6 | 3.2% |
| Other (please state) | 45 | 44.6% | 12 | 35.3% | 57 | 30.8% |
| Number of respondents | 101 | 100.0% | 34 | 100.0% | 135 | 100.0% |

Q30: In the last five (5) years how much did you spend on legal fees when enforcing registered and/or unregistered design rights? Please select one only. If not applicable, please skip and move to the next question.

| | Survey 1 | | Survey 2 | | Combined Data | |
|---------------------|------------|---------------------------|-----------|---------------------------|---------------|---------------------------|
| | Count | Percentage of respondents | Count | Percentage of respondents | Count | Percentage of respondents |
| Nothing | 32 | 16.5% | 14 | 41.2% | 46 | 20.2% |
| Less than £1,000 | 32 | 16.5% | | | 32 | 14.0% |
| £1,000 - £5,000 | 40 | 20.6% | 8 | 23.5% | 48 | 21.1% |
| £5,000 - £20,000 | 42 | 21.6% | 4 | 11.8% | 46 | 20.2% |
| £20,000 - £100,000 | 25 | 12.9% | 3 | 8.8% | 28 | 12.3% |
| £100,000 - £500,000 | 2 | 1.0% | 1 | 2.9% | 3 | 1.3% |
| £500,000 - £1m | 1 | 0.5% | 1 | 2.9% | 2 | 0.9% |
| Over £1m | 1 | 0.5% | 1 | 2.9% | 2 | 0.9% |
| Don't know | 19 | 9.8% | 2 | 5.9% | 21 | 9.2% |
| Total | 194 | 100.0% | 34 | 99.9% | 228 | 100.0% |

Q31: In the last five (5) years how much revenue did you lose due to infringement of your registered and/or unregistered design rights? [Please select one only. If not applicable, please skip and move to the next question].

| | Survey 1 | | Survey 2 | | Combined Data | |
|---------------------|------------|---------------------------|-----------|---------------------------|---------------|---------------------------|
| | Count | Percentage of respondents | Count | Percentage of respondents | Count | Percentage of respondents |
| Nothing | 16 | 8.2% | 2 | 5.7% | 18 | 7.9% |
| Less than £1,000 | 10 | 5.2% | | | 10 | 4.4% |
| £1,000 - £5,000 | 14 | 7.2% | 4 | 11.4% | 18 | 7.9% |
| £5,000 - £20,000 | 24 | 12.4% | 5 | 14.3% | 29 | 12.7% |
| £20,000 - £100,000 | 23 | 11.9% | 8 | 22.9% | 31 | 13.5% |
| £100,000 - £500,000 | 24 | 12.4% | 3 | 8.6% | 27 | 11.8% |
| £500,000 - £1m | 6 | 3.1% | 2 | 5.7% | 8 | 3.5% |
| Over £1m | 4 | 2.1% | 1 | 2.9% | 5 | 2.2% |
| Don't know | 73 | 37.6% | 10 | 28.6% | 83 | 36.2% |
| Total | 194 | 100.0% | 35 | 100.1% | 229 | 100.0% |

Q32: In the last five (5) years what was the value of staff time lost due to infringement of your registered or unregistered design rights? Please select one only. If not applicable, please skip and move to the next question.

| | Survey 1 | | Survey 2 | | Combined Data | |
|-----------------------|------------|---------------------------|-----------|---------------------------|---------------|---------------------------|
| | Count | Percentage of respondents | Count | Percentage of respondents | Count | Percentage of respondents |
| No loss of staff time | 26 | 13.5% | 5 | 13.5% | 31 | 13.5% |
| Less than £1,000 | 35 | 18.1% | 9 | 24.3% | 44 | 19.1% |
| £1,000 - £5,000 | 38 | 19.7% | 10 | 27.0% | 48 | 20.9% |
| £5,000 - £20,000 | 35 | 18.1% | 6 | 16.2% | 41 | 17.8% |
| £20,000 - £100,000 | 15 | 7.8% | 4 | 10.8% | 19 | 8.3% |
| £100,000 - £500,000 | 5 | 2.6% | 1 | 2.7% | 6 | 2.6% |
| Don't know | 39 | 20.2% | 2 | 5.4% | 41 | 17.8% |
| Total | 193 | 100.0% | 37 | 100.0% | 230 | 100.0% |

| | Q30 - In the last 5 years, how much did you spend on legal fees when enforcing your registered and/or unregistered design rights? | Q31 - In the last 5 years, how much revenue did you lose due to infringement of your registered and/or unregistered design rights? |
|--------------|---|--|
| N Valid | 171 | 118 |
| Missing data | 520 | 573 |
| Mean | 3,06 | 4,21 |
| Median | 3,00 | 4,00 |
| Dominant | 4 | 6 |
| St. Dev. | 1,452 | 1,907 |
| Percentiles | | |
| 25 | 2,00 | 3,00 |
| 50 | 3,00 | 4,00 |
| 75 | 4,00 | 6,00 |

| Q31 - In the last 5 years, how much revenue did you lose due to infringement of your registered and/or unregistered design rights? | | Q19 - Issued Court Claim | | |
|--|----------|--------------------------|---------|--------|
| | | Unchecked | Checked | Total |
| Nothing | # | 14 | 1 | 15 |
| | % in row | 93.3% | 6.7% | 100.0% |
| Less than £1,000 | # | 9 | 0 | 9 |
| | % in row | 100.0% | 0.0% | 100.0% |
| £1,000 - £5,000 | # | 11 | 2 | 13 |
| | % in row | 84.6% | 15.4% | 100.0% |
| £5,000 - £20,000 | # | 18 | 3 | 21 |
| | % in row | 85.7% | 14.3% | 100.0% |
| £20,000 - £100,000 | # | 19 | 3 | 22 |
| | % in row | 86.4% | 13.6% | 100.0% |
| £100,000 - £500,000 | # | 15 | 8 | 23 |
| | % in row | 65.2% | 34.8% | 100.0% |
| £500,000 - £1m | # | 5 | 1 | 6 |
| | % in row | 83.3% | 16.7% | 100.0% |
| Over £1m | # | 2 | 2 | 4 |
| | % in row | 50.0% | 50.0% | 100.0% |
| Total | # | 93 | 20 | 113 |
| | % in row | 82.3% | 17.7% | 100.0% |

Q33: To the best of your knowledge, how many incidents of design rights infringement have you experienced in the last five (5) years? [Please select one only]

| | Survey 1 | | Survey 2 | | Combined Data | |
|--------------|------------|---------------------------|-----------|---------------------------|---------------|---------------------------|
| | Count | Percentage of respondents | Count | Percentage of respondents | Count | Percentage of respondents |
| None | 2 | 1.0% | 2 | 5.1% | 4 | 1.7% |
| one (1) | 41 | 21.0% | 7 | 17.9% | 48 | 20.5% |
| 2 to 5 | 82 | 42.1% | 13 | 33.3% | 95 | 40.6% |
| 6 to 10 | 21 | 10.8% | 5 | 12.8% | 26 | 11.1% |
| More than 10 | 39 | 20.0% | 9 | 23.1% | 48 | 20.5% |
| Don't know | 10 | 5.1% | 3 | 7.7% | 13 | 5.6% |
| Total | 195 | 100.0% | 39 | 99.9% | 234 | 100.0% |

| | Q30 - In the last 5 years, how much did you spend on legal fees when enforcing your registered and/or unregistered design rights? | Q31 - In the last 5 years, how much revenue did you lose due to infringement of your registered and/or unregistered design rights? | Q32 - In the last 5 years, what was the value of staff time lost due to infringement of your registered and/or unregistered design rights? |
|--------------|---|--|--|
| N Valid | 171 | 118 | 150 |
| Missing data | 520 | 573 | 541 |
| Mean | 3,06 | 4,21 | 2,95 |
| Median | 3,00 | 4,00 | 3,00 |
| Dominant | 4 | 6 | 3 |
| St. Dev. | 1,452 | 1,907 | 1,360 |
| Percentiles | | | |
| 25 | 2,00 | 3,00 | 2,00 |
| 50 | 3,00 | 4,00 | 3,00 |
| 75 | 4,00 | 6,00 | 4,00 |

| Q6 - Have you or your company invented or developed products that are significantly improved or completely new to the market in the last 5 years? | | Q33 - To the best of your knowledge, how many incidents of design rights infringements have you experienced in the last 5 years? | | | | | Total |
|---|----------|--|---------|--------|---------|--------------|--------|
| | | None | one (1) | 2 to 5 | 6 to 10 | More than 10 | |
| Yes | # | 2 | 33 | 69 | 18 | 30 | 152 |
| | % in row | 1.3% | 21.7% | 45.4% | 11.8% | 19.7% | 100.0% |
| No | # | 0 | 6 | 7 | 2 | 6 | 21 |
| | % in row | 0.0% | 28.6% | 33.3% | 9.5% | 28.6% | 100.0% |
| Don't know | # | 0 | 0 | 5 | 1 | 2 | 8 |
| | % in row | 0.0% | 0.0% | 62.5% | 12.5% | 25.0% | 100.0% |
| Total | # | 2 | 39 | 81 | 21 | 38 | 181 |
| | % in row | 1.1% | 21.5% | 44.8% | 11.6% | 21.0% | 100.0% |

| Q33 - To the best of your knowledge, how many incidents of design rights infringements have you experienced in the last 5 years? | | Q1 - Which one of the following describes your primary work or role relating to Designs? [Please select one only] | | | | |
|--|-------------|---|--------------|--|------------------|------------|
| | | Designer | Design Owner | Design Product/ Product Component Manufacturer | Other categories | All sample |
| None | N | 2 | 0 | 0 | 0 | 2 |
| | % in column | 4.0% | 0.0% | 0.0% | 0.0% | 1.1% |
| one (1) | N | 14 | 5 | 1 | 6 | 39 |
| | % in column | 28.0% | 13.9% | 7.7% | 16.2% | 21.5% |
| 2 to 5 | N | 20 | 18 | 3 | 18 | 81 |
| | % in column | 40.0% | 50.0% | 23.1% | 48.6% | 44.8% |
| 6 to 10 | N | 5 | 6 | 2 | 4 | 21 |
| | % in column | 10.0% | 16.7% | 15.4% | 10.8% | 11.6% |
| More than 10 | N | 9 | 7 | 7 | 9 | 38 |
| | % in column | 18.0% | 19.4% | 53.8% | 24.3 | 21.0% |
| Total | N | 50 | 36 | 13 | 37 | 181 |
| | % in column | 100.0% | 100.0% | 100.0% | 100.0% | 100.0% |

Q34: To the best of your knowledge, how many designs involving design rights have you allegedly infringed in the last five years? [Please select one only]

| | Survey 1 | | Survey 2 | | Combined Data | |
|--------------|----------|---------------------------|----------|---------------------------|---------------|---------------------------|
| | Count | Percentage of respondents | Count | Percentage of respondents | Count | Percentage of respondents |
| None | 115 | 70.1% | 29 | 87.9% | 144 | 73.1% |
| One (1) | 14 | 8.5% | 2 | 6.1% | 16 | 8.1% |
| 2 to 5 | 14 | 8.5% | 2 | 6.1% | 16 | 8.1% |
| 6 to 10 | 3 | 1.8% | | | 3 | 1.5% |
| More than 10 | 2 | 1.2% | | | 2 | 1.0% |
| Don't know | 16 | 9.8% | | | 16 | 8.1% |
| Total | 164 | 100.0% | 33 | 100.1% | 197 | 100.0% |

Q35 - If any of your designs have been allegedly infringed, would you describe the majority of infringing design(s) as: [Please select one only]

| | Survey 1 | | Survey 2 | | Combined Data | |
|--|------------|---------------------------|-----------|---------------------------|---------------|---------------------------|
| | Count | Percentage of respondents | Count | Percentage of respondents | Count | Percentage of respondents |
| An identical copy | 42 | 21.5% | 13 | 33.3% | 55 | 23.5% |
| A nearly identical copy (differences are hardly noticeable compared with the original) | 101 | 51.8% | 17 | 43.6% | 118 | 50.4% |
| Still a copy but with some noticeable differences | 35 | 17.9% | 6 | 15.4% | 41 | 17.5% |
| Not applicable | 10 | 5.1% | 1 | 2.6% | 11 | 4.7% |
| Don't know | 7 | 3.6% | 2 | 5.1% | 9 | 3.8% |
| Total | 195 | 100.0% | 39 | 100.0% | 234 | 100.0% |

Q36: If any of your designs have been allegedly infringed, was this mostly done intentionally or inadvertently? [Please select one only].

| | Survey 1 | | Survey 2 | | Combined Data | |
|----------------|------------|---------------------------|-----------|---------------------------|---------------|---------------------------|
| | Count | Percentage of respondents | Count | Percentage of respondents | Count | Percentage of respondents |
| Intentionally | 142 | 72.8% | 31 | 79.5% | 173 | 73.9% |
| Inadvertently | 15 | 7.7% | 2 | 5.1% | 17 | 7.3% |
| Not applicable | 5 | 2.6% | 0 | 0% | 5 | 2.1% |
| Don't know | 33 | 16.9% | 6 | 15.4% | 39 | 16.7% |
| Total | 195 | 100.0% | 39 | 100.0% | 234 | 100.0% |

| | Survey 1 | | Survey 2 | | Combined Data | | |
|----------------------|------------|------------------|------------|------------------|---------------|------------------|------------------------------|
| | Identical | Nearly identical | Identical | Nearly identical | Identical | Nearly identical | Identical + Nearly identical |
| Intentionally | 32 | 82 | 11 | 13 | 43 | 95 | 138 |
| % of total responses | 4.6% | 11.9% | 6.5% | 7.7% | 5% | 11.1% | 16% |
| Other or No response | 658 | 608 | 158 | 156 | 816 | 764 | |
| % of total responses | 95.4% | 88.1% | 93.5% | 92.3% | 95% | 88.9% | |
| Total | 690 | 690 | 169 | 169 | 859 | 859 | |

