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Hello

Here are some answers to the questions posed in the consultation. I hope they help.

Copyright
Q5 – I strongly believe not. There are already court decisions taking that view. There is literature arguing against it e.g. J Ginsburg in IIC https://link.springer.com/article/10.1007/s40319-018-0670-x and previously S Ricketson, international renown experts on copyright law and others cited in this editorial and elsewhere. International conventions are against it – for copyright to subsist in a work there needs to be an author – i.e. human being.
Q8 – yes

Designs
Q1- yes
Q4 – no
Q6 – I have not trawled the preparatory legislative materials to the regulation for a while. So yes there may be uncertainty but the rule should be the same for CDRs as for national designs so AI/machines cannot be an author of a design.

Best wishes,

Estelle Derclaye

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Member and President-elect (May 2021) of the European Copyright Society - https://europeancopyrightsociety.org/

Recent publications:

O. Church, E Derclaye, and G. Stupfler, "Design litigation in the EU Member States: Are overlaps with other intellectual property rights and unfair competition problematic and are SMEs benefitting from the EU design legal framework?" (2021) European Law Review, available at http://ssrn.com/abstract=3675732

Derclaye, E. “The multifaceted influence of the Advocates-General on the Court of Justice’s copyright case law: legal secretaries, literature and language” in E. Rosati (ed.), Routledge Handbook of European Copyright Law, Routledge, forthcoming 2021, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3684862

E. Derclaye, “AG Campos Sanchez-Bordona’s opinion in Brompton Bicycle – The good, the bad and the contradictory – Part I & II”, Kluwer Copyright Law Blog, February 2020, available at http://copyrightblog.kluweriplaw.com/2020/02/13/ag-campos-sanchez-bordonas-opinion-in-brompton-bicycle-the-good-the-bad-and-the-contradictory-part-i and http://copyrightblog.kluweriplaw.com/2020/02/18/ag-campos-sanchez-bordonas-opinion-in-brompton-bicycle-the-good-the-bad-and-the-contradictory-part-ii/

E. Derclaye, “*Doceram*, *Cofemel* and *Brompton*: How does the current and future CJEU case law affect digital designs?” in B. Pasa (ed.), *Design, technological and digital innovation. Interdisciplinary proposals for reshaping legal protections,* ESI Press, Naples, *forthcoming* 2020, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3507802

E. Derclaye, “Right and wrong analogies. The CJEU’s use of trade mark concepts in copyright and design law” (2020) European Intellectual Property Review 78-83, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3445426

O. Church, E Derclaye, and G. Stupfler, “An Empirical Analysis of the Design Case Law of the EU Member States” (2019) IIC, available at https://link.springer.com/article/10.1007/s40319-019-00813-0

E Derclaye, “EU Design Law: Transitioning Towards Coherence? 15 Years of National Case Law”, in N. Bruun, G. Dinwoodie, M. Levin & A. Ohly, Transition and Coherence in Intellectual Property law, Cambridge University Press, forthcoming 2020, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3355353

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