



ANTI COPYING IN DESIGN (ACID) SUBMISSION TO THE IPO CALL FOR VIEWS ON DESIGN IP 2022

Executive Summary

From iconic to every day, design is all around us, improving our lives, providing solutions, and influencing the way we live and work. Underpinned by the value of the intellectual property (IP) created, this is why IP matters to the design economy. Intellectual Property, creations of our minds, are increasingly crucial to the UK's economic, cultural, social wellbeing - a national asset, especially in design. IP enriches our lives by providing us with work, solutions, and innovation. It is hard to think of a service, product, or activity which in some way does not depend on IP.

The design economy punches well above its weight and latest figures produced by the Design Council, confirmed by ONS, indicate strong growth (15%) over 3 years of £97.4bn (66% of the financial services industry) of which 1.9 million are designers or those with design skills.

For over a decade, since the last Call for Views in 2012, UK designers have not been effectively supported by the UK Government with an IP framework that is fit for purpose. ACID has consistently provided evidence to support this reality, over many years. In our submission we articulate our concerns about post Hargreaves recommendations to Government that evidence to form policy decisions must be a two-way street.

Our submission identifies key areas necessary for the current reform of Design IP law and also the necessity to futureproof this vital part of the UK economy as well as providing a raft of easily achievable solution-led initiatives.

These key areas include addressing the disparity between design and other IP rights' protection together with simplifying a difficult to understand and overly complex system. The impact on the UK's design sector, mostly SME, is an increasing inability to enforce their IP rights. Currently, enforcement is cost and time prohibitive as well as being emotionally challenging. Tightening up regulation will play a key role in dissuading those legal practitioners who rely on complex laws to exploit and perpetuate legal correspondence, especially in David and Goliath challenges.

Simplification should not include introducing examination for registered designs which would be a retrograde step and achieve very little. What is important is that registered designs can be heard in a new and improved Small Claims Track System.

A lack of reciprocity for unregistered designs in the EU and question marks over simultaneous publication of designs in the UK and EU has left many designers with legal uncertainty. ACID has consistently called on Government to re-open discussions to provide clarity and solutions. Post-Brexit, UK design protection has been eroded as a result.

Government consistently reinforces the mantra that the UK has one of the best IP regimes in the world. Maybe this is true about the efficiency of the technical registrations' framework, the counterfeiting & piracy intel hubs and/or for those with sufficient legal budgets. And if you are a songwriter, inventor, or trade mark owner, this may also be true, but it certainly isn't the case if you are a designer. In the field of designs law enforcement, where David is the designer, Goliath usually triumphs, and litigation is the luxury of the few.



With the UK departure from the EU, there is a golden opportunity to look at IP design rights from scratch, putting designers first and considering overall what protection should be offered and how. All our evidence supports the fact that it would be chilling for innovation if the intentional infringement of a registered design is **not** made a crime to provide a strong deterrent. Providing a level playing field between those designers who rely on registered designs and those who rely on unregistered designs, (in line with copyright) is not only critical but fair.

But IP is more than the law, whilst the law should be fit for purpose to protect and enforce infringement effectively, there is a societal and moral issue which must be embraced in articulated corporate social responsibility about IP compliance, and ethics. It is hoped that government and others will put their full weight behind the soon to be launched ACID IP Charter, signatories of which comply with the principles of publicly declared IP respect.

A snapshot of some of the 44 ACID member profile comments in our evidence, including Design Council

"Not only has a large non-UK retail behemoth and others stolen my registered design, used my trademark without permission, the legal fees are in the region of £30,000 and I will lose my business. I have £500K of stock I cannot shift because the retailer has undercut their lookalike product. More tragic of all is that I have lost my desire to carry on designing and innovating. Surely UK designers deserve better and more cost-effective access to laws that protect them?"

"Intellectual Property rights are fundamental to the business of design. We want a design IP system that keeps pace with and reflects new technologies and global markets. It is important that people from across the design industry give their views on the current IP framework and how it can be improved for designers. As part of our Design Economy work, we are looking at ways to enable designers to provide more value for people and planet, and we will be looking carefully at the suggestions emerging within this important review by the IPO."

"It is very difficult and expensive, especially for young companies to officially register every design and process, so to extend the law to Unregistered Designs would be hugely beneficial. We need strong leadership in this area and the UK should be leading from the front. If anything, this will lead to more certainty and more innovation rather than the opposite".

Although we now have an IP Act which means not only criminal provisions for intentional commercial Registered design infringement but also for individual directors, we feel this does not go far enough. Why not extend this to intentional unregistered design infringement? After all copying is criminal.

It would be great if Government could give more protection to small designers against bigger businesses as design law is very complex and it is v costly to take legal action.

"I think that extending the IP Act to include Unregistered Designs would add to the deterrent and is unlikely to 'chill' innovation; after all how can it be innovation if it is based on someone else's design?"

"I believe that Government can and should do more to protect design theft. One of our concerns relates to the inconsistency of how copyright infringement and design infringement is applied across different industry sectors. For example, the music industry has very strong protection in the duration of protection (life+70 years), yet a product designer's protection, with regard to a design's protection, duration is significantly shorter. This is not right."



About Anti Copying in Design (ACID)

Anti Copying In Design (ACID) was founded in 1997 and is the UK's leading design and intellectual property campaigning organisation. It is a forward-thinking membership trade association for designers and manufacturers; a not-for-profit organisation funded by membership fees.

For over a quarter of a century, ACID has been a consistent voice calling for design (IP) law reform and influential in providing evidence to support many of the IP and design reforms which have taken place in the UK before and since the Hargreaves Review. ACID spearheaded a UK campaign for the introduction of criminal sanctions for the intentional infringement of both registered and unregistered designs. This campaign resulted in a partial success with the criminalisation of intentional infringement of a registered design (included in the 2014 IP Act).

ACID continues to campaign for intentional infringement of unregistered designs to attract criminal sanctions as the ultimate deterrent against copying.

Why? Designers continue to be baffled by a law that makes it a criminal offence to copy a two-dimensional design drawing but when that drawing is converted into a 3D product there is no criminal offence involved should it be copied. This is both unfair and ridiculous. Therefore, we are resolute in pursuing parity between unregistered design rights, registered designs, and copyright in terms of sanctions.