Q37: Would you describe the innovative quality of your infringed designs as radical or incremental? Radical innovation relates here to designs, which have a disruptive impact [Please select one only]

| | Survey 1 | | Survey 2 | | Combined Data | |
|------------------------|------------|---------------------------|-----------|---------------------------|---------------|---------------------------|
| | Count | Percentage of respondents | Count | Percentage of respondents | Count | Percentage of respondents |
| Definitely incremental | 8 | 4.1% | 1 | 2.6% | 9 | 3.9% |
| Rather incremental | 20 | 10.4% | 3 | 7.7% | 23 | 9.9% |
| Not sure | 67 | 34.7% | 16 | 41.0% | 83 | 35.8% |
| Rather radical | 63 | 32.6% | 15 | 38.5% | 78 | 33.6% |
| Definitely radical | 35 | 18.1% | 4 | 10.3% | 39 | 16.8% |
| Total | 193 | 100.0% | 39 | 100.1% | 232 | 100.0% |

Q38: If you ever had any REGISTERED design infringed, approximately how many years after registration did the infringement occur? [Please select one only]

| | Survey 1 | | Survey 2 | | Combined Data | |
|-------------------------------------|------------|---------------------------|-----------|---------------------------|---------------|---------------------------|
| | Count | Percentage of respondents | Count | Percentage of respondents | Count | Percentage of respondents |
| Less than one (1) year | 30 | 15.5% | 4 | 10.3% | 34 | 14.7% |
| From 1 up to and including 2 years | 38 | 19.7% | 3 | 7.7% | 41 | 17.7% |
| From 2 up to and including 3 years | 33 | 17.1% | 3 | 7.7% | 36 | 15.5% |
| From 3 up to and including 5 years | 29 | 15.0% | 1 | 2.6% | 30 | 12.9% |
| From 5 up to and including 10 years | 22 | 11.4% | 4 | 10.3% | 26 | 11.2% |
| More than 10 years | 6 | 3.1% | | | 6 | 2.6% |
| Not applicable | 35 | 18.1% | 24 | 61.5% | 59 | 25.4% |
| Total | 193 | 100.0% | 39 | 100.1% | 232 | 100.0% |

Q39: If you ever had any UNREGISTERED design infringed, approximately how many years after first marketing the design in public did the infringement occur? [Please select one only]

| | Survey 1 | | Survey 2 | | Combined Data | |
|-------------------------------------|------------|---------------------------|-----------|---------------------------|---------------|---------------------------|
| | Count | Percentage of respondents | Count | Percentage of respondents | Count | Percentage of respondents |
| Less than one (1) year | 17 | 8.8% | 7 | 17.9% | 24 | 10.3% |
| From 1 up to and including 2 years | 28 | 14.5% | 7 | 17.9% | 35 | 15.1% |
| From 2 up to and including 3 years | 27 | 14.0% | 9 | 23.1% | 36 | 15.5% |
| From 3 up to and including 5 years | 16 | 8.3% | 0 | 0.0% | 16 | 6.9% |
| From 5 up to and including 10 years | 14 | 7.3% | 4 | 10.3% | 18 | 7.8% |
| More than 10 years | 2 | 1.0% | 0 | 0.0% | 2 | 0.9% |
| Not applicable | 89 | 46.1% | 12 | 30.8% | 101 | 43.5% |
| Total | 193 | 100.0% | 39 | 100.0% | 232 | 100.0% |

Q40: If your designs have ever been infringed, how did you find out about the infringement? [Please select all that apply. If none applies, please skip and move to the next question]

| | Survey 1 | | Survey 2 | | Combined Data | |
|--|----------|---------------------------|----------|---------------------------|---------------|---------------------------|
| | Count | Percentage of respondents | Count | Percentage of respondents | Count | Percentage of respondents |
| Seen at trade fairs | 80 | 11.6% | 16 | 19.5% | 96 | 12.4% |
| Emails from others | 96 | 13.9% | 27 | 32.9% | 123 | 15.9% |
| Seen in someone else's catalogue | 96 | 13.9% | 27 | 32.9% | 123 | 15.9% |
| Online search | 125 | 18.1% | 37 | 45.1% | 162 | 21.0% |
| Seen at retail store(s) | 61 | 8.8% | 11 | 13.4% | 72 | 9.3% |
| From customers | 96 | 13.9% | 28 | 34.1% | 124 | 16.1% |
| From suppliers | 38 | 5.5% | 15 | 18.3% | 53 | 6.9% |
| Regularly monitoring the market through searches | 77 | 11.2% | 17 | 20.7% | 94 | 12.2% |
| Other (please state) | 28 | 4.1% | 9 | 11.0% | 37 | 4.8% |
| Number of respondents | 690 | 100.0% | 82 | 100.0% | 772 | 100.0% |

2.4 Preventing infringement

Q41: What kind of activities do you employ to monitor the market for infringement?
[Please select all that apply. If none applies, please skip and move to the next question]

| | Survey 1 | | Survey 2 | | Combined Data | |
|---|----------|---------------------------|----------|---------------------------|---------------|---------------------------|
| | Count | Percentage of respondents | Count | Percentage of respondents | Count | Percentage of respondents |
| Search design right register(s) | 82 | 11.9% | 10 | 11.2% | 92 | 11.8% |
| Employ solicitor to monitor | 17 | 2.5% | 6 | 6.7% | 23 | 3.0% |
| Employ patent or trade mark attorney to monitor | 78 | 11.3% | 6 | 6.7% | 84 | 10.8% |
| Read trade journals | 124 | 18.0% | 12 | 13.5% | 136 | 17.5% |
| Rely on customers and suppliers | 297 | 43.0% | 58 | 65.2% | 355 | 45.6% |
| Other (please state) | 145 | 21.0% | 25 | 28.1% | 170 | 21.8% |
| No Form of Monitoring | 4 | 0.6% | 8 | 9.0% | 12 | 1.5% |
| Number of respondents | 690 | 100.0% | 89 | 100.0% | 779 | 100.0% |

Q42: Have you/has your company joined a trade association in response to the risk of Design Right infringement?

| | Survey 1 | | Survey 2 | | Combined Data | |
|-------|----------|---------------------------|----------|---------------------------|---------------|---------------------------|
| | Count | Percentage of respondents | Count | Percentage of respondents | Count | Percentage of respondents |
| No | 645 | 93.5% | 102 | 88.7% | 747 | 92.8% |
| Yes | 45 | 6.5% | 13 | 11.3% | 58 | 7.2% |
| Total | 690 | 100.0% | 115 | 100.0% | 805 | 100.0% |

| | | Q42 - Have you / Has your company joined a trade association in response to the risk of Design Right infringement | | | | | | | |
|---|--|---|----------|------|----------|------|----------|------|----------|
| | | ,00 | | 1,00 | | 2,00 | | 3,00 | |
| | | N | % in row | N | % in row | N | % in row | N | % in row |
| Q5 - How long have you been involved in Design related work? | Less than 5 years | 153 | 96.2 | 6 | 3.8 | 0 | 0.0 | 0 | 0.0 |
| | From 5 to 10 years | 145 | 93.5 | 9 | 5.8 | 1 | 0.6 | 0 | 0.0 |
| | From 11 to 20 years | 98 | 89.1 | 11 | 10.0 | 1 | 0.9 | 0 | 0.0 |
| | More than 20 years | 228 | 93.1 | 14 | 5.7 | 2 | 0.8 | 1 | 0.4 |
| Q1 - Which one of the following describes your primary work or role relating to Designs?[Please select only one] | Designer | 187 | 94.4 | 11 | 5.6 | 0 | 0.0 | 0 | 0.0 |
| | Design Owner | 244 | 94.6 | 12 | 4.7 | 2 | 0.8 | 0 | 0.0 |
| | Design In-house Lawyer | 19 | 86.4 | 3 | 13.6 | 0 | 0.0 | 0 | 0.0 |
| | Design Business Adviser | 4 | 100.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| | Design Product Retailer | 7 | 100.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| | Design Product or Product Component Manufacturer | 90 | 87.4 | 11 | 10.7 | 1 | 1.0 | 1 | 1.0 |
| | Design Management | 22 | 95.7 | 1 | 4.3 | 0 | 0.0 | 0 | 0.0 |
| | Design Consultant | 14 | 87.5 | 2 | 12.5 | 0 | 0.0 | 0 | 0.00 |
| Other (please state) | 37 | 97.4 | 0 | 0.0 | 1 | 2.6 | 0 | 0.0 | |
| Q7 - Do you / Does your company create or own any of the following Intellectual Property (IP) rights? | Patent | 270 | 93.8 | 15 | 5.2 | 3 | 1.0 | 0 | 0.0 |
| | Trade Mark | 347 | 91.6 | 27 | 7.1 | 4 | 1.1 | 1 | 0.3 |
| | Copyright | 233 | 91.7 | 17 | 6.7 | 4 | 1.6 | 0 | 0.0 |
| | UK Registered Design Right | 430 | 93.5 | 26 | 5.7 | 3 | 0.7 | 1 | 0.2 |
| | Community Registered Design Right | 179 | 86.9 | 23 | 11.2 | 4 | 1.9 | 0 | 0.0 |
| | UK Unregistered Design Right | 94 | 82.5 | 16 | 14.6 | 3 | 2.6 | 1 | 0.9 |
| | Community Unregistered Design Right | 57 | 89.1 | 6 | 9.4 | 1 | 1.6 | 0 | 0.0 |
| | Other rights (please state) | 27 | 100.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |

Q43: IP robustness is understood here as the level of protection offered by the type of right. On a scale of 1 being the least robust to 5 being the most robust please rate how robust you consider the following protection methods: [Please select one option for each category]

| Survey 1 | | | | | | | | |
|----------------------------|-------|-------|-------|-------|-------|------------|--------|--------|
| | 1 | 2 | 3 | 4 | 5 | Don't know | Total | Median |
| Registered Design Rights | 44 | 89 | 147 | 117 | 107 | 186 | 690 | 3 |
| (%) | 6.4% | 12.9% | 21.3% | 17.0% | 15.5% | 27.0% | 100.0% | |
| Unregistered Design Rights | 142 | 103 | 57 | 11 | 16 | 361 | 690 | 2 |
| (%) | 20.6% | 14.9% | 8.3% | 1.6% | 2.3% | 52.3% | 100.0% | |
| Copyright | 58 | 63 | 131 | 112 | 107 | 219 | 690 | 3 |
| (%) | 8.4% | 9.1% | 19.0% | 16.2% | 15.5% | 31.7% | 100.0% | |
| Trademark | 24 | 31 | 91 | 165 | 196 | 183 | 690 | 4 |
| (%) | 3.5% | 4.5% | 13.2% | 23.9% | 28.4% | 26.5% | 100.0% | |
| Patent | 38 | 16 | 62 | 115 | 261 | 198 | 690 | 5 |
| (%) | 5.5% | 2.3% | 9.0% | 16.7% | 37.8% | 28.7% | 100.0% | |
| Total responses | 306 | 302 | 488 | 520 | 687 | 1147 | 3450 | |
| (%) | 8.9% | 8.8% | 14.1% | 15.1% | 19.9% | 33.2% | 100% | |

| Survey 2 | | | | | | | | |
|----------------------------|-------|-------|-------|-------|-------|------------|--------|--------|
| | 1 | 2 | 3 | 4 | 5 | Don't know | Total | Median |
| Registered Design Rights | 7 | 12 | 17 | 10 | 9 | 51 | 106 | |
| % | 6.6% | 11.3% | 16.0% | 9.4% | 8.5% | 48.1% | 100.0% | |
| Unregistered Design Rights | 26 | 10 | 9 | 2 | 1 | 58 | 106 | |
| % | 24.5% | 9.4% | 8.5% | 1.9% | 0.9% | 54.7% | 100.0% | |
| Copyright | 5 | 3 | 15 | 22 | 33 | 28 | 106 | |
| % | 4.7% | 2.8% | 14.2% | 20.8% | 31.1% | 26.4% | 100.0% | |
| Trademark | 5 | 3 | 15 | 22 | 33 | 28 | 106 | |
| % | 4.7% | 2.8% | 14.2% | 20.8% | 31.1% | 26.4% | 100.0% | |
| Patent | 2 | 5 | 16 | 11 | 48 | 24 | 106 | |
| % | 1.9% | 4.7% | 15.1% | 10.4% | 45.3% | 22.6% | 100.0% | |
| Total responses | 45 | 33 | 72 | 67 | 124 | 189 | 530 | |
| % | 8.5% | 6.2% | 13.6% | 12.6% | 23.4% | 35.7% | 100.0% | |

| Combined Data | | | | | | | | |
|----------------------------|-------|-------|-------|-------|-------|------------|--------|--------|
| | 1 | 2 | 3 | 4 | 5 | Don't know | Total | Median |
| Registered Design Rights | 51 | 101 | 164 | 127 | 116 | 237 | 796 | |
| % | 6.4% | 12.7% | 20.6% | 16.0% | 14.6% | 29.8% | 100.0% | |
| Unregistered Design Rights | 168 | 113 | 66 | 13 | 17 | 419 | 796 | |
| % | 21.1% | 14.2% | 8.3% | 1.6% | 2.1% | 52.6% | 100.0% | |
| Copyright | 63 | 66 | 146 | 134 | 140 | 247 | 796 | |
| % | 7.9% | 8.3% | 18.3% | 16.8% | 17.6% | 31.0% | 100.0% | |
| Trademark | 29 | 34 | 106 | 187 | 229 | 211 | 796 | |
| % | 3.6% | 4.3% | 13.3% | 23.5% | 28.8% | 26.5% | 100.0% | |
| Patent | 40 | 21 | 78 | 126 | 309 | 222 | 796 | |
| % | 5.0% | 2.6% | 9.8% | 15.8% | 38.8% | 27.9% | 100.0% | |
| Total responses | 351 | 335 | 560 | 587 | 811 | 1336 | 3980 | |
| % | 8.8% | 8.4% | 14.1% | 14.7% | 20.4% | 33.6% | 100.0% | |