ACID is also a member of the Alliance for Intellectual Property which is a UK-based coalition of 19 trade associations and enforcement organisations with an interest in ensuring intellectual property rights receive the protection they need and deserve. Its members include representatives of the audio-visual, music, video games and business software sectors, as well as sports industries, branded manufactured goods, publishers, authors, retailers, and designers. ACID's CEO [REDACTED], OBE., is a Vice Chair of the Alliance for Intellectual Property.

Comments on Survey and Call for Views

A decade after the 2012 Call for Views, ACID welcomes this timely review and commends the Government's commitment to encourage comments about whether "*The Designs Framework is fit for purpose?*" Preceded by a designs survey for those who do not have a comprehensive knowledge of design law, this provided an opportunity for engagement with designers, designer makers and manufacturers, though we should point out that it was confusing to have two "reviews" and respondents echoed this. We are assured that the views from both the survey and the Call for Views will be considered when recommendations are made.

We also appreciated the opportunity of a round table meeting via zoom with the Head of Designs Policy and ACID members on 27 January and the agreed account of the discussions can be reviewed here¹ [REDACTED], Deputy CEO of the UK Intellectual Property Office (IPO) also hosted a further meeting with our ACID Council.

Evidence – a two-way street.

We are concerned that the IPO sees evidence as a one-way street and not a two-way exchange of information reinforcing Government's position that Intellectual Policy must be evidence based. This was one of the conclusions of the Hargreaves Review of intellectual policy in 2011. So whenever the IPO is presented with arguments in favour or against a change or enhancement to UK IP laws, it needs to

¹ [REDACTED]
[REDACTED]



review all the available evidence and weigh it up when deciding whether to propose the change. And so, whenever ACID has campaigned for changes to design laws in the UK, we have carried out detailed surveys of our members, which we have then sent to the IPO in support of our arguments.

The situation has arisen in respect of ACID's campaign to criminalise unregistered design right infringement. At present it is a criminal offence to deliberately copy a song, book, 2-dimensional artwork, photograph, computer software, registered trade mark or logo, or a registered design. The penalty is a maximum ten-year prison sentence and directors of a company convicted of the offence can also be prosecuted. However, it is still not a criminal offence to deliberately copy an unregistered design and the vast majority of designs are unregistered.

The IPO's response to ACID's lobbying has been that to criminalise the deliberate copying of an unregistered design would have **"a chilling effect on innovation and lead to business uncertainty."** Our own analysis of the 38 responses to the 2012 Call for Views does not align with the IPO's interpretation. Thus far no evidence from the IPO to the contrary has been forthcoming.

Whilst this issue is at present a concern for designers, obviously it sets an unhappy precedent in all areas of IP policy making. In our view sharing evidence must be a two-way street. If the IPO refuses to share the evidence that it does have, then it damages the trust and generally good working relationship that rightsowners share with it.

1-8 Generic questions

9. Do you have views on whether the IPO should change examination practice for designs?

Designs are a vastly different species of intellectual property right from patents, where examination can take upwards of several years. Unregistered designs sit, quite understandably, within the CDPA 1988 as they were born out of the Whitford Committee Review of copyright in the 1980's. If the IPO were to introduce more cumbersome registration procedures for registering a design, in our view with designs, it would have a chilling effect on innovation within the design sector which moves so quickly in comparison to the world of invention. It would also be counter-productive to the current policy of making the registration of a design cost effective and create a longer and more expensive process. Currently the period of registration is weeks rather than days. If we move to an examination process it could take months, a year or even more, which pushes designers to rely on unregistered design protection during that time.

If a streamlined registration process were introduced - what would an examination process involve? What additional certainty would it provide that the design being registered is not a copy of another unregistered design? If it were to be put in place it would create a little more certainty but as most UK designers rely on unregistered design right (even though only 31,000+ designs were registered in 2021), this would be an almost impossible task regarding validity.

Whether a design is registered or unregistered does not make much difference when lone, micro and SMEs are pitted against major high street retailers and manufacturers. Many believe this would be a step backwards, make registration slow and clunky, increase costs and there are serious question marks about accuracy on a global basis. Afterall copyright has none of these restrictions. It is basically down to the IP creator to provide evidence of their creation.

Even where a design is registered, it receives no better protection through civil enforcement – Triclimb case is a perfect example. See statement from Triclimb (included in case study evidence).



10. Do you think it would be useful to introduce any of the options outlined?

Prior art searching, Two-tier system, Use of AI tools, Bad faith and opposition periods, other

Prior art yes, AI to a certain extent.

UK unregistered design right, because of the length of time available for protection, is not ideal because of license of right which does not seem equitable. One ACID Legal Affiliate said he had rarely enforced Community UDR because of the requirement for it to be new in the registered design sense. The benefit of UDR, because it mirrors copyright, is the originality that is tested.

The burning questions are, would those carrying out these checks have the necessary expertise, and would they be carried out consistently? These checks, (as we have commented upon in Q9) will obviously slow the process down and lead to higher costs for registration, which may be prohibitively expensive for small businesses who would otherwise have registered their designs, pushing them further into unregistered design territory.

Our understanding is that there is already ambiguity in where and how to register designs, which begs the question will registration be made clearer and simpler? This was one of the main policy objectives of the 2012 Calls for Views. **“To modernise and simplify the law”** which, 10 years later has not happened. ***What will be the consequences for “bad faith”?*** The big question is – what additional protection pre-registration will give to creators against copying and make it easier to pursue enforcement, especially when it is cost and time prohibitive for the majority of lone, micro and SME designers to enforce their IP rights.

A bad-faith rule would only make UK design law more complicated. Currently there is a benefit to designers in keeping the system simple, quick, and inexpensive. This will be reinforced in a soon to be introduced ACID IP Charter.

Dumbing down of design rights is an unwelcome and risky path because it will undermine the comprehensive (albeit complex) protection currently available to designers. It is important not to lose the different forms of protection available in any overhaul which might be carried out with the current system.

Registered designs, of course, have been provided with valuable protection through a change in the law introducing criminal sanctions as a strong deterrent against infringement. Yes, registered designs can be challenged on novelty grounds; but, turning it on its head, we are not persuaded that introducing a more in-depth examination process and an opposition process as part of the application process, would provide any additional certainty or protection for enforcement purposes for the reasons already given above, unless there is a reform in design rights law that makes enforcement less complicated and a simpler and cheaper legal process to go hand in hand with it. It would also make it far more expensive for designers to register their designs and would discourage people from using the registered design system – meaning that it was even more important to have comprehensive unregistered design rights!