Q44: How do you rate your confidence in the system for protection of REGISTERED and UNREGISTERED Design Rights on a scale of 1 (least confident) 5 (most confident)? [Please select one option for each category]

| | Survey 1 | | | | | | | Total | Median |
|----------------------------|----------|-------|-------|-------|-------|------------|--------|-------|--------|
| | 1 | 2 | 3 | 4 | 5 | Don't know | | | |
| Registered Design Rights | 67 | 76 | 142 | 127 | 104 | 174 | 690 | 3 | |
| (%) | 9.7% | 11.0% | 20.6% | 18.4% | 15.1% | 25.2% | 100.0% | | |
| Unregistered Design Rights | 146 | 83 | 75 | 14 | 15 | 357 | 690 | 2 | |
| (%) | 21.2% | 12.0% | 10.9% | 2.0% | 2.2% | 51.7% | 100.0% | | |
| Total responses | | | | | | | | | |
| (%) | | | | | | | | | |

| | Survey 2 | | | | | | | Total | Median |
|----------------------------|----------|-------|-------|-------|------|------------|--------|-------|--------|
| | 1 | 2 | 3 | 4 | 5 | Don't know | | | |
| Registered Design Rights | 13 | 7 | 15 | 17 | 6 | 48 | 106 | | |
| (%) | 12.3% | 6.6% | 14.2% | 16.0% | 5.7% | 45.3% | 100.0% | | |
| Unregistered Design Rights | 6 | 13 | 30 | 3 | 3 | 51 | 106 | | |
| (%) | 5.7% | 12.3% | 28.3% | 2.8% | 2.8% | 48.1% | 100.0% | | |
| Total responses | 19 | 20 | 45 | 20 | 9 | 99 | 212 | | |
| (%) | 9.0% | 9.4% | 21.2% | 9.4% | 4.2% | 46.7% | 100.0% | | |

| | Combined Data | | | | | | | Total | Median |
|----------------------------|---------------|-------|-------|-------|-------|------------|--------|-------|--------|
| | 1 | 2 | 3 | 4 | 5 | Don't know | | | |
| Registered Design Rights | 80 | 83 | 157 | 144 | 110 | 222 | 796 | | |
| (%) | 10.1% | 10.4% | 19.7% | 18.1% | 13.8% | 27.9% | 100.0% | | |
| Unregistered Design Rights | 158 | 109 | 135 | 20 | 21 | 459 | 902 | | |
| (%) | 17.5% | 12.1% | 15.0% | 2.2% | 2.3% | 50.9% | 100.0% | | |
| Total responses | 165 | 103 | 120 | 34 | 24 | 456 | 902 | | |
| (%) | 18.3% | 11.4% | 13.3% | 3.8% | 2.7% | 50.6% | 100.0% | | |

Q45: How do you rate costs involved in registering a Design Right? [Please select one only]

| | Survey 1 | | Survey 2 | | Combined Data | |
|---------------------------|------------|---------------------------|------------|---------------------------|---------------|---------------------------|
| | Count | Percentage of respondents | Count | Percentage of respondents | Count | Percentage of respondents |
| Very poor value for money | 22 | 3.2% | 6 | 5.7% | 28 | 3.5% |
| Poor value for money | 70 | 10.1% | 13 | 12.3% | 83 | 10.4% |
| Average | 221 | 32.0% | 30 | 28.3% | 251 | 31.5% |
| Good value for money | 192 | 27.8% | 3 | 2.8% | 195 | 24.5% |
| Very good value for money | 85 | 12.3% | 3 | 2.8% | 88 | 11.1% |
| Don't know | 100 | 14.5% | 51 | 48.1% | 151 | 19.0% |
| Total | 690 | 100.0% | 106 | 100.0% | 796 | 100.0% |

Q46: Do you expect design rights infringement to increase or to decrease in the next 5 years? [Please select one only]

| | Survey 1 | | Survey 2 | | Combined Data | |
|--------------------------------|------------|---------------------------|------------|---------------------------|---------------|---------------------------|
| | Count | Percentage of respondents | Count | Percentage of respondents | Count | Percentage of respondents |
| I expect a decrease | 13 | 1.9% | 1 | 1.0% | 14 | 1.8% |
| I expect it to remain the same | 118 | 17.1% | 11 | 10.5% | 129 | 16.2% |
| I expect an increase | 356 | 51.6% | 64 | 61.0% | 420 | 52.8% |
| Don't know | 203 | 29.4% | 29 | 27.6% | 232 | 29.2% |
| Total | 690 | 100.0% | 105 | 100.0% | 795 | 100.0% |

Appendix 2: Questionnaires

2.1 Structure of the questionnaire

The questionnaire was divided in eight sections:

1. **Your details** (questions 1 to 6): Data on characteristics of the respondent, e.g. role of individual within the business; size of business; employed or self-employed etc.
2. **Your business / the business you work for** (questions 7 to 9): Engagement of company to protect and enforce rights; and spend on IP rights protection
3. **Incidence of infringement** (questions 10 to 18): Incidence of infringement experienced over the last five years; and experience of one particular dispute perceived to be exemplary
4. **Reactions to infringement** (questions 19 to 29): Reactions to discovery of potential infringement, from the perspectives of the potentially infringed and infringing party – all questions refer to one incident of design right infringement perceived to be exemplary;
5. **Scale of infringement** (questions 30 to 36): Cost of enforcement, perceived nature of infringement – e.g. could the infringement be deemed a criminal offence?
6. **Context of the infringement** (questions 37 to 39): Commercialisation stage of infringed design and timing
7. **Attitudes and behaviour towards design rights infringement** (questions 40 to 42: methods of monitoring, the role of trade associations
8. **Attitudes towards design rights** (questions 43 to 44): Perceptions of robustness of various IP rights and confidence in registered and unregistered design rights; cost of protection.

2.2 Mapping questions

The questions in the questionnaire were mapped to ensure the research objectives were addressed. For example, research objective, ‘to understand the attitudes and behaviour of designers and owners of designs towards infringement’ was covered in the questionnaire by the following questions:⁵¹

- Q.19** In respect of the particular dispute what action(s) did you take?
- Q.20** If a claim was issued in court which court(s) were involved?
- Q.21/22** What was / were your reason(s) for taking action?
- Q.24** As infringed party: If the allegations of infringement were ignored, why do you think that was? As allegedly infringing party: If you ignored the allegations what were your reason(s)?
- Q.26** How do you feel about the litigation process?
- Q.27** How do you feel about the outcome of the legal dispute?
- Q.29** If you chose not to start court proceedings what were your reason(s)?
- Q.44** How do you rate your confidence in the system for protection of registered and unregistered design rights on a scale of 1 (least confident) - 5 (most confident)?

⁵¹ The mapping process is further explained in Design rights infringement Survey 2016, Interim Report No 2 (25 March 2016), pp 9 – 14.

2.3 Analysis of the data

The responses to the printed questionnaire from Survey 1 were entered manually into Survey Gizmo⁵², which also captured responses entered online. Data from Survey 1 were downloaded as Microsoft Excel files. Responses to quantitative Surveys 2 and 3 were entirely entered online as respondents accessed the questionnaire via links distributed via social media or email directly sent to them.

Data resulting from Surveys 2 and 3 were downloaded and then merged in one Microsoft Excel file and subsequently called 'Survey 2' since their main objective was to target potential owners of unregistered design rights.

All Survey data resulting from Survey 1 and Survey 2 are currently stored on a University of Hertfordshire server and available on request. They were subsequently exported into the csv (comma separated values) format.

Data sets from Survey 1 and Survey 2 were initially analysed separately and then displayed next to each other in the tables below. This was possible because the questionnaire used for all Surveys was identical. This allows for easy comparison of the results of both data sets.

The analysis of Survey 1 was performed using R 3.3.2⁵³ along with the packages knitr⁵⁴, ggplot2⁵⁵ and scales⁵⁶ to visualise the data.

Data from Survey 2 were not visualised due to limitations of resources and the fact that data from those Surveys were not statistically valid. Therefore, any reference to visualised data in the form of single column charts or wheel charts represent results from Survey 1 only.

The analysis follows the testing of the various hypothesis and questions employed to meet the research objectives.

2.4 Telephone interview questions

The questions for the telephone interviews were mapped using the objectives as prescribed by the IPO with the aim of gathering data, which were unlikely to be provided by the quantitative Survey alone (Table 3).

52 Survey Gizmo is a commonly used web-based Survey tool: <https://www.Surveygizmo.com/?page=start>

53 R Core Team (2016). R: A language and environment for statistical computing. R Foundation for Statistical Computing, Vienna, Austria. URL <https://www.R-project.org/>.

54 Yihui Xie (2014). 'knitr: A Comprehensive Tool for Reproducible Research in R'. In Stodden, V., Leisch, F. and Peng, R. (ed.), *Implementing Reproducible Computational Research*. Chapman and Hall/CRC. ISBN 978-1466561595.

55 H. Wickham (2009). 'ggplot2: Elegant Graphics for Data Analysis'. Springer-Verlag New York, 2009.

56 H. Wickham (2016). scales: Scale Functions for Visualization. R package version 0.4.1. URL <https://CRAN.R-project.org/package=scales>.

Table 3. Interview Questions

Interview questions:

Since we will be telephoning the respondents with their data in front of us, we (other than to create a good atmosphere for the conversation,) are not relying on the phone conversation to give us data in relation to their business, size etc.

| Questions | Rationale for asking it |
|---|---|
| 1. What were your reasons for agreeing to participate in this telephone interview? | To put the interviewee at ease and finding out more about motivation to engage with the Survey. |
| 2. How would you describe your attitude to design right infringement? | To understand the attitudes and behaviour of designers and owners of design towards infringement – some may be more relaxed about it than others. |
| 3. Do you think that there is a greater role for government to prevent or reduce infringement of design rights? | To find out more about the attitudes of designers / design right owners to prevent infringement. |
| 4. Do you register all your designs? 4.a. If you don't register all your designs how do you decide which ones you register? | This is about robustness but also about commercial decisions that lead businesses to register designs. |
| 5. Apart from the registration system, what other practical measures or initiatives do you know of and/or recommend to others to prevent infringement of design rights? | To discover the level of understanding and use of unregistered designs compared to registered designs. |
| 6. If your designs have been infringed, what were the most challenging aspects of it? | To measure the impact of infringement on businesses and designers – leaves open an answer about emotional impact or no impact at all. |
| 7. If you have been accused of infringing somebody else's design, what were the most challenging aspects of it? | To measure the impact of infringement disputes on the infringing party. Is there a difference between the infringed and infringing party? |
| 8. What method would you recommend to solve the dispute if you discovered infringement and why? | To find out what considerations (commercial and otherwise) are taken into account to resolve a dispute. |
| 9. What method would you recommend to solve the dispute if you have been accused of infringing and why? | To find out what considerations (commercial and otherwise) are taken into account to resolve a dispute. Is there a difference between infringed and infringing party? |
| 10. If you are in a position to compare UK and overseas measures of protection (e.g. registration process) how does the UK compare? | To learn more about international protection from infringement and access to the protection measures. |
| 11. If you are in a position to compare UK and overseas measures of enforcement how does the UK compare? | To learn more about international enforcement measures. |

2.5 Analysis of open-ended text comments

We have also analysed the corpus of open-ended text comments from all Surveys together with the transcriptions of the interviews using the software, Repindex⁵⁷, which allowed us to test our hypotheses in more depth. Repindex employs systematic methodology based on linguistic models (e.g. corpus linguistics and systemic functional linguistics) to identify linguistic concepts. We used it to:

- automate the coding of individual responses that have been captured as text to make analysis faster, consistent and rigorous.
- facilitate the ability to locate the views and concerns of individual respondents for further analysis.
- identify issues and concerns that are of importance to respondents that have not been addressed by the structured research questionnaire.
- link the linguistic concepts found in the texts to the questions in the research questionnaire to complement and add to the analysis of the quantitative data.

Table 3 gives an overview of the words available for analysis for each Survey and the interview transcripts and concepts found.