An opposition process would be disastrous and lead to potential drawn out challenges, to the benefit of those corporate companies that already blatantly and intentionally copy other designs with deep pockets and who use the ping pong of correspondence to their advantage.

The main concerns are lack of reciprocal rights with the UK’s main trading partner, the EU, and unequal treatment of design right and copyright.



ACID uses blockchain technology in its new IP Databank offer giving access to those who rely on unregistered designs and allowing them to create a tamper proof audit trail of all the design stages from idea to marketplace. Significantly, there are more audit trail options for evidence as all stages are held securely in the ACID system as a third party. We would argue that this often provides more evidence of ownership than a registered design, which remains unexamined.

11. What form of design protection works best for you at present?

Currently none work effectively whether we are dealing with registered or unregistered design right, both have their challenges in that it is down to whether funds are available to pursue enforcement. The cost and time element makes it almost impossible for lone, micro and SME designers/manufacturers. This point was reinforced by all attendees at the IPO/ACID meeting on 27 January 2022.

The average hourly earnings of a designer are £16.43² v IP specialists at £225+ per hour upwards and make access to effective legal advice to enter correspondence over an infringement minimal, if not impossible.

12. Do the different and overlapping ways of protecting the appearance of a product present any issues to creators and users of the system? If you think the system could be simplified, we would like your views on how to do this.

Difficult to answer because they arise automatically, so if you create a new aesthetic "fish slice" for example, you are not really thinking about what the protection is going to be. It is only IP savvy businesses that are aware of the law protecting designs. Overlapping is fine because one is covered visually. However, there is a school of thought that there could possibly be a division whereby there are two different kinds of designs – aesthetic/creative on the one hand and functional/industrial on the other?

Having to pay to register each little detail is complicated, see ACID Ambassador ([Trunki](#)) case and is prohibitively expensive and this is probably the reason designers do not use the registration system for all (or any) of their designs. What you register is what you rely on, if challenged. The case cost Trunki £1m to lose on a technicality.

13. Are there terms in the Registered Designs Act which would benefit from clarification or guidance e.g. "get up"?

Very few designers will know what the 1949 Registered Design Act (RDA) is and for those that do, it is written in a language that is difficult even for lawyers to understand. This would appear to be above the heads or remit of most designers' thinking. When a designer creates a new design, they certainly do not think of the RDA or the CDPA nor would they probably understand all the various technical legal elements.

Designers rely on an IP system that not only rewards them but provides them with a legal framework fit for purpose. Currently this does not exist.

² "Evidence should drive policy" P7

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/32448/11-1199-government-response-to-hargreaves-review.pdf



All current design right laws need clarification and guidance as we have suggested in our solutions; No. 5 on page 17.

14. Please share any issues you or your clients have experienced in relation to the changes to disclosure requirements for unregistered designs since the end of the transition period (31 December 2020).

There will undoubtedly have been issues caused by the lack of reciprocity, but they have not emerged yet and won't until enforcement becomes impossible. However, latest Design Economy figures indicate a substantial drop in exports since 2019 but the relationship between the two has not been evidenced.

15. Would any of the options outlined, such as simultaneous disclosure, address this issue? Are there any other ways of addressing the lack of reciprocal recognition for unregistered designs in the UK and EU? If so, please provide details on how they may work in practice.

It is incumbent on the UK Government to enter dialogue, post Brexit, with the EU because of the importance of the UK design sector, especially where fashion designers, for example, may show in London and then Paris. This, as shown in the Brexit agreement was either not high enough on the UK Agenda or it was traded off.

The protection of design rights has always been broken and simply patched up along the way. This is an ideal opportunity for a big change for improvement in design rights law, more especially as UK designers have lost EU27 protection for unregistered designs and there is still no clarity in simultaneous publication.

The main concerns are lack of reciprocal rights with the UK's main trading partner, the EU, and unequal treatment of design right and copyright. Product designers, in the current trade negotiations are disadvantaged when compared to those who rely on copyright which has a universal signature.

Simultaneous publication could be helped by improved new technology which would offer all those within the EU the opportunity to publish at the same time which would negate the risk of losing rights in other EU countries when one publishes first in a particular country. For example, a UK fashion design launching first in Milan could still retain unregistered rights' protection in other EU countries and importantly not lose UK Supplementary Unregistered Design Right.

Live streaming to achieve simultaneous disclosure at a launch event or online could be an option although this has not been tested by the courts thus far. Whether there could be arguments about any delay in transmission could also be an issue. It is common practice to launch new designs on digital platforms so we are sure that technology could be developed to facilitate this to clarify any confusion.

16. How can the current system better meet the needs of a digital environment and future technologies?

The current law needs changing. Currently you must apply for each individual shape, so producing 20 different shapes for transformable shapes. E.g., a provision for change in the process so that a design that is transformable is registrable.

Examining 3D printing for example. Currently there are no criminal provisions available for statutory enforcement bodies to prosecute counterfeiters who infringe an unregistered UK design to support



criminal activity through 3D printing, such as the production of guns, now prolific in the USA. But it is not just about guns by a long stretch, 3D printing could be used to make perfect clones of all sorts of 3D objects cutting across the rights of not only all ACID members but for all UK 3D designers. This would have a significant monetary loss on the UK economy.

If considering AI for registering designs, there will be additional cost implications for the designer creating the 2D image and also a potential loss to the 2D designer where they do not have that technology and must use a third party to create it for them. If a designer commissions a 2D design to create the 3d version, additional contracts will have to be created to provide legal certainty.

The question about extending unregistered design to cover computer generated designs requires many more questions to be asked and answered, such as it is not possible for AI to be the author or owner of a UK design. How can it be assessed when AI stops being a tool programmed by a human and becomes an intelligent entity capable of producing its own IP. Establishing proof or evidence is a major consideration. Unless further in-depth research is carried out ACID is against non-human design right ownership. 3/4/5d

17. Are areas such as digital designs and 4D printed products adequately protected by the current system.

Currently insufficient research and evidence is available to have a firm view on this.

18. Do you think it would be useful to introduce any of the options outlined? These include extending supplementary unregistered design to cover computer generated designs, filing of digital representations, and ceasing accepting physical specimens.

Please refer to our comments on design law reform.