Table 3: Survey 1 and 2 comments and interviews: word and concept count

| | Word count | Concept count | Comments |
|------------|------------|---------------|---|
| Survey 1 | 3229 | 127 | Sufficient data for analysis |
| Survey 2 | 127 | 15 | Insufficient data for analysis |
| INTERVIEWS | 18,128 | 194 | Sufficient data for analysis / many concepts identified |

The comments captured in responses to the first Survey (i.e. holders of registered design rights) are held in Columns FJ, GD, GL, and IM in the Survey spreadsheet output from SurveyGizmo⁵⁸. There were 3,229 words in all comments. Repindex identified 127 concepts in the text, which are determined by certain key words that refer to the meaning of the concept. Each tab in the excel sheet contains the relevant comments. Each line displays up to seven words to the left and up to seven words to the right of the identified key word. This provides the context within which the key word, which belongs to the relevant linguistic concept is used.

Let us use the example concept: cost. The concept is determined by key words such as 'cost', 'costly', 'expensive', 'cannot afford'. Below is an example of the output from Repindex.

- 'Obtaining patents can be very expensive. They are necessary to protect larger companies'
- '...each year throughout its life with increasing cost each year'
- '...the law - certainly flouts IP at no cost to xxx'
- '...micro-business designing new products. I cannot afford to defend my designs'
- 'Why do patents cost so much to register compared to design?'
- 'Why does a trade mark cost more than a design right?'
- '...so it is too risky and costly to pursue further'
- 'Defending rights is far too expensive'
- 'Taking action outside the UK is expensive'.

57 Developed by Dr Mark Perkins, the software is based on principles from Discourse Stream Analysis (DSA) © created in his linguistic research.

58 Survey Gizmo is a commonly used web-based Survey tool: <https://www.Surveygizmo.com/?page=start>. The Survey spreadsheet is available on request from the IPO.

The results can be used to formulate a question relating to the research. For example, are many people concerned with infringement by Chinese companies? The spreadsheet lists 30 top concepts determined by the frequency in which the key words relating to the linguistic concept are used in the comments to the Survey questionnaire or the interviewee transcripts (Table 4):

Table 4: Top 30 Concepts

| Top 30 | Survey 1 | Note to concepts in blue | Count | Interviews | Count | Comments to concepts in red |
|--------|-------------|---|-------|------------|-------|---|
| 1 | DESIGN | | 93 | DESIGN | 244 | |
| 2 | INFRINGE | | 46 | GOOD | 143 | |
| 3 | LITIGATION | | 44 | RIGHTS | 142 | |
| 4 | PROTECT | | 32 | LITIGATION | 134 | |
| 5 | COST | | 29 | REGISTER | 115 | |
| 6 | REGISTER | | 28 | COPY | 114 | |
| 7 | PATENT | | 25 | PATENT | 106 | |
| 8 | RIGHTS | | 24 | LACKNEED | 101 | |
| 9 | PRODUCT | | 24 | TIME | 97 | |
| 10 | TIME | | 22 | WORK | 96 | |
| 11 | COPY | | 20 | PRODUCT | 95 | |
| 12 | IPOSERVICE | | 19 | INFRINGE | 81 | |
| 13 | SMALL | | 18 | MORE | 81 | |
| 14 | LAW | | 17 | SMALL | 77 | |
| 15 | INFORMATION | Appears lower than position 30 in the Interview transcripts | 16 | COST | 71 | |
| 16 | LACKNEED | | 16 | PROTECT | 68 | |
| 17 | CASE | | 15 | AMAZING | 62 | A large miscellany of irrelevant comments |
| 18 | IP | | 15 | UK | 51 | |
| 19 | GOOD | | 15 | IPOSERVICE | 50 | |
| 20 | COURT | Appears lower than position 30 in the Interview transcripts | 13 | MIGHT | 46 | A large miscellany of irrelevant comments |
| 21 | STOP | Appears lower than position 30 in the Interview transcripts | 13 | WEBSITE | 43 | Relevant comments about websites |
| 22 | WORK | | 12 | EBAY | 42 | Relevant comments |
| 23 | DIFFERENT | | 11 | DIFFICULT | 39 | Mostly relevant comments |
| 24 | HELP | | 11 | WANE | 39 | Not relevant |
| 25 | LARGE | | 11 | CALL | 39 | Some relevant comments |
| 26 | MORE | | 11 | LAW | 38 | |
| 27 | UK | | 10 | HELP | 38 | |
| 28 | CHINA | Appears lower than position 30 in the Interview transcripts | 9 | LARGE | 38 | A miscellany - some relevant |
| 29 | OUTCOME | | 9 | MONEY | 37 | Relevant |
| 30 | TRADEMARK | | 9 | PROBLEM | 36 | All sorts of problems |

We can see that China ranks 28 out of the Top 30 Concepts and has a count of ‘9’, meaning that nine people have stated ‘China’ in a text response. Going back to the data held in the spreadsheet, we now have to click on the tab named ‘China’. We can there check the actual context in which the key word is used as the list will give us seven words to the left and seven to the right of the key word ‘China’. For example, one respondent commented: ‘I am focusing quite a lot on China. Intentional copying is not a crime there.’

The reference in the spreadsheet next to the identified concept, COMMENTS-GL, allows us to relate the concept to the field in the questionnaire that elicited this comment. ‘GL’ refers to the column in the Survey spreadsheet holding the comments to the questionnaire section, ‘Attitudes Towards Design Rights’.

Appendix 3: Respondents

3.1 Targeting owners of registered design rights

To test the response rate, we sent 300 letters by post to contacts that we randomly selected from the EUIPO and UK IPO registered design databases. Additionally, the questionnaire was sent to four design companies with registered design rights, some of which were known to have been engaged in disputes involving design rights. This approach ensured that the questionnaire was tested in its entirety – including questions about disputes and the use of the court system. We received 15 responses to the pilot Survey, but this number of responses has no statistical validity.⁵⁹

We sent the questionnaire by post to 12,222 registered design rights owners, which were also randomly selected from the EUIPO and UK IPO databases. To ensure a better response rate compared with the pilot Survey, we decided to include self-addressed and free-post envelopes.

We received 690 usable responses to both the pilot and the first quantitative Survey – 621 responses by post and the remainder via the link published in the covering letter to complete the questionnaire online.

3.2 Targeting owners of unregistered design rights

In June 2016, a bulk email was sent to around 650,000 contacts selected from the Fame database, which includes data on incorporated companies in the UK and Ireland, using the methodology outlined in an interim report written by Matthias Hillner in June/July 2016. The email was categorised by several servers as spam and the link to our Survey contained in the email was disabled. Nevertheless, it generated 123 usable responses of which 80 were complete (65%).

We reviewed the Survey distribution methodology that we had initially adopted with the aim of:

- ensuring that it is legal and repeatable in the future.
- and reaching industry sectors that may own unregistered design rights either because they produce products that are protected by unregistered design rights or may commission or trade in such products.

To address the latter, we considerably widened the selection of ‘standard industrial classification’ (SIC) codes that we used for the email campaign. In October/November 2016, we used a bulk email service, Benchmark, and – as advised by Benchmark – only contacted name-based emails from the selected SIC codes. We were satisfied that it is legal to contact individuals for research purposes using personal email addresses as long as it is clear who has sent the email and the communication provides an easy way to unsubscribe.

The contacts were divided into large, medium, small and micro-sized enterprises defined according to the EU Commission’s recommendations.⁶⁰ Links to the Survey allowed us to identify respondents by SIC code and business size. The initial list contained 51,522 named contacts, but once Benchmark had rejected inactive or unresponsive email addresses, this was reduced to 6,950 active contacts. This generated an additional 11 usable responses, of which five (45.5%) completed all the questions in the Survey, so the responses cannot be regarded as statistically relevant.

59 Design rights infringement Survey 2016, Interim Report No 2 (25 March 2016), p 9.

60 http://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition_en (accessed on 2 April 2017)

Selection of SIC codes for Fame database mailing

Table 1: Selection of SIC codes for Fame database mailing

| SIC | Company size | Description of sector | Total | Contacts |
|------|--------------|---|-------|----------|
| 10 | micro | Manufacture of food products | 6,741 | 472 |
| 10 | small | | 219 | 83 |
| 10 | medium | | 733 | 369 |
| 10 | large | | 378 | 199 |
| 11 | micro | Manufacture of beverages | 2,049 | 141 |
| 11 | small | | 34 | 15 |
| 11 | medium | | 72 | 40 |
| 11 | large | | 74 | 39 |
| 12 | micro | Manufacture of tobacco products | 34 | - |
| | small | | 2 | - |
| | medium | | 2 | - |
| | large | | 6 | 2 |
| 13.9 | micro | Manufacture of other textiles | 2,154 | 159 |
| | small | | 44 | 18 |
| | medium | | 118 | 64 |
| | large | | 33 | 15 |
| 14 | micro | Manufacture of wearing apparel | 3,636 | 175 |
| | small | | 58 | 23 |
| | medium | | 115 | 49 |
| | large | | 36 | 19 |
| 15 | micro | Manufacture of leather and related products | 699 | 40 |
| | small | | 12 | 5 |
| | medium | | 24 | 12 |
| | large | | 14 | 5 |
| 16.2 | micro | Manufacture of products of wood, cork, straw and plaiting materials | 3,367 | 287 |
| | small | | 67 | 25 |
| | medium | | 119 | 67 |
| | large | | 21 | 13 |
| 17.2 | micro | Manufacture of articles of paper and paperboard | 1,409 | 302 |
| | small | | 56 | 27 |
| | medium | | 166 | 99 |
| | large | | 47 | 22 |
| 20.4 | micro | Manufacture of soap and detergents, cleaning and polishing preparations, perfumes and toilet preparations | 599 | 83 |
| | small | | 20 | 9 |
| | medium | | 65 | 39 |
| | large | | 24 | 16 |
| 21.1 | micro | Manufacture of basic pharmaceutical products | 580 | 40 |
| | small | | 50 | 12 |
| | medium | | 94 | 41 |
| | large | | 80 | 26 |
| 22 | micro | Manufacture of rubber and plastics products | 3,692 | 662 |
| | small | | 189 | 106 |
| | medium | | 516 | 303 |
| | large | | 129 | 73 |
| 23 | micro | Manufacture of other non-metallic products (excluding 23.5 and 23.9 if possible) | 2,138 | 255 |
| | small | | 73 | 30 |
| | medium | | 166 | 94 |
| | large | | 55 | 36 |
| 24.2 | micro | Manufacture of tubes, pipes, hollow profiles and related fittings, of steel | 174 | 26 |
| | small | | 7 | 3 |
| | medium | | 13 | 8 |
| | large | | 6 | 5 |
| 24.5 | micro | Casting of metals | 323 | 50 |
| | small | | 29 | 16 |
| | medium | | 55 | 36 |
| | large | | 21 | 12 |

| SIC | Company size | Description of sector | Total | Contacts |
|------|--------------|---|---------|----------|
| 25 | micro | Manufacture of fabricated metal products, except machinery and equipment (excluding 25.5 and 25.62 if possible) | 11,919 | 1,976 |
| | small | | 479 | 250 |
| | medium | | 832 | 488 |
| | large | | 156 | 98 |
| 26 | micro | Manufacture of computer, electronic and optical products | 4,703 | 823 |
| | small | | 283 | 128 |
| | medium | | 457 | 239 |
| 27 | micro | Manufacture of electrical equipment | 3,811 | 618 |
| | small | | 238 | 121 |
| | medium | | 381 | 215 |
| | large | | 115 | 61 |
| 28 | micro | Manufacture of machinery and equipment n.e.c. | 6,779 | 1,266 |
| | small | | 436 | 224 |
| | medium | | 654 | 398 |
| 29 | micro | Manufacture of motor vehicles, trailers and semi-trailers | 1,959 | 151 |
| | small | | 45 | 20 |
| | medium | | 195 | 112 |
| | large | | 114 | 74 |
| 30 | micro | Manufacture of other transport equipment | 2,336 | 201 |
| | small | | 79 | 28 |
| | medium | | 153 | 74 |
| 31 | micro | Manufacture of furniture | 4,665 | 386 |
| | small | | 81 | 42 |
| | medium | | 261 | 138 |
| | large | | 46 | 27 |
| 32 | micro | Other manufacturing | 16,813 | 2,212 |
| | small | | 615 | 331 |
| | medium | | 1,009 | 592 |
| | large | | 233 | 121 |
| 41 | micro | Construction of buildings | 88,653 | 2,544 |
| | small | | 1,535 | 329 |
| | medium | | 1,423 | 470 |
| | large | | 430 | 170 |
| 42 | micro | Civil engineering | 17,590 | 857 |
| | small | | 266 | 106 |
| | medium | | 503 | 213 |
| 45 | micro | Wholesale and retail trade; Repair of motor vehicles and motorcycles | 38,657 | 1,632 |
| | small | | 361 | 123 |
| | medium | | 909 | 432 |
| | large | | 347 | 207 |
| 46 | micro | Wholesale trade, except motor vehicles and motorcycles (excluding 46.1 and 46.2 if possible) | 47,097 | 4,156 |
| | small | | 1,595 | 650 |
| | medium | | 2,210 | 1,123 |
| | large | | 750 | 387 |
| 47 | micro | Retail trade, except motor vehicles and motorcycles (excluding 47.3 if possible) | 123,777 | 5,187 |
| | small | | 1,223 | 304 |
| | medium | | 1,773 | 562 |
| | large | | 728 | 334 |
| 58.2 | micro | Software publishing (including computer games) | 6,771 | 263 |
| | small | | 138 | 42 |
| | medium | | 111 | 30 |
| 59.1 | micro | Motion Picture, video and television programme activities | 24,811 | 764 |
| | small | | 405 | 65 |
| | medium | | 247 | 66 |
| | large | | 76 | 21 |

| SIC | Company size | Description of sector | Total | Contacts |
|-------|--------------|--|---------|----------|
| 62 | micro | Computer programming, consultancy and related activities | 163,168 | 6,779 |
| | small | | 1,589 | 639 |
| | medium | | 1,402 | 615 |
| | large | | 431 | 166 |
| 71.1 | micro | Architectural and engineering activities and related technical consultancy | 50,776 | 2,703 |
| | small | | 391 | 173 |
| | medium | | 442 | 222 |
| | large | | 156 | 75 |
| 74.1 | micro | Specialised design activities | 15,767 | 885 |
| | small | | 67 | 28 |
| | medium | | 52 | 25 |
| | large | | 5 | 5 |
| 82.92 | micro | Packaging activities | 1,006 | 139 |
| | small | | 29 | 9 |
| | medium | | 43 | 17 |
| | large | | 10 | 6 |
| 90 | micro | Creative Arts and Entertainment Activities | 29,633 | 1,264 |
| | small | | 383 | 144 |
| | medium | | 173 | 79 |
| | large | | 34 | 14 |
| 91 | micro | Libraries, archives, museums and other cultural activities | 2,612 | 195 |
| | small | | 145 | 63 |
| | medium | | 42 | 23 |
| | large | | 10 | 5 |
| 93 | micro | Sports activities and amusement and recreation activities | 35,515 | 1,528 |
| | small | | 419 | 150 |
| | medium | | 344 | 144 |
| | large | | 133 | 59 |
| TOTAL | | | | 51,522 |

3.3 Involving design industry associations

As we wanted to investigate the use, infringement and attitudes of registered and unregistered design rights amongst businesses that were unincorporated – e.g. sole traders and micro businesses – we used design industry associations to disseminate the link to the Survey amongst their members and stakeholders.