19. What are your views on the protection of computer-generated designs?

The RDA and the CDPA both say that where a design is generated by a computer, the person who made the arrangements necessary for the creation of the design will be considered the author (s2(4) RDA and s214(2) CDPA). The language of the RDA and CDPA therefore suggests only a legal person who can own property can be the author or owner of a UK registered or unregistered design. It is not currently possible for AI, which does not have legal personality, to be recognised in law as the author or owner of the IP.

We believe until further research is carried out that it is not possible for AI to be the author or owner of a registered or unregistered design because there is no clarity about the legal entity applying for the rights.

20. Should UK law have an express deferment provision and how long should it be?

Yes. For product designs, the development journey from idea to market place is a long and involved process. For example, starting from the seed of an idea it includes drawings, plans, technical specifications, research development, prototyping, testing, manufacture, supply chain organisation, marketing, selling and compliance which all take significant investment, often referred to as “sweat equity” before there is a return on investment. The process can be a long one from, sometimes one to two years or more. If they are registered, this offers an advantage to some if they opt for deferring



publication.

Often, by deferring publication, the contents of design registrations can be kept out of the public domain and thus kept secret for a longer period, for example until after products incorporating the design(s) are released to the public domain.

ACID's experience of this is during exhibitions when a product or product range is usually launched, a company will have the benefit against other exhibitors/competitors. In other words, their new designs or product launches can be kept under wraps, and they probably have a period of time of exclusivity before copies appear. Only good design gets copied but at least it allows the originator to capture the market before this takes place.

The current one-year deferment is fair, bearing in mind the length of the financial commitment from conception to market readiness. We understand it is possible to request to defer publication of a registered design application in several countries (including UK and Europe, as well as in International Designs under the Hague Agreement). The maximum period of deferment in UK Registered Designs and Hague Agreement Registered Designs is 12 months from the filing date which we believe is fair.

In our experience few know or understand this benefit, so case study examples should form part of the greater Design and IP education outreach programme.

21. What information, if any, should be published in relation to a deferred design?

As already mentioned, the advantages of deferment should form the basis of IP education to business of the benefits. See question 20.

22. Is there a need for specific provisions for prior use or to deal with co-pending applications?

No comment

Enforcement

The IPO claims to have one of the best intellectual property regimes in the world. However, we believe that this is not true for SMEs who form the backbone of the creative industries. It can only be the best legal system if it provides the required protection from blatant and intentional copying, which it sadly falls short of doing, especially for those designers pitted against others with deep pockets. Designers find no comfort or security in the current design IP framework.

There is no validity in the IPO argument that it would be too complex to include criminal provisions for the intentional infringement of an unregistered design due to the difficulty in determining which unregistered rights exist and who owns them. Copyright creators have the same issues as an unregistered right. Registered designs are no different from unregistered designs in that their ownership can be challenged until a design corpus is proved and both are unexamined.

If criminal provisions for unregistered design were introduced, it could be made very clear in rules/wording included which limit the circumstances when criminal provisions can apply, similar to the provisions contained in the IP Act 2014. It is not anyone's desire to punish genuine accidental copying.

Opposing views say that there have been *"virtually no criminal cases on registered designs," adding "that those centring on unregistered designs are likely to be much harder to enforce and less clear in*



their outcome.” A concern, voices, is that because unregistered rights can be uncertain or unknown, adding criminal sanctions could unjustly penalise accidental infringers.”

The fact that there have been virtually no criminal cases (only two to date, see [link](#)) points to the strength of the deterrent factor, integral to the main objective of the Impact Assessment of 2013. In addition, in the “Red Bus” case it was easier to rely on protection under copyright law rather than unregistered design right law, especially on those where a clear design audit can be evidenced. In the *Red Bus* case or *Temple Island Collections v New English Teas*, evidence was provided by the ACID IP Databank. Admittedly this was a copyright case, but the principle is the same. As previously mentioned, penalising *the accidental infringer* has rarely been experienced in ACID’s 25-year history.

No-one wants to penalise the innocent, accidental infringer. Surely, this is the type of thing established before any litigation (civil or criminal) is considered or commenced?

Ignorantia juris non excusat is a legal principle holding that a person who is unaware of a law may not escape liability for violating that law by merely being unaware of its content. Or *nemo censetur ignorare legem* (nobody is thought to be ignorant of the law).

However, there is also the argument that innocent or unknowing copyright infringement occurs when someone engages in infringing activity not knowing that their conduct constitutes infringement—perhaps most commonly when they knowingly copy from another’s work but reasonably believe that their copying is not infringing.

Evidence from the IPEC demonstrates that there have been the same number of registered and unregistered design cases:

Registered and Unregistered Design cases heard in IPEC 2013-2021 inclusive										
Design right	2013	2014	2015	2016	2017	2018	2019	2020	2021	totals
Registered		5	12	13	15	8	9	14	4	80
Unregistered	1	7	18	11	9	14	14	6	5	84
Both		1	5	6	12	7	6	4	3	44
Total	1	13	35	30	36	29	29	24	12	208
Total IPEC claims	9	98	221	203	242	206	217	157	128	1481
Average of 14% design cases v other IP cases										
Average of 23 (registered and unregistered designs heard per year)										

23. What are your views on the effectiveness of the UK’s enforcement framework?

There is a perceived level of understanding of the technical aspects of design/IP law by designers/makers/manufacturers by the IPO which is not as high as the IPO believe. One only needs to look at the technical aspects contained in these Calls for Views to demonstrate this. As the majority of lone, micro and SME creators do not access (or have access to) lawyer representation, most answers given will be from lawyers who represent medium and large enterprises who can afford a) legal advice and b) to take (civil?) legal action if infringed.



The cost and time, not to mention the emotional stress, of trying to take legal action against copyists is a losing battle for most who suffer from the copycat culture. Our case studies demonstrate this point.

The status for SMEs was set out in the Impact Assessment of 2013 [link](#)

A recurring theme in responses to the Designs Consultation was that designers, many of whom are small and medium enterprises (SMEs) and micro-businesses, can find it difficult to protect their designs against those who deliberately copy them. 59% of respondents to an IPO survey said their designs had been copied. However, only 32% of those who had their designs copied went on to take civil action in the courts. Of those companies that took no action, 91% cited the expense involved as the reason for not doing so.

In the (nearly) decade since then, little has changed in the effectiveness of the UK's enforcement framework for micro and SME designers, designer makers and manufacturers to improve the status quo.