All design industry associations received an email with a unique link to the Survey, which allowed us to trace responses to the stakeholder who circulated the link. Most did not engage. Only those who we contacted personally, and asked to promote the Survey, circulated the link to stakeholders or members. This generated 23 usable responses of which 12 (52.2%) are complete.

We received:

- two completed Surveys through Anti Copying in Design (ACID)
- three through Own-it (University of the Arts London)
- one through the Design Council
- two through the Design Trust
- three through the Association of Illustrators
- and one through the Design Business Association (DBA).

Full list of design industry associations

| Stakeholder | Represents |
|---|---|
| Anti Copying in Design (ACID) | All 'standard industrial classification' (SIC) and 'system on a chip' (SOC) in design, product, graphic and fashion design |
| All Party Design and Innovation Group (APDIG) | Various organisations and universities representing the design industry (http://www.policyconnect.org.uk/apdig/industry-membership) |
| Association of Illustrators (AOI) | Illustrators, animators and character designers, who mostly producing copyright work but also create characters used in merchandising that are protected by unregistered design rights |
| Association of Suppliers of the British Clothing Industry (ASBCI) | Brings together the clothing industry from fibre manufacturer, retail and aftercare |
| British Fashion Council (BFC) | Fashion designers, costume designers |
| British Film Designers Guild (BFDG) | Art directors and costume designers working in film/television |
| British Industrial Design Association (BIDA) | All design, but not crafts |
| British Institute of Interior Design (BIID) | Interior designers |
| British Library and IP Centre (BL IPC) | All sectors |
| British Retail Consortium (BRC) | Retail, all sectors |
| CBI (Confederation of British Industry) | All sectors (UK) |
| Chartered Institute of Patent Attorneys (CIPA) | Patent attorneys advising design industry |
| British Chambers of Commerce (BCC) | All sectors |
| Characters Engage (CE) | Character designers |
| CREATe | Design education |
| Creative Barcode (CB) | Fashion, design, crafts |
| Creative Skillset (CSS) | Film and television, games, design (individuals) |
| DACS | Artists and designers, but they manage copyright on designers' behalf |
| Design Business Association | Design sector |
| Design & Technology Association (Data) | Design sector |
| Designersblock | Product designers |
| Engineering and Physical Sciences Research Council (EPSRC) | Researchers in the area of engineering and physics |
| Enterprise Educators UK (EEUK) | All sectors |
| Ethical Fashion Forum (EFF) | Fashion and costume designers |
| Fashion Association of Britain (BIRA) | Fashion industry |
| Fashion Capital (FC) | Fashion industry |
| Federation of Small Businesses (FSB) | All sectors |
| Independent Theatre Council (ITC) | Theatre set design, costumes and props |
| Innovate Product Design (Innovate Design) | Design |
| InnovateUK | Design |
| Institution of Engineering Designers (IED) | Engineering and design |
| Chartered Institute of Trade Mark Attorneys (CITMA) | Trade mark and design attorneys advising the design sector and/or design owners |
| National Endowment for Science, Technology and the Arts (NESTA) | |
| Own-it | All creative sectors but, in particular, micro businesses and sole traders |
| Pro-Cartoonists | Character designers |
| Royal College of Art (RCA) alumni | Design (all sectors) |
| Royal Institute of British Architects (RIBA) | Architects and interior designers |
| Royal Society of the Arts (RSA) | Design (all sectors) |
| The Design Council (DC) | Design (all sectors) |
| The Design Trust (DT) | Fashion, design and crafts |
| Skills Council – SEMTA | Engineering |
| The Society of British and International Design (SBID) | Design sector |
| The Society of British Theatre Designers (SBTD) | Set designers |
| TIGA | Games industry (merchandise etc) |
| UK Fashion and Textile Association (UKFTA) | Fashion and textile designers |
| UK Science Parks Association (UKSPA) | Engineering and design |
| UK Department for International Trade (UKDIT) | All industry sectors |

3.4 Social media campaign

We also ran a social media campaign to promote the Survey from 6 October to 25 November 2016.

We set up a simple website (<https://designrights.herts.ac.uk>) and promoted the Survey via Twitter @DRI_Survey. One team member also posted a news item promoting the Survey on various LinkedIn groups. This generated nine usable responses of which six completed all the questions in the Survey. The news item posted by our team member on LinkedIn generated five completed Surveys while Twitter generated only one completed response despite gaining 169 followers and 25 likes during the campaign.

3.5 Qualitative follow-up telephone interviews

We chose 30 candidates and were able to interview 28 rights holders who responded to the Survey. We recorded the interviews but were only able to get transcripts of 24 interviews due to technical problems with some of our recordings. We marked those profiles for which we didn't get transcripts with '0'. All others were given numbers to anonymise data for analysis.

We selected most of the interviewees from the first quantitative Survey and a few from the first Fame database emailing, using proportionate numbers of:

- sole traders, small, medium-sized and large companies
- and those who claimed that their rights have been infringed, that they had experienced both infringement of their design and somebody else alleging infringement, or reported UK Disputes. (See Table 2).

Table 2: Interviewee profiles

| | No disputes / UK designs infringed (UK INFRINGED)/ UK designs infringed and alleged infringer (UK BOTH) | Your primary work or role relating to Designs? | Primary business area relating to Designs | What is the size of your organisation / firm? [FT = full-time / full-time equivalent] | How long have you been involved in design related work? |
|----|--|---|--|--|--|
| 0 | UK Both | Design Owner / Inventor | Inventor | Sole Trader | From 5 to 10 years |
| 0 | UK Infringed | Design Owner / Compliance Engineer | Product / Industrial Design | 10 to 49 FT employees | From 5 to 10 years |
| 0 | UK Disputes | Designer | Product / Industrial Design | Sole Trader | Less than 5 years |
| 0 | UK Both | Design In-house Lawyer | Product / Industrial Design | More than 250 FT employees | From 11 to 20 years |
| 0 | UK Infringed | Design Product Retailer | Product / Industrial Design | 2 to 9 FT employees | From 11 to 20 years |
| 0 | UK Infringed | In-house Lawyer | Product / Industrial Design | More than 250 FT employees | From 5 to 10 years |
| 1 | UK Infringed | Designer | Crafts | Sole trader | From 11 to 20 years |
| 2 | UK Infringed | Design Owner | Furniture Design | 2 to 9 FT employees | Less than 5 years |
| 3 | UK Disputes | Design Owner | Product / Industrial Design | 2 to 9 FT employees | From 5 to 10 years |
| 4 | UK Infringed | Design Owner | Product / Industrial Design | 2 to 9 FT employees | More than 20 years |
| 5 | UK Infringed | Design Owner | Product / Industrial Design | Sole trader | From 11 to 20 years |
| 6 | UK Infringed | Designer | Product / Industrial Design | 10 to 49 FT employees | From 5 to 10 years |
| 7 | UK Infringed | Designer | Product / Industrial Design | 2 to 9 FT employees | From 5 to 10 years |
| 8 | UK Infringed | Designer | Product / Industrial Design | 2 to 9 FT employees | From 11 to 20 years |
| 9 | UK Disputes | Design Product Retailer | Product / Industrial Design | 10 to 49 FT employees | From 5 to 10 years |
| 10 | UK Infringed | Product Manufacturer | Product / Industrial Design | 10 to 49 FT employees | From 5 to 10 years |
| 11 | UK Infringed | Designer | Product / Industrial Design | 10 to 49 FT employees | More than 20 years |
| 12 | UK Disputes | Design Owner / Inventor | Product / Industrial Design | SoleTrader | From 5 to 10 years |
| 13 | UK Both | Design Owner | Product / Industrial Design | 2 to 9 FT employees | More than 20 years |
| 14 | UK Disputes | Design Owner | Crafts | Sole Trader | From 5 to 10 years |
| 15 | UK Infringed | Design Product or Product Component Manufacturer | Product / Industrial Design | 10 to 49 FT employees | More than 20 years |
| 16 | UK Infringed | Design Product or Product Component Manufacturer | Product / Industrial Design | 2 to 9 FT employees | More than 20 years |
| 17 | UK Infringed | Designer | Product / Industrial Design | Sole trader | From 5 to 10 years |
| 18 | UK Disputes | Design Consultant | Vehicle Design | 50 to 250 FT employees | More than 20 years |
| 22 | UK Infringed | Design Product or Product Component Manufacturer | Furniture Design | 10 to 49 FT employees | More than 20 years |
| 24 | UK Infringed | Designer | Product / Industrial Design | 2 to 9 FT employees | More than 20 years |
| 25 | UK Infringed | Designer | Product / Industrial Design | 2 to 9 FT employees | From 11 to 20 years |
| 26 | UK Infringed | Design Owner | Crafts | 2 to 9 FT employees | Less than 5 years |
| 27 | UK Infringed | Design Owner | Crafts | Sole trader | From 11 to 20 years |
| 28 | UK Disputes | Design Product or Product Component Manufacturer | Product / Industrial Design | Sole Trader | From 11 to 20 years |

Appendix 4: Research objectives and their corresponding hypotheses

R.01 To understand the attitudes and behaviour of designers and owners of designs towards infringement.

1.1 Hypothesis 1: The larger a defendant's firm the more likely they are to ignore infringement letters.

We Combined Data about the size of the firm determined by the number of employees (question 4) with a question about the reaction to a discovery of a potential infringement and reasons for this particular response (questions 19, 23 and 24)

1.2 Hypothesis 2: The majority of design right infringements are not litigated.

We analysed data about responses to a discovery of a potential infringement (question 19) differentiating between claimants and defendants (question 14)

1.3 Hypothesis 3: Claimants are worried about the costs required to take a case to court.

This was tested by asking about reasons why no action was taken in general (question 21) and why respondents didn't start court proceedings in particular (question 29) again, differentiating between claimants and defendants (question 14).

1.4 Hypothesis 4: Confidence in design rights is low.

We directly asked about confidence in the system for protection of registered and unregistered design rights (question 44) and the perceived robustness of the various IP protection regimes to compare the perceived level of protection offered by registered and unregistered design rights with other IP rights (copyright, trade mark, patent)(question 43).

R.02 To understand what impact infringement has on businesses and designers.

We asked about the economic impact of enforcing registered and unregistered design rights in questions 30 to 32 (financial spend on legal fees / loss of revenue / loss of staff time)

R.03 To explore how the type of design right (registered or unregistered) affects the incidence and level of infringement.

3.1 Hypothesis 1: The number of perceived infringements is higher in the area of registered design rights than it is in the area of unregistered design rights.

We asked about the kind of rights involved in disputes in the last five years (question 10) and followed this up with a question about rights involved in the particular dispute that they perceived as representative of their experience (question 16).

3.2 Hypothesis 2: Infringing firms tend to be larger in size than the claimant.

We Combined Data about the size of the firm (question 4) with data about the position of the firm as a potential claimant (infringed party) or potential defendant (allegedly infringing party) in the dispute (question 14). We also asked potential claimants or defendants (question 14) whether the opposing party was smaller, larger or about the same size⁶¹.

61 We did not define the terms 'smaller or larger' but assumed that respondents may have the definition given in question 4 (defined by number of employees) in mind when answering this question in particular as this question cannot be answered definitely since the 'size' of the other party will in most cases depend on assumptions especially when no formal court proceedings are started.

3.3 Hypothesis 3: Registered design rights are easier to defend successfully than unregistered design rights.

We included only responses from claimants in our analysis and Combined Data from answers to question 16 (which IP rights were involved in the dispute) with answers to question 25 (If court proceedings were started what was the outcome).