The Impact Assessment of 17 January 2013 included the following [link](#)

Stakeholders have told the IPO that the UK's legal framework for protecting designs is complex, confusing and, therefore, somewhat incoherent. This has:

- *created a lack of legal clarity and onerous proprietorship rights.*
- *reduced the protection available to overseas rights holders who trade or wish to trade in the EU*
- *reduced legal certainty for firms seeking to protect or use designs.*

This is particularly burdensome for smaller businesses with less experience and knowledge of the intellectual property system. Both inhibit use of the design rights system, and the willingness of firms to invest in new designs.

24. How could it be improved to help small businesses and individual designers enforce their rights?

We have met with stakeholders and below have suggested solution-led options to improve access to justice for design creatives to consider which are aimed at helping small businesses and individual designers enforce their IP rights. See suggested solutions in 12,13,14 in this response. Link [here](#)

25. What has been your experience of the introduction of criminal sanctions for registered designs?

This is only half of what is needed to give all designers a real deterrent against IP theft. ACID made the case for the intentional infringement of a registered design and unregistered design to be included in the IP Act. The evidence from designers in the 2012 Call for Views indicated 98% of designers wanted both. Mainly legal practitioners, academics and patent-led big business were against. Dyson was the only designer against both. Given that there are 1.9 million involved in design and design skills producing a seismic 97 billion to the UK's GVA, the question must be posed; Who is the law protecting? Whilst there must be a balance of all views, we believe this decision was not fairly interpreted and have presented evidence to substantiate this view.



Since the introduction of criminal sanctions in 2014 we are aware that the IPO has carried surveys for its effectiveness but thus far has not shared them. Following a request, they have informed us that there have been two cases [\(link\)](#). One where there was a suspended prison sentence and the other is awaiting review.

Furthermore, the arguments against extending criminal provisions to unregistered design right infringement are being made by organisations and individuals with apparently little or no actual experience of criminal prosecutions in the IP sector. This is hardly surprising, nor intended as a criticism, as IP prosecutions are rather a specialist and boutique area of expertise. None of the current opponents of criminal sanctions for unregistered design right infringement have ever sat on the IPO IP Crime Group, which has existed since 1999, and are therefore completely oblivious and ignorant of the very real concerns of those statutory enforcement bodies and other rights owners of the links between IP infringement and organised crime. By contrast ACID has been a member of the IP Crime Group since 2014, contributes every year to the IPO IP Crime Report and our Chief Counsel was one of the founders of the IP Crime Group. Accordingly, we bring very real practical experience and knowledge of how IP criminal prosecutions work based on countless prosecutions working alone or together with statutory enforcement bodies.

The concerns about prosecutions being commenced unlawfully or unreasonably for unregistered design right infringement are misplaced. Any prosecution, whether brought by the CPS, Trading Standards or even privately, needs to meet the Attorney General's guidelines. These provide a two-limb test; first the prosecutor must establish that the prosecution will be in the public interest. Second the prosecution must show that an objective, impartial and reasonable jury properly directed and acting in accordance with the law is more likely than not to convict the defendant of the charge alleged. These are heavy tests to meet. Furthermore if a private prosecutor does choose to prosecute in breach of these tests, then it is always open to the CPS to take over a prosecution and drop it. There are accordingly already built-in safeguards to prevent the abuse of any prosecution regime by over enthusiastic rights owners.

The ignorance of these tests or the basic safeguards illustrates the fact that concerns are being expressed by individuals and organisations who lack basic criminal prosecution knowledge. Perhaps only three or four sets of barristers' chambers regularly practise in the field of IP prosecutions and even fewer firms of solicitors do. Policy needs to be evidence based. We have seen no evidence of the alleged chilling effect on innovation that would be caused by criminalising unregistered design right infringement and no rational argument made by experienced criminal prosecutors. There might be a chilling effect on theft however and we support that.

It is of course extremely concerning that the most vocal opponents of criminal sanctions for unregistered design right infringement seem to be members of and legal advisers to the [REDACTED]. This is with respect akin to counterfeiters complaining about laws to prevent counterfeiting. On more than one occasion representatives of the [REDACTED] have complained that criminal sanctions for unregistered design right infringement would prevent them from pursuing the favoured business model of some of their members, namely copying the designs of individual designers or at the very least using their designs as a template for making their own designs. Copying of any IP right should not be encouraged. If intentionally copying a two dimensional art work is treated as theft under English law resulting in a possible term of imprisonment of ten years, why should the intentional copying of the artwork transformed into a three-dimensional design not be accorded the same protection? Copying is copying and in such cases theft, pure and simple.

26. What are your thoughts on extending criminal sanctions to unregistered designs and what economic evidence do you have to support your view?



It would be helpful if one of the outcomes of this Calls for Views is the complete reform of design right law which results in the consolidation of the current laws and provides simpler laws and consistency of language, giving the same protection and term of protection (why should a registered design have more protection than an unregistered design?) They are both “designs” of great and significant monetary value to the UK economy and worthy of the same protection. **(See “solutions” point 6)**

ACID has made consistent requests to the IPO to provide evidence to support government’s reluctance to extend criminal sanctions to the intentional infringement of an unregistered design, thus far this has been unforthcoming. ACID and other stakeholders believe that evidence must be a two-way street.

For the future of design innovation in the UK, the government must think long and hard about this and more must be done to support designers in this country by providing a strong deterrent against blatant and intentional copying. A recent ACID survey out of 100 responses indicated that 90% thought copying was blatant and intentional 10% thought it was unintentional.

We have found no IPO evidence in the 38 responses from the **original** 2012 Call for Evidence to support the continuing incorrect (in our view) statement that the introduction of criminal provisions c/would be “chilling for innovation” and lead to business uncertainty. On the contrary, in the 2012 Impact Assessment and Evidence this included the statement **“There was little notional support given to the concept of a “chilling effect” on innovation.”**

Of the 38 responses, 14 were from designer/manufacturers, all in favour of introducing criminal provisions for the intentional infringement of an unregistered design. Only Dyson was against. It is interesting to note that Dyson relies on patents on a ratio of approximately 2 to 1 to designs. As at February 2022, Dyson hold 1145 patents and 637 designs. Dyson are members of the IP Federation who are against criminal provisions for both registered and unregistered design infringement. They were one of the respondents who cited that it would be “chilling” but without any evidence to substantiate this. At a meeting held between the IPO and legal representatives the IP Federation said that it would stifle innovation, but we have yet to see any evidence to substantiate this. It would appear that their focus would be to support big business rather than SME.