3.4 Hypothesis 4: Registered design rights are infringed more often than unregistered design rights.

This hypothesis is very similar to Hypothesis R03 – 1 but focusses on facts rather than perceived infringement. The only real evidence currently available pointing to facts are court statistics. For that reason we undertook a legal context study of court cases involving decisions about design rights between 2013 and 2017 and compared our findings with Estelle Derclaye's findings based on an analysis of UK court cases decided between October 2001 and Oct 2012 involving registered and unregistered design rights.⁶²

R.04 To explore how the characteristics of designers (e.g. individual designer or large design firm) impacts on the level of infringement of their designs.

4.1 Hypothesis 1: Infringed designs by tendency belong to individual designers or small firms. Infringing firms are mostly larger by comparison.

This hypothesis is very similar to hypothesis R03 – 2. We analysed this hypothesis using the same data.

4.2 Hypothesis 2: Knowledge surrounding design rights is lower than knowledge related to patents and copyright. Knowledge about unregistered design rights is more limited than knowledge related to registered design rights.

We analysed responses to questions 7 (Does your company own any of the following IP rights?) and 8 (which of the following IP rights have you NOT heard of before) to test this hypothesis.

4.3 Hypothesis 3: The legal fees involved when enforcing design rights are lesser than the losses in revenues.

Designers litigate only when experiencing substantive revenue losses. We analysed data from questions 30 (spend on legal fees to enforce design rights) and 31 (revenue loss due to design rights infringement) to test this hypothesis. We also looked at whether willingness to issue a court claim was to some extent related to revenue less (questions 31 and 19).

4.4 Hypothesis 3: Designers and companies who engage in inventive design activities experience infringement more often than those who do not.

To find out, we analysed data from questions 6 (quality of new product) and 33 (incidents of design rights infringements experienced in the last five years).

62 Derclaye, Estelle (2013). "A Decade of Registered and Unregistered Design Rights Decisions in the UK: What Conclusions Can We draw for the Future of Both Types of Rights?", in: IP Theory: Vol 3: Iss. 2, Article 6.

R.05 To measure the degree to which registered and unregistered design rights are of significance in different industry sectors.

5.1 Hypothesis 1: Litigations of the infringement of registered design rights is more common than litigation of the infringement of unregistered design rights.

We only used respondents who told us that they were claimants to test this hypothesis and then Combined Data from questions 16 (which IP rights were involved) and 19 (what actions did you take following discovery of potential infringement).

5.2 Hypothesis 2: Owners defend design rights mainly to protect market shares.

This was tested by analysing and comparing answers from potential claimants and defendants. Data from questions 14 and 22 were relevant.

5.3 Hypothesis 3: The highest level of infringement is in the retail sector.

Answers to questions 2 (primary area of business) and 7 (does your company create or own one or more of the following IP rights) were relevant to test this hypothesis.

R.06 To understand how product characteristics (e.g. product type, commercialisation stage) impact on the attitudes and behaviour of designers towards (perceived) infringement.

6.1 Hypothesis 1: The longer the life-span of a design product / solution, the greater the value of design rights.

It would be necessary to find correlations between data sets from various questions to test this hypothesis. We asked about the commercialization stage of the product at the time of infringement (question 18), the type of action that was taken (question 19) and why action was taken (question 22). Other relevant questions were questions 6 (Has company invented or developed products that are significantly improved or completely new), questions 33 (number of incidents of design rights infringements experienced) and 37 (innovative quality of the infringed designs).

6.2 Hypothesis 2: Infringement occurs pre-dominantly in relation to products that have proof of market.

This also relates to hypothesis R06 – 1 since it can be assumed that only designs that are valuable in the marketplace are at greater risk to be infringed. Questions 18, 38 and 39 are relevant. Question 18 directly asks about the commercialization stage of the product when it was allegedly infringed while questions 38 and 39 ask about how much after the design was registered or first marketed to the public the design was infringed.

6.3 Hypothesis 3: Infringement occurs pre-dominantly in relation to products that generate high revenues (mainstream markets).

This relates to Hypothesis R06 – 2 but cannot be tested directly with available data. There are questions which may allow us to suggest correlations between revenue loss and incidents of infringements (questions 31 and 33) as it is likely that a few incidents of infringements with high revenue loss point to products that generate high revenues while the same number of incidents of infringement with less revenue loss suggest lower value products.

6.4 Hypothesis 4: Infringement occurs pre-dominantly in relation to products that are relatively new to the relevant markets.

Data from questions 38 and 39 are relevant to test this hypothesis.

R.07 To understand the attitudes and behaviour of potential infringers towards design infringement.

- 7.1 **Hypothesis 1: Infringers are often unaware of the fact that they are infringing.**
We differentiated between potential claimants and defendants (questions 11 and 14) and asked about their reactions to actions taken by the infringed party (questions 23 and 24).
- 7.2 **Hypothesis 2: Infringers tend to not respond to infringement letters if the opposing party is smaller.**
This required to analyse answers to questions 23 and 24 in combination with answers to question 17 about the size of the main opposing party to the dispute.
- 7.3 **Hypothesis 3: Infringers tend to stop infringing if being threatened with litigation.**
We analysed questions 23 and 24 about reactions of potential infringers to actions taken by the infringed party (see hypothesis R07 – 1).

R.08 To produce an estimate for the incidence of design infringement occurring against UK designers internationally.

We included questions about disputes involving international design rights (question 10) and about countries involved in such disputes (question 13) directly related to the research objective.

R.09 To distinguish between potentially criminal offences and civil infringement.

Again, we included questions 35 and 36 to find out more about how many infringements would meet the definition of a criminal offence but didn't distinguish between unregistered and registered rights.⁶³

R.10 What is the incidence of (alleged) infringement reported by designers?

Question 10 asked about the experience of disputes involving any IP rights including registered and unregistered design rights overall while question 33 asks specifically about the number of incidents of design rights infringements experienced in the last five years.

R.11 What is the scale of (alleged) infringement reported by designers?

This is almost the same question as R 10 but we can take into account revenue losses and staff time lost due to infringements (questions 31 and 32).

R.12 How does having registered design rights affect the level of (alleged infringement)?

- 12.1 **Hypothesis 1: the number of perceived infringements is higher with registered design rights than it is with unregistered design rights.**
This hypothesis is nearly identical with hypothesis R 03 – 1 and can be tested in the same way.
- 12.2 **Hypothesis 2: Owners of registered rights are more likely to challenge infringers than owners of registered design rights.**
This hypothesis was tested by looking at data from question 16 (which IP rights were involved in the dispute) and question 19 (actions taken).

63 See page 5 and 9 of this report.

R.13 How do design and designer characteristics affect the level of (alleged) infringement?

- 13.1 **Hypothesis 1: IP active designers report more incidences of infringement than IP inactive designers.**
Data from questions 33 and question 5 (length of involvement of the respondent in design related work) were analysed to test the hypothesis. It is assumed that the longer a designer is working in the industry the more likely it is that she has experienced design rights infringements. We also Combined Data from questions 33 and 1 (primary role of respondent in relation to design) to test who in the relevant categories (e.g. designer, design owner or design product manufacturer) reported the most incidents.
The level of awareness of design rights may also play a role in the number of incidents reported by designers (question 07 and 08).
- 13.2 **Hypothesis 2: Larger firms are more likely to litigate than smaller ones.**
We tested this hypothesis with responses from claimants only and analysed data from questions 4 and 19.
- 13.3 **Hypothesis 3: Radical innovations are more likely to be infringed than incremental innovations.**
Data from question 37 is sufficient to test this hypothesis.

R.14 How do designers find out about the (alleged) infringement?

Data from question 40 is sufficient to answer this question.

R.15 What strategies do designers/ design firms who reported infringement use to monitor infringement?

- 15.1 **Hypothesis 1: Effective monitoring of infringement at international level is challenging.**
No question is directly relevant to test this hypothesis but we asked questions about the challenges of infringement at international level in the interviews.
- 15.2 **Hypothesis 2: Designers find out about infringement predominantly through peers and trade journals.**
This hypothesis can be tested by analyzing data from question 40 (see R 14). Question 41 about the methods employed to monitor the market is also relevant.
- 15.3 **Hypothesis 3: IP active designers join trade associations such as ACID.**
There is no question included in the questionnaire that would allow us to characterise a respondent as 'IP active' (see also R 13 – 1) but we tested the hypothesis by looking at roles, length of involvement in design related work and creation of IP rights in the company (questions 5, 1, 7) and frequency of joining a trade association in response to the risk of design right infringement (question 42).

R.16 How do designers respond to identifying (alleged) infringement?

We distinguished between claimants and defendants who responded to question 19 (what action did you take?), looked at which courts were involved if court proceedings were started (question 20) and asked for reason why no action was taken (question 21).

R.17 What is the outcome of this legal action?

'Legal action' here means court proceedings. Question 25 asks about the outcome of court proceedings.

R.18 How long were legal proceedings issuing the claim to final court judgment/settlement?

Question 28 asks the question.

R.19 What were the characteristics of litigated firms?

We analysed data from questions 15 (where was the other party based) and 17 (size of other party) differentiating between claimants and defendants (question 14).

R.20 How many design businesses that sell their own designs report an incidence of infringement?

We differentiated between claimants and defendants (question 14) and analysed data from question 18 about the commercialisation stage of the product. (see also R 06 – 2)

R.21 Attitudes towards design right infringement/design rights.

- 21.1 Hypothesis 1: Unregistered design rights are more difficult to enforce than registered design rights.
(See also R03 – 3). Evidence from actual cases involving design rights may also help to test this hypothesis.
- 21.2 Hypothesis 2: Design rights are perceived as weak protection methods (low confidence).
Responses to questions 43 and 44 were analysed to test the hypothesis. Question 45 also asked about the perceived value for money when registering design rights.

Appendix 5: UK design right court decisions from 2013-17

5.1 Before the UK IPO Tribunal

| | Date | Case IPO Tribunal | Application | Matter | Decision | Costs awarded £ |
|----|-------------|-------------------|---|--|-----------------|-----------------|
| 1 | 28 Aug 2013 | O/345/13 | Request to invalidate by TechGalerie GmbH | Reg Design No 4022782 in the name of Tom Cable | Design invalid | 800 |
| 2 | 19 Sep 2013 | O/383/13 | Request to invalidate by Tracey Jayne Hollins | Reg Design No 4025205 in the name of Morrck Ltd | Design invalid | 500 |
| 3 | 30 Oct 2013 | O/431/13 | Request to invalidate (NO. 28/12, 29/12, 30/12 & 31/12) by Darren Graham | Reg. design nos: 4018454, 4018455, 4026498 & 4019846 in the name of Registered Designs Limited | Designs invalid | 900 |
| 4 | 7 Nov 2013 | O/445/13 | Request to invalidate (no. 33/12) by Spire Homewares Ltd t/a Archibald Kenrick & Sons Ltd | Registered design no: 4023950 in the name of Synergy Architectural Hardware Ltd | Design invalid | 1250 |
| 5 | 22 Nov 2013 | O/471/13 | Request to Invalidate (No. 27/12) by Volvere Central Services Limited | Registered Design No. 4025232 in the name of Peter Hunt's Bakery Limited | Design valid | 1500 |
| 6 | 13 Jan 2014 | O/013/14 | Request to invalidate (No. 5/13) by Graham Tinker | Registered Design No 4026255 in the name of All Pond Solutions Limited | Design invalid | 600 |
| 7 | 19 Mar 2014 | O/137/14 | Request to invalidate (No. 1/14) by Marion Giglio | Registered Design No. 4032451 in the name of Kobell Ltd | Design invalid | 225 |
| 8 | 30 Jun 2014 | O/288/14 | Request to invalidate (No. 53/13) by Zhu Zhu Ltd | Registered Design No. 4032447 in the name of Theramit Ltd | Design invalid | 150 |
| 9 | 21 Nov 2014 | O/494/14 | Request to invalidate (No. 49/13) by Antonia Garcia | Registered Design No 4028819 in the name of Pauline Quigley | Design invalid | 400 |
| 10 | 24 Dec 2014 | O/565/14 | Application No. 51/13 to invalidate the registered design by Kobell Ltd | Registered Design No. 4012141 in the name of Marion Giglio | Design invalid | 400 |
| 11 | 9 Apr 2015 | O/155/15 | Request to invalidate (no. 03/14) by Cataclean Global Limited | Registered Design No. 4033752 in the name of Truscott Terrace Holdings Llc | Design valid | 1200 |
| 12 | 6 May 2015 | O/210/15 | Application No. 40/13 by Rosehill Furniture Limited to invalidate the registered design | Registered Design No. 4015395 owned by Alpha Furnishings Limited | Design valid | 1500 |
| 13 | 29 Jul 2015 | O/344/15 | Applications (No. 41/13 – 48/13) by Stanze Ltd to invalidate the registered designs | Eight Registered Designs (Nos. 4022554-4022561) owned by Chelsea Lifestyle Ltd | Designs valid | 1,000 |