As the IP Federation members rely on patents more than designs, we question whether their experience, knowledge and understanding of the issues that UK designers face with blatant infringement is relevant to UK policy. [REDACTED]

The majority (87%) of SME design consultancies employ less than 10 staff, 60% employ 4 or fewer. 1.9m are employed in design and design skills contributing **£97 billion** to the UK’s GVA. The design sector punches above its weight compared to, say, the financial and insurance services sector in the United Kingdom which had a gross value added (GVA) that amounted to over **£161.4 billion in 2020**.

Whilst we recognise and respect the diverse interests of the members of the IP Federation, we do note that the main shareholding or ultimate ownership of many of these companies is not from the UK and so we wonder whether the UK Government should be favouring their concerns over those of tens of thousands of UK designers. (See profile of IP Federation based on the evidence we had available which is in the public domain).

How can anyone prove the economic impact of a negative/deterrent that does not exist? Sir Robert Peel did not introduce the Metropolitan Police to put everyone in prison he did so as a deterrent against crime. In the same way, introducing criminal sanctions for unregistered designs would provide a very strong deterrent to combat an insidious pattern of behaviour which is prevalent.

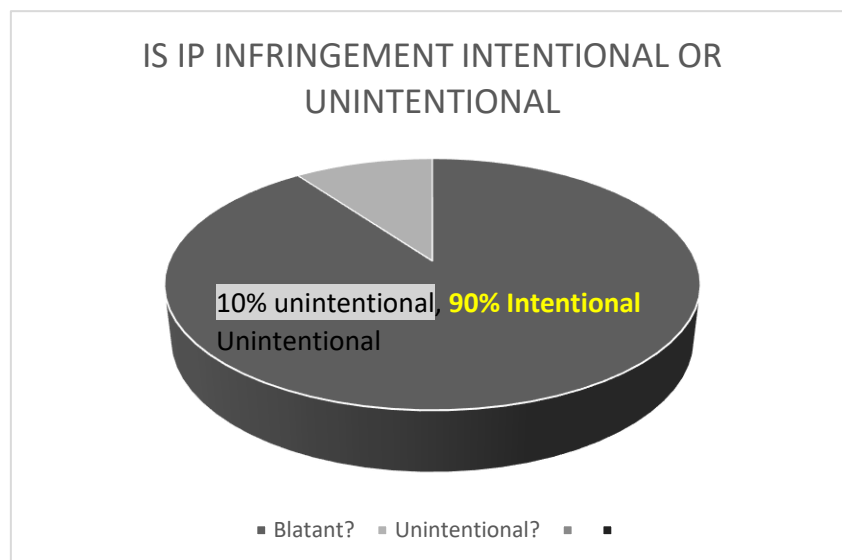


If there was enough publicity that criminal provisions were available for both registered and unregistered design rights, as well as individual directors, this would send a very strong deterrent message. It would also bring parity to design creatives; why should a songwriter or film maker benefit from better protection even where less originality and creativity has been part of the process, when a furniture or lighting designer, who also relies on unregistered rights, does not? It does not make sense when the value to the UK design economy is significant.

Designers continue to be baffled by a law that makes it a criminal offence to copy a two-dimensional design drawing but when that drawing is converted into a 3D product there is no criminal offence involved should it be copied. This is both unfair and ridiculous.

Evidence to date has not shown that it is chilling for innovation, rather the evidence shows that it is chilling to innovation not to have a deterrent, as designers go out of business or simply throw in the towel as they cannot afford to enforce their rights against those that persistently, intentionally and blatantly copy their designs. The creative industries have grown exponentially.

Some arguments against criminal provisions for the intentional infringement of an unregistered design say that “adding criminal sanctions could unjustly penalise accidental infringers.” ACID’s survey points to exactly the opposite, and we would suggest that making the criminal provisions strictly available in specific circumstances, as per the earlier comment about wording.



Also, the bar is very high for criminal prosecution requiring *mens rea* evidence of intent to copy and it is in the public interest to progress a case. *Mens rea*, in Anglo-American law, **criminal intent or evil mind**. In general, the definition of a criminal offence involves not only an act or omission and its consequences, but also the accompanying mental state of the infringer/copyist. All criminal systems require an element of criminal intent for most crimes.

It is interesting that opposition is sometimes from IP solicitors who may rely on accidental infringement as a defence. In ACID’s 25-year history, this has rarely been the case. A question must be posed to IP policy makers, especially on legislative changes, where there may be a conflict of interest in the opinions of those IP solicitors/counsel who defend, those who enforce and those who do both.

Doesn’t this leave most IP legal practitioners/counsel in a neutral position in putting forward opinions on one or other view regarding criminal provisions?



Recommended Solutions

ACCESS TO JUSTICE FOR DESIGN CREATORS

Background:

As we are all aware design rights law is currently overly complex, i.e. UK Registered Design, Registered Community Design (before Brexit), Unregistered UK Design, New Supplementary UK Unregistered Design, Post Brexit Community Unregistered Design and Copyright (Works of Artistic Craftmanship) and needs simplification.

See Alessi example in Appendix 1

We are also aware that there is no real deterrent for infringement of unregistered designs. It is hoped that the current Call for Views will support the need for urgent reform for design rights law, which will bring with it stronger protection and deterrent for infringement of registered and unregistered designs in all its shapes and forms.

In addition to the above, due to its current complexity, bringing any legal action for infringement of registered and unregistered design rights is currently prohibitively expensive.

It also appears that despite criminal provisions being introduced into registered design right law in 2014, there have been only two reported cases. Is this because it has been the protection needed, or is it because there is no experience in this IP area to bring such an action?

When considering reform of design rights law, what can also be done to make Access to Justice easier for small business owners?

2011 - The Hargreaves Report emphasises the significant contribution that designs make to the British economy and says that it is surprising that they were not even mentioned in the government's terms of reference for the review. Several issues relating to designs had come up in the evidence submitted to Professor Hargreaves, including the discrepancy between copyright and design right in terms of duration, availability, and ease of enforcement. There was a distinct lack of research on design rights, particularly in view of the fact that different industries relied on them to different degrees and in different ways. Much of the evidence had suggested that designs found enforcement action to be prohibitively expensive or found that the law was inadequate to protect the investment they had made in their designs.

During the gap between 2011 and 2022 little has been acted upon to improve the status quo. It is within this context that we recommend that urgent attention is given to the following suggested solutions.

Suggested solutions for consideration:

1. A specific Designs Court held at IPEC, and IP Judge(s) experienced in Designs law presiding, which could be open to cases one or two days per week only dealing with design (registered and unregistered) infringement cases (maybe a strictly non lawyer court where each side has a level playing field) and the Judge case manages the claim throughout. It is anomalous with the current IPO "push" for design registrations that registered designs cannot be heard in the Small Claims Track. This must change.
2. Adopt a similar pre-litigation framework in the UK like the Danish Design Board, launched in Denmark on 24 February 2022: *"The main goal of the Design Board is to strengthen protection of design and copyright and to offer speedy resolution of disputes. The Design Board has the potential to especially benefit small and upcoming designers and small and medium sized enterprises (SMEs). Against this background, various stakeholders—the community of*



designers, artists, lawyers, and academics—have expressed hope in the launching of the Design Board due to its clear structure, affordable price and proposed efficient timelines.”

3. A litigation protocol that parties in design cases must follow and gives the Court powers to reprimand those parties who do not follow the protocol with costs orders and other sanctions.
4. A proforma standard industry template LBA and legal documents could be made readily accessible by ACID to designers who cannot afford a lawyer, complete with comprehensive guidance notes which are easy to follow in drafting your claim and the evidence required. These could be provided as an ACID membership benefits package with a nominal charge.
5. A free or very low-cost initial opinion/advice on the drafted LBA and Claim.
6. A comprehensive list of all the sections and acts for the cross overs in registered and unregistered design law, with a comprehensive plain English interpretation of what each section of the acts means and examples of the situations in which it is relevant and c/should be relied upon (this may also open the field for cheaper lawyers to assist).
7. An IPEC Small Claims Mediation service (like the **free** Small Claims telephone mediation service) to encourage early settlement between the parties.
8. Like the CPS, could evidence be provided to an experienced Design Rights appointed service to assess whether there is a case to answer at an early stage and before proceedings are commenced. Is this a service a presiding Judge in IPEC could provide?
9. A Pro Bono legal advisory and advocacy service funded by the IPO to assist designers with litigation where their designs are copied.
10. IP is more than the law, whilst the law should be fit for purpose to protect and enforce infringement effectively, there is a moral issue which must be embraced in articulated corporate social responsibility about IP respect, compliance, and ethics. This was so eloquently described by Matthew Syed in the Sunday Times, *“Today’s masters of the universe are still being taught ethics don’t matter”* and quotes Milton Friedman’s “doctrine” 50 years ago, *“The sole responsibility of corporations is to maximise profits within the law”*. If only this was true for those who infringe IP in 2022, a sanitised word for theft.
11. Corporate Social Responsibility – Support for ACID’s soon to be launched IP and Designs Charter (which we have already discussed with Government/IPO) and which is already supported by the Design Council, and other key influencers) to reinforce respect, compliance, and ethics for IP creators.



CSR – ethics, compliance, respect for IP – promote the ACID IP Charter to encourage all to be signatories – when we get a critical mass, those invited who do not sign will be listed. This will also provide a fighting fund for lone, micro and SMEs



12.

13. Increased regulation on the current culture of expensive legal ping pong and point scoring by some IP lawyers. An SME caught in the middle of what would appear to be an increasing culture of perpetuating litigation and stonewalling challenge is almost impossible for most to survive. The IPO could create a Code of Conduct or protocol about what is expected of solicitors in letters before action. The complexity of the law allows some legal professionals to over complicate correspondence which is expensive.
14. Extensive mediation – bought into by legal profession in more regulation, ACID has a tried and tested 3-hour model without lawyers but mediated by a design lawyer. who is also a mediator.
15. Introduce a fast-track, nimbler cost and time effective enforcement system for registered and unregistered design infringement.
16. Consideration could be given to the introduction of a national IP insurance scheme that is affordable and effective for lone, micro, and SMEs.
17. Criminal sanctions for UDR infringement – deterrence.
18. Two types of designs? There is scope for aesthetic designs to back into copyright protection and for functional utility designs to remain within current legislation.
19. Complete reform and consolidation of the current Design Rights laws.

We have provided evidence that designs laws need simplifying and provided solution-led examples how to achieve this. In the ACID case studies and views from members, and their clearly strong evidence that the current framework is not fit for purpose. Access to a cost and time effective system is paramount. UK design protection has been eroded by the loss of automatic unregistered design protection in EU27 post Brexit. There are still muddy waters in the overlap in IP rights and disparity between copyright & design creators. The introduction of criminal provisions for the intentional infringement of an unregistered design be a strong deterrent.

ACID would like to thank the Intellectual Property Office and the Design Council for facilitating meetings to hear a diversity of views which we hope are reflected in our response, ACID's commitment is to continue to work closely with Government to achieve design IP law reform that will support the UK's incredible design economy.



"It is completely unacceptable that Government continues to treat UK designers as second-class IP rights owners and as the poor cousins in the IP family. It needs to invest time and money to secure the future of such an important sector which contributes over £97 billion into the U.K. economy. By preferring the economic interests of global multinationals over the needs of UK designers, Government is destroying the desire of many designers to design, and this creates a chilling effect on innovation! UK designers need and deserve an IP regime that is fit for purpose. Global multinationals do not need or deserve further protection at their expense."

**CEO and Co-founder of Anti Copying in Design
and Vice Chair of the Alliance for Intellectual Property**

Links to Evidence

ACID Case studies submitted [here](#)

Impact Assessment 2013 link [here](#)

ACID analysis of 2013 38 responses to the 2013 Calls for Views [here](#)

PowerPoint summary of the above 2013 demonstrating lack of evidence [here](#)

IPO/ACID Round Table notes/evidence [here](#)

43 ACID member focus comments on improving the IP system [here](#)

IP Federation profile based on information available in the public domain (March 2022) [here](#)

Videos showing various ACID members' views on the current IP framework on British IP Day 2021 below with links

Response	Percentage
Current administration	80%
Previous administration	20%



ACID Support

Alliance for Intellectual Property

Designers, designer makers, artists, and brand-builders play an integral role to the UK's economy, innovation, output, and trade, across regions and all sizes of organisation. The Design Economy currently supports 1.97 million jobs according to latest 2021 figures from the Design Council and the burden of protecting IP rights frequently falls on lone, micro, SME, and freelance designers/artists. The enforcement mechanisms currently available are often difficult and protracted, as well as cost prohibitive for most. Any additional protection that can be granted is therefore helpful to the position of those right holders affected. The Alliance considers that effective, enforceable rights and providing right holders with sufficient remedies against infringement is a crucial tenet of a strong IP framework.