| | Date | Case IPO Tribunal | Application | Matter | Decision | Costs awarded £ |
|----|-------------|-------------------|---|--|--|--|
| 14 | 11 Nov 2015 | O/525/15 | Application (No. 4/14) by Cool Collars Ltd to invalidate the design | Registered Design No 4030465 owned by Gemma Lockwood | Design invalid | £1,000 |
| 15 | 16 Nov 2015 | O/533/15 | Application (No. 60/14) by Framebow & Greenhill Joinery to invalidate the registered design | Registered Design No 4037011 owned by Melvyn John Coles | Design invalid | 550 |
| 16 | 10 Dec 2015 | O/586/15 | Application No. 14/15 by I.P. Joinery Limited to invalidate the registered design | Registered Design No. 4035208 owned by H Stebbings, | Design valid | £100 |
| 17 | 18 Dec 2015 | O/598/15 | Applications by Origamic Ltd to invalidate the designs | Registered Designs 4032591, 4032592, 4033463, 4033464, 4033465, 4033466, 4033467, 4033469, 4032574, 4032575, 4032576, 4032577, 4032580, 4032581, 4032582, 4032583, 4032584, 4032585, 4032586, 40325898 & 4032590 owned by Yaojie Liu | Designs valid | £700 |
| 18 | 14 Jan 2016 | O/012/16 | Application for invalidation by Yong Jun | Registered Design 4034148 owned by Chaoqun Li | Design invalid (proprietorship issue) | £200 |
| 19 | 15 Jan 2016 | O/016/16 | Requests to Invalidate (Nos. 34-37/13) by Shengwei Jiao | Registered Design Nos 4025832, 4025833, 4025834 and 4024639 in the name of Schayane Dawd | Designs invalid (proprietorship issue) | £600 |
| 20 | 27 Jan 2016 | O/046/16 | Application No. 39/13 by Melvyn John Coles to invalidate the design | Registered Design No 4023096 in the name of Garden Life Ltd | Design valid | £100 |
| 21 | 30 Mar 2016 | O/110/16 | Request to invalidate (No. 63/14) By David Calder | Registered Design No. 4033000 in the name of Red Kite Products Ltd | Design valid | £450 |
| 22 | 23 Mar 2016 | O/152/16 | Requests to invalidate (Nos. 42/14 And 43/14) By Sumaira Javaid | Registered Design Nos 4019752 and 4019267 in the name of Ahmet Erol | Design invalid | £0 no costs sought – appealed (unsuccessfully) |
| 23 | 23 Mar 2016 | O/153/16 | Requests to invalidate (Nos. 33/14, 34/14, 36/14 and 37/14) by Mohammad Malik Tanveer | Registered Design Nos 4020104, 4020066, 4025695 and 4020237 in the name of Ahmet Erol | Registered designs 4020104, 4020066 and 4020237 invalid. Reg design 4025695 valid. | £0 no costs sought |
| 24 | 19 May 2016 | O/252/16 | Application (No. 20/15) by H Stebbings to invalidate the registered design | Design No 4040424 owned by Stuart Maguire | Design valid | £200 |
| 25 | 25 May 2016 | O/262/16 | Application No. 21/15 by Peter Bryant to invalidate the design | Registered Design No 4040685 in the name of Dexil Limited | Design valid | £350 |
| 26 | 5 Jul 2016 | O/318/16 | Applications by Dragon 007 Limited to invalidate the designs, Nos 44/14 To 58/14 | Registered Designs 4031656, 4031657, 4031658, 4031659, 4031660, 4031661, 4031662, 4031663, 4031664, 4031665, 4031666, 4031667, 4031668, 4031669 and 4031670 owned by J. F. A. Shenstone | Designs valid | £200 |
| 27 | 5 Aug 2016 | O/375/16 | Request to invalidate (No. 8/16) by Mrs Sharon Davis | Registered Design No. 5001346 in the name of Ms Sarah White | Design invalid | £100 |

| | Date | Case IPO Tribunal | Application | Matter | Decision | Costs awarded £ |
|----|----------------|------------------------------|--|--|---|----------------------------|
| 28 | 12 Aug 2016 | O/388/16 | Application (No. 88/15) to invalidate the design by All Labels Ltd | Registered Design No 4035208 owned by H Stebbings | Design valid | £100 |
| 29 | 30 Jan 2017 | O/034/17 | Request to invalidate (No. 89/15) By Yellow Dog Uk | Registered Design No. 5000131 in the name of Sarah Jones | Design invalid | £300 |
| 30 | 15 Feb 2017 | O/066/17 | Application No. 2/16 By Mr Ryan Roberts to invalidate the registered design. | Registered Design No. 500032 owned by 'I Want A Standing Desk Limited' | Design invalid | £550 |
| 31 | 24 Feb 2016 | O/086/17 | Application (No. 5/16) to invalidate the design by Justin Bernhaut | Registered Design no 4014852 owned by Bushbaby Ltd | Design invalid | £500 – appeal withdrawn |
| 32 | 2 Jun 2017 | O/265/17 | Application No. 21/16 by La Hacienda Limited to invalidate the registered design | Registered Design No. 4042194 owned by Kd & Jay Limited | Design invalid | £1,800 |
| 33 | 6 Jul 2017 | O/308/17 | Request to invalidate (no. 9/17) by Beechfield Brands Limited | Registered design no. 6001060 in the name of Shang Han | Design invalid | £348 |
| 34 | 6 Jul 2017 | O/309/17 | Application (No. 90/15) to invalidate the design by Deidre Ann Sam-Pyatte | Registered design no 4041949 owned by John Anthony Forth | Design valid | £850 |
| 35 | 27 Oct 2017 | O/544/17 | Applicaton no. 7/16 by Systems Products Uk Limited to invalidate the registered design | Registered design no. 4033752 owned by Truscott Terrace Holdings LLC | Applicant estopped from bringing novelty claim again – application fails on this ground but proprietorship claim to be decided. | |
| 36 | 12 Dec 2017 | O/636/17 | Application (No. 03/17) for invalidation by Bamboo Tools S.L. | Registered design no 5002784 owned by Dexil Limited | Design invalid | £48 |

5.2 Chancery Division (Patents Court) / Patents County Court / Intellectual Property Enterprise Court: Design Decisions 2013-17

| No. | Date | Name | Matter | Valid | Infringed | NOTE |
|-----|-------------|---|---|---------------------------|---|--|
| 1 | 21 Jan 2013 | Utopia Tableware Ltd v BBP Marketing Ltd [2013] EWPC 15 | UK unregistered design right; UK registered design right | Not at issue | | Interim injunction sought and granted |
| 2 | 24 Jan 2013 | Muck Truck UK Ltd v Helps (t/a Helps Muck Truck Sales) [2013] EWHC 74 (Ch) | Registered and unregistered design rights (not further specified in the judgment) | Not at issue | Yes – breach of settlement agreement between the parties | Preliminary issue concerning the alleged infringement of registered and unregistered design rights |
| 3 | 28 Jan 2013 | Kohler Mira Ltd v Bristan Group Ltd [2013] EWPC 2 | UK unregistered design rights and registered community designs | Both valid | UKUDR infringed / RCD not infringed | |
| 4 | 30 May 2013 | Sealed Air Ltd v Sharp Interpack Ltd [2013] EWPC 23 | UK unregistered design right; UK and community registered design | Designs valid | Registered designs not infringed / UK registered design infringed | |
| 5 | 5 Jun 2013 | Satco Plastics Ltd v Super Pack Ltd [2013] EWPC 29 | UK unregistered design right | Design valid | Not infringed | |
| 6 | 11 Jul 2013 | Magmatic Ltd v PMS International Ltd [2013] EWHC 1925 (Pat) | Community registered design and UK unregistered design | RCD valid / UKUDR valid | Both infringed | appealed |
| 7 | 23 Jul 2013 | Whitby Specialist Vehicles Ltd v Yorkshire Specialist Vehicles Ltd [2013] EWHC 2776 (Pat) | UK registered and UK unregistered design rights | | | Preliminary issue as to liability of fourth defendant pursuant to a common design to do the acts complained of |
| 8 | 30 Jul 2013 | Uwug Ltd & Anor v Ball (t/a Red) [2013] EWPC 35 | UK unregistered design rights and UK registered design right | Both valid | Both infringed | |
| 9 | 24 Sep 2013 | Utopia Tableware Ltd v BBP Marketing Ltd & Anor [2013] EWHC 3483 (IPEC) | UK unregistered design right; UK registered design right | Both valid | Both infringed | |
| 10 | 24 Feb 2014 | Magmatic Ltd v PMS International Ltd [2014] EWCA Civ 181 | Registered community design | valid | Not infringed | appealed |
| 11 | 25 Jul 2014 | Cassie Creations Ltd v Blackmore [2014] EWHC 1140 (Ch) | UK unregistered design right; UK registered design right | | | Preliminary issue – application for summary judgment dismissed |
| 12 | 22 Aug 2014 | William Mark Corporation & Anor v Gift House International Ltd [2014] EWHC 2845 (IPEC) | Patent and four registered community designs | Patent valid / RCDs valid | Patent infringed / RCDs infringed | Defendant accepted that three RCDs were valid and infringed, infringement claim of fourth was dropped. |

| No. | Date | Name | Matter | Valid | Infringed | NOTE |
|-----|--------------|--|--|--|--|---|
| 13 | 21 Nov 2014 | John Kaldor Fabricmaker UK Ltd v Lee Ann Fashions Ltd [2014] EWHC 3779 (IPEC) | Unregistered community design and copyright | (not at issue since no inference of copying) | Both not infringed | |
| 14 | 8 Dec 2014 | DKH Retail Ltd v H. Young (Operations) Ltd [2014] EWHC 4034 (IPEC) | UK unregistered design right and unregistered community designs. | Both valid | Both infringed | |
| 15 | 17 Dec 2014 | Whitby Specialist Vehicles Ltd v Yorkshire Specialist Vehicles Ltd, Amer Rubani, Omar Rubani, Ghulam Rubani [2014] EWHC 114 (Ch) | UK unregistered design right; UK registered design right | Both valid | Both infringed | |
| 16 | 6 Feb 2015 | G-Star Raw CV v Rhodi Ltd [2015] EWHC (Ch) | UK unregistered design right | Valid | infringed | |
| 17 | 16 Sep 2015 | Tech 21 UK Ltd v Logitech Europe S.A. [2015] EWHC 2614 (Ch) | UK and community unregistered design rights | | | At issue was jurisdiction of the UK court – no jurisdiction to hear claim for declaration of non-infringement |
| 18 | 23 Oct 2015 | T & A Textiles and Hosiery Ltd v Hala Textile UK Ltd & Ors [2015] EWHC 2888 (IPEC) 14 | UK registered design and copyright | UKRD invalid | Both not infringed | Counterclaim Unjustified threats in relation to registered design infringement successful |
| 19 | 9 Mar 2016 | Magmatic Ltd v PMS International Ltd [2016] UKSC 12 | Registered Community Designs | RCD valid | Not infringed | |
| 20 | 7 July 2016 | EC Medica Group Ltd v Dearnley-Davison [2016] EWHC 2065 (Pat) | Community registered designs and community unregistered design; UK unregistered design | RCD and UCDR very likely invalid; UK unregistered design not decided | | Application for interim injunctions – UK unregistered design in licence of the right phase |
| 21 | 13 July 2016 | Raft Ltd v Freestyle of Newhaven Ltd & Ors [2016] EWHC 1711 (IPEC) 15 | UK unregistered design right | UKURD valid | UKUDR infringed | Passing off claim dismissed |
| 22 | 7 Dec 2016 | Action Storage Systems Ltd v G-Force Europe.Com Ltd & Anor [2016] EWHC 3151 (IPEC) | UK unregistered design right | UKUDR valid | UKUDR infringed | |
| 23 | 25 Aug 2017 | Neptune (Europe) Ltd v Devol Kitchens Ltd [2017] EWHC 2172 (Pat) | UK unregistered design right / registered community design rights | All valid | Not infringed | |
| 24 | 27 Oct 2017 | Scomadi Ltd & Anor v RA Engineering Co. Ltd & Ors [2017] EWHC 2658 (IPEC) | Registered community design rights | Both RCD1 and RCD2 valid; RCD3 invalid | One design infringes RCD2 but two others do not infringe the valid designs | |
| 25 | 13 Dec 2017 | Madine (t/a Nico) & Anor v Phillips (t/a Leanne Alexandra) & ors [2017] EWHC 3268 (IPEC) | UK unregistered design rights | valid | infringed | |

5.3 Cases by court and date

| | | EWPCC | IPEC | Ch.D (PC) | CoA(CD) | SC |
|----|--|-------------------------------|--------------------|----------------------------------|--------------------|---------|
| 1 | Utopia Tableware Ltd v BBP Marketing Ltd [2013] EWPCC 15 | 01.2013 05.2013 (costs) | IPEC 11.2013 | | | |
| 2 | Muck Truck UK Ltd v Helps (t/a Helps Muck Truck Sales) [2013] EWHC 74 (Ch) | | | 01.2013 | | |
| 3 | Kohler Mira Ltd v Bristan Group Ltd [2013] EWPCC 2 | 01.2013 01.2013 | 06.2014 | | | |
| 4 | Sealed Air Ltd v Sharp Interpack Ltd [2013] EWPCC 23 | 05.2013 | | | | |
| 5 | Satco Plastics Ltd v Super Pack Ltd [2013] EWPCC 29 | 05.2013 | | | | |
| 6 | Magmatic Ltd v PMS International Ltd [2013] EWHC 1925 (Pat) | | | 07.2013 | 02.2014 04.2014 | 03.2016 |
| 7 | Whitby Specialist Vehicles Ltd v Yorkshire Specialist Vehicles Ltd [2013] EWHC 2776 (Pat) | | | 07.2013 11.2014 12.2014 | | |
| 8 | Uwug Ltd & Anor v Ball (t/a Red) [2013] EWPCC 35 | 07.2013 | 12.2014 01.2015 | | | |
| 9 | Utopia Tableware Ltd v BBP Marketing Ltd & Anor [2013] EWHC 3483 (IPEC) | See case 1 | | | | |
| 10 | Magmatic Ltd v PMS International Ltd [2014] EWCA Civ 181 | See case 6 | | | | |
| 11 | Cassie Creations Ltd v Blackmore [2014] EWHC 1140 (Ch) | | | 07.2014 groundless threats | | |
| 12 | William Mark Corporation & Anor v Gift House International Ltd [2014] EWHC 2845 (IPEC) | | | 08.2014 patent claims | | |
| 13 | John Kaldor Fabricmaker UK Ltd v Lee Ann Fashions Ltd [2014] EWHC 3779 (IPEC) | | 11.2014 | | | |

| | EWPCC | IPEC | Ch.D (PC) | CoA(CD) | SC |
|----|---|------------|--|---|----|
| 14 | DKH Retail Ltd v H Young (Operations) Ltd [2014] EWHC 4034 (IPEC) | | 12.2014 | 04.2012 12.2015 (permission to appeal) | |
| 15 | Whitby Specialist Vehicles Ltd v Yorkshire Specialist Vehicles Ltd, Amer Rubani, Omar Rubani, Ghulam Rubani [2014] EWHC 1140 (Ch) | See case 7 | | | |
| 16 | G-Star Raw CV v Rhodi Ltd [2015] EWHC 216 (Ch) | | | 02.2015 | |
| 17 | Tech 21 UK Ltd v Logitech Europe S.A. [2015] EWHC 2614 (Ch) | | | 09.2015 09.2015 | |
| 18 | T&A Textiles and Hosiery Ltd V Hala Textile UK Ltd & Ors [2015]EWHC 2888 (IPEC) | | 10.2015 | | |
| 19 | Magmatic Ltd v PMS International Ltd [2016] UKSC 12 | See case 6 | | | |
| 20 | EC Medica Group Ltd v Dearnley-Davison [2016] EWHC 2065 (Pat) | | | 07.2016 07.2016 | |
| 21 | Raft Ltd v Freestyle of Newhaven Ltd & Ors [2016] EWHC 1711 (IPEC) | | 07.2016 | | |
| 22 | Action Storage Systems Ltd v G-Force Europe.Com Ltd v Anor [2016] EWHC 3151 (IPEC) | | 12.2016 | | |
| 23 | Neptune (Europe) Ltd v Devol Kitchens Ltd [2017] EWHC 2172 (Pat) | | | 03.2017 08.2017 | |
| 24 | Scomadi Ltd & Anor v RA Engineering Co Ltd v Ors [2017] EWHC 2658 (IPEC) | | 10.2017 10.2017 (permission to appeal) 11.2017 | | |
| 25 | Madine (t/a Nico) & Anor v Phillips (t/a Leanne Alexandra) & Ors [2017] EWHC 3268 (IPEC) | | 12.2017 12.2017 | | |

5.4 Intellectual property enterprise court design decisions 2013-17

| | | Copyright | UK Registered Design | UK Unregistered Design Right | Community Registered Design | Community Unregistered Design Right | Patent | Passing off |
|----|---|-----------|----------------------|------------------------------|-----------------------------|-------------------------------------|--------|-------------|
| 1 | Utopia Tableware Ltd v BBP Marketing Ltd [2013] EWPC 15 | | x | x | | | | |
| 2 | Muck Truck UK Ltd v Helps (t/a Helps Muck Truck Sales) [2013] EWHC 74 (Ch) | | x | x | | | | |
| 3 | Kohler Mira Ltd v Bristan Group Ltd [2013] EWPC 2 | | | x | x | | | |
| 4 | Sealed Air Ltd v Sharp Interpack Ltd [2013] EWPC 23 | | x | x | x | | | |
| 5 | Satco Plastics Ltd v Super Pack Ltd [2013] EWPC 29 | | | x | | | | |
| 6 | Magmatic Ltd v PMS International Ltd [2013] EWHC 1925 (Pat) | | | x | x | | | |
| 7 | Whitby Specialist Vehicles Ltd v Yorkshire Specialist Vehicles Ltd [2013] EWHC 2776 (Pat) | | x | x | | | | |
| 8 | Uwug Ltd & Anor v Ball (t/a Red) [2013] EWPC 35 | | x | x | | | | |
| 9 | Utopia Tableware Ltd v BBP Marketing Ltd & Anor [2013] EWHC 3483 (IPEC) | | x | x | | | | |
| 10 | Magmatic Ltd v PMS International Ltd [2014] EWCA Civ 181 | | | | x | | | |
| 11 | Cassie Creations Ltd v Blackmore [2014] EWHC 1140 (Ch) | | x | x | | | | |
| 12 | William Mark Corporation & Anor v Gift House International Ltd [2014] EWHC 2845 (IPEC) | | | | | x | x | |
| 13 | John Kaldor Fabricmaker UK Ltd v Lee Ann Fashions Ltd [2014] EWHC 3779 (IPEC) | x | | x | | | | |

| | | Copyright | UK Registered Design | UK Unregistered Design Right | Community Registered Design | Community Unregistered Design Right | Patent | Passing off |
|----|---|-----------|----------------------|------------------------------|-----------------------------|-------------------------------------|--------|-------------|
| 14 | DKH Retail Ltd v H Young (Operations) Ltd [2014] EWHC 4034 (IPEC) | | x | x | | | | |
| 15 | Whitby Specialist Vehicles Ltd v Yorkshire Specialist Vehicles Ltd, Amer Rubani, Omar Rubani, Ghulam Rubani [2014] EWHC 1140 (Ch) | | x | x | | | | |
| 16 | G-Star Raw CV v Rhodi Ltd [2015] EWHC 216 (Ch) | | | x | | | | |
| 17 | Tech 21 UK Ltd v Logitech Europe S.A. [2015] EWHC 2614 (Ch) | | | x | | x | | |
| 18 | T&A Textiles and Hosiery Ltd V Hala Textile UK Ltd & Ors [2015]EWHC 2888 (IPEC) | x | x | | | | | |
| 19 | Magmatic Ltd v PMS International Ltd [2016] UKSC 12 | | | | x | | | |
| 20 | EC Medica Group Ltd v Dearnley-Davison [2016] EWHC 2065 (Pat) | | | x | x | x | | |
| 21 | Raft Ltd v Freestyle of Newhaven Ltd & Ors [2016] EWHC 1711 (IPEC) | | | x | | | | |
| 22 | Action Storage Systems Ltd v G-Force Europe.Com Ltd v Anor [2016] EWHC 3151 (IPEC) | | | x | | | | |
| 23 | Neptune (Europe) Ltd v Devol Kitchens Ltd [2017] EWHC 2172 (Pat) | | | x | x | | | |
| 24 | Scomadi Ltd & Anor v RA Engineering Co Ltd v Ors [2017] EWHC 2658 (IPEC) | | | | x | | | |
| 25 | Madine (t/a Nico) & Anor v Phillips (t/a Leanne Alexandra) & Ors [2017] EWHC 3268 (IPEC) | | | | x | | | |
| | Totals | 2 | 10 | 19 | 9 | 3 | 1 | |

Appendix 6: Media Survey

6.1 Trunki case

Website: The Telegraph
 Website type: News media
 Date: 9 March 2016
 Heading: 'Suitcase maker Trunki loses Supreme Court battle against copycat brand'
 Author: Laura Davidson
 Url: <http://www.telegraph.co.uk/business/2016/03/09/trunki-loses-years-long-legal-battle-against-copycat-brand>
 Coverage: Sympathetic to Trunki and the design community

Website: The Guardian
 Website type: News media
 Date: 9 March 2016
 Heading: 'Trunki trumped by Kiddee in design battle of the suitcases'
 Author: Julia Kollwe
 Url: <https://www.theguardian.com/business/2016/mar/09/kiddee-trumps-trunki-in-battle-of-the-suitcases>
 Coverage: Sympathetic to Trunki and the design community

Website: BBC News online
 Website type: News media
 Date: 9 March 2016
 Heading: 'Trunki loses ride-on animal suitcase court case'
 Author: Staff
 Url: <http://www.bbc.co.uk/news/uk-england-bristol-35762610>
 Coverage: Sympathetic to Trunki and the design community

Website: The Guardian
 Website type: News media
 Date: 3 November 2015
 Heading: Trunki v Kiddee: battle over children's luggage reaches supreme court
 Author: Julia Kollwe
 Url: <https://www.theguardian.com/business/2015/nov/03/trunki-v-kiddee-battle-over-childrens-luggage-reaches-supreme-court>
 Coverage: Sympathetic to Trunki and the design community

Website: BBC News online
 Website type: News media
 Date: 3 November 2015
 Heading: 'Trunki and Kiddee Case in court over design dispute'
 Author: Staff
 Url: <https://www.bbc.co.uk/news/uk-england-34711270>
 Coverage: Sympathetic to Trunki and the design community

6.2 Dyson v Vax

Website: BBC News online
 Website type: News media
 Date: 10 September 2013
 Heading: 'Dyson sues Samsung over new vacuum's steering mechanism'
 Author: Leo Kelion
 Url: <http://www.bbc.co.uk/news/technology-24023430>
 Coverage: Neutral

Website: Harbottle
 Website type: News section of law firm's website
 Date: 16 December 2011
 Heading: 'Dyson v Vax decision'
 Author: Harbottle & Lewis
 Url: <https://www.harbottle.com/news/dyson-v-vax-decision/>
 Coverage: Unbiased (neutral) legal analysis

Website: The Guardian
 Website type: News media
 Date: 27 January 2010
 Heading: 'Dyson sues rival Vax over vacuum cleaner design'
 Author: Rebecca Smithers
 Url: <https://www.theguardian.com/business/2010/jan/27/dyson-sues-vax>
 Coverage: Gives more background on Dyson, but it largely neutral

6.3 Apple v Samsung

Website: Wikipedia
 Website type: General knowledge / wiki
 Date: last updated 27 May 2018
 Heading: 'Apple Inc v Samsung Electronics Co'
 Author: Various
 Url: https://en.wikipedia.org/wiki/Apple_Inc._v._Samsung_Electronics_Co

Coverage: A history of court cases around the world between the two companies

Website: Forbes
 Website type: Business media
 Date: 6 April 2017
 Heading: 'Innovators Need Closure On The Apple v. Samsung Case'
 Author: Tim Sparapani
 Url: <https://www.forbes.com/sites/timsparapani/2017/04/06/innovators-need-closure-on-the-apple-v-samsung-case/#4a85c9e076db>

Coverage: Analytical, neutral

Website: 9to5Mac
 Website type: Technology news
 Date: 7 February 2017
 Heading: 'Apple v. Samsung patent case sent back to lower courts to determine if damages retrial is necessary'
 Author: Chance Miller

- Url: <https://9to5mac.com/2017/02/07/apple-samsung-lower-courts/>
 Coverage: Slightly biased towards Apple
- Website: Digital Trends
 Website type: Technology news
 Date: 13 January 2017
 Heading: 'U.S. Court of Appeals officially reopens the Apple vs. Samsung patent case'
 Author: Julian Chokkattu
 Url: <https://www.digitaltrends.com/mobile/apple-vs-samsung-supreme-court/#ixzz4gcvS37M>
 Coverage: Neutral
- Website: MacRumors
 Website type: Technology news
 Date: 13 January 2017
 Heading: 'Apple vs. Samsung Lawsuit Over iPhone Design Officially Reopened'
 Author: Joe Rossignol
 Url: <https://www.macrumors.com/2017/01/13/apple-vs-samsung-reopened/>
 Coverage: Neutral
- Website: Recode
 Website type: Technology news
 Date: 6 December 2016
 Heading: 'In its new Apple v. Samsung ruling, the Supreme Court has changed how patent damages are calculated'
 Author: Ina Fried
 Url: <https://www.recode.net/2016/12/6/13854490/samsung-apple-iphone-design-patents>
 Coverage: Analytical
- Website: USA Today
 Website type: American news media
 Date: 7 December 2016
 Heading: 'Samsung wins Supreme Court fight with Apple'
 Author: Richard Wolf
 Url: <https://www.usatoday.com/story/news/politics/2016/12/06/supreme-court-samsung-apple-smartphone-iphone-design-patent/94570296/>
 Coverage: Neutral
- Website: Cnet
 Website type: Technology news
 Date: 10 October 2016
 Heading: 'Apple v. Samsung heads to Supreme Court: What you need to know'
 Author: Shara Tibken
 Url: <https://www.cnet.com/uk/news/apple-vs-samsung-heads-to-supreme-court-everything-you-need-to-know-faq/>
 Coverage: Neutral
- Website: Fox News

Website type: American news media
Date: 24 August 2012
Heading: 'Apple wins lawsuit against Samsung, as jury awards \$1B for patent infringement'
Author: Associated Press
Url: <http://www.foxnews.com/tech/2012/08/24/jury-reaches-verdict-in-apple-vs-samsung-case.html>
Coverage: Neutral

Website: The Telegraph
Website type: News media
Date: No date
Heading: 'Apple vs Samsung lawsuit – in pictures'
Author: Staff
Url: <https://www.telegraph.co.uk/technology/apple/8461065/Apple-vs-Samsung-lawsuit-in-pictures.html>
Coverage: Neutral

Website: The Telegraph
Website type: News media
Date: 19 April 2011
Heading: 'Apple sues Samsung for 'slavish' copying of iPhone and iPad'
Author: Matt Warman
Url: <https://www.telegraph.co.uk/technology/apple/8460300/Apple-sues-Samsung-for-slavish-copying-of-iPhone-and-iPad.html>
Coverage: Neutral

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