Alongside its 20+ history of working alongside the Alliance for IP, ACID works closely with the Design Council and supports their position in the Calls for Views on Design IP.

Design Council

Future-proofing the UK Designs IP Framework

Design Council is the UK Government's advisor on design. We champion design through evidence, policy, thought leadership and communication and provide impartial strategic advice and practical support to local and national Government and their agencies to embed design in their work.

Design for Planet is our mission to galvanise and support the 1.97m strong UK design community to design with the welfare of the planet as a priority. The IPO review of the UK Designs IP Framework and design protection come at a key moment for the design sector, for UK business and innovation, and for wider society in the UK and beyond. Design is a growing and increasingly important part of the UK's economy and approach to solving big social and environmental problems. In 2019 it was worth £97.4bn GVA¹, which was around 66% of the financial services industry². It is made up of 1.97m people. 1.4m of those are professional designers with 77% of them working outside design agencies, in organisations such as retail, energy and automotive³. An estimated 2.5m people use design thinking skills in their work⁴, demonstrating the wider spread of design as part of the skillset of public sector bodies, businesses, or grassroots individuals and collectives solving pressing social and environmental challenges.

Design as a discipline and set of creative, problem-solving tools is becoming more widely used beyond the core of the creative industries. Simply put, more of us are designers now than ever before. As design proliferates, as the design economy grows and draws in more varied practitioners, and as this goes on to generate new innovations and IP (Intellectual Property) we will require design laws and an IP protection framework that is simple to use, but also one that can keep pace with the wider contexts of fast-changing technology and urgency in designing for people and planet.

Through our ongoing work with ACID (Anti Copying in Design) and in listening to a variety of voices from across the design landscape of the UK we have identified a series of areas that we need to address to ensure that design protection truly protects and is fit for the challenges of the near and further future.



Protection

For many the current system is simply too complex and confusing, with those seeking to protect designs unsure of what type and what level of design protection to seek. There are multiple protections, terminology is opaque and the results of obtaining a particular form of protection are unclear. Frequently the costs and time associated with protection of designs is seen as prohibitive and if design protection is infringed, then resolution is seen by many as all but impossible in the face of a system that can be gamed by those with deeper pockets and more experienced legal teams. Not only does this have a big financial impact, but a huge emotional one too. 1 Design Economy 2022 (forthcoming) 2 ibid 3 ibid 4 Designing a Future Economy, Design Council (2018)

At the same time, we need a system that can support designers and those taking out design protection in ways that do not require every design iteration or design within a family of products having individual representation. We need tools and approaches that will let us differentiate between unintentional similarity and intentional copying of design for profit and we also need to ensure that copyright infringement in design is taken as seriously as in other creative fields such as music. Design protection needs to be simpler to understand and easier to access by designers from across the spectrum and ultimately be easier to police and seek redress from. Design Council supports ACID's calls for a consolidation of the seven different types of protection and calls for clarification that similar provisions enjoyed by copyright creators can apply to 3D unregistered designs to create a level playing field in term and protection.

We also support ACID's call for free and low-cost initial opinions and advice alongside an IP insurance scheme to support designers who are fighting legal challenges against big organisations, and a mediation scheme for disputes between smaller firms. All these interventions could also be reinforced by the ACID IP Charter Framework for businesses to openly demonstrate and communicate their ethical and compliance commitments within their declared corporate social responsibility. Post Brexit, UK designers lost automatic unregistered design rights protection in EU27. Simultaneous publication could be helped by improved new technology which would offer all those within the EU the opportunity to publish at the same time which would negate the risk of losing rights in other EU countries when one publishes first in a particular country. For example, a UK fashion design launching first in Milan could still retain unregistered rights' protection in other EU countries and importantly not lose UK Supplementary Unregistered Design Right.

Technology

As the design economy is transformed (like every other sector) by new technology we need to ensure that design protection can adapt to protect against those advances that make infringement easier, but also to embrace those that give us new opportunities to protect. On the one hand it has never been easier to scan, duplicate or reverse engineer products and systems, while on the other there are new ways for technology to streamline protection processes and track information across geographies and between stakeholders.

How might AI simplify the process of navigating the design protection process? How could blockchain and NFTs allow us to identify design rights holders and track the usage of a design throughout its life? What could the rise of DAOs (Decentralised Autonomous Organisations) tell us about the nature of ownership in an age where corporate structures are being re-examined



and becoming more dispersed, automated, and flexible? With these questions the Design Council is not proposing a definitive solution but asking what these new developments could mean for IP and design rights. With policy often moving more slowly than advances in technology, the design IP protection framework needs to be flexible enough to adapt to technology shifts now and in the future.

Design for Planet

Design and designers have a crucial role in creating products, services and ways of living that will be more sustainable and regenerative in the face of climate change, and it is vital that design protection protects designers while still allowing for an ever more urgent need to share ideas and innovation to tackle global climate crises.

Emerging design practices such as mission-led design, open innovation, and Design Council's Systemic Design Approach all rely on bringing together diverse types of design expertise with policy makers, communities, and private sector actors to share knowledge freely and in doing so solve problems in ways that are beneficial to people and planet. Design protection should be designed to enable this sharing to allow ideas to move freely but securely, to make designers in every discipline feel confident in opening up ideas and innovations to broad coalitions of actors across a system without fear of infringement. Designers play an integral role to the UK's economy, innovation, output, and trade.

The burden of protecting copyright and unregistered design rights often falls on individuals working as smaller companies, and the enforcement mechanisms are often difficult and protracted. Any additional protection that can be granted is therefore helpful to the position of the category of right holders affected. Design Council considers that strengthening rights and providing right holders with sufficient remedies against infringement is a crucial tenet of a strong IP framework. Levelling the playing field between copyright and unregistered design right infringement remedies brings equity within the IP legal framework. Design Council believes the UK Designs IP Framework should protect in the here and now while remaining flexible enough to meet future changes: Design protection should be more widely understood through awareness and education and the system should be simpler to understand, simpler to navigate in setting up, and more trusted as a route to recompense if infringement occurs. All this while ensuring ideas and designs can still be shared freely to meet the challenges of Design for Planet.

ACID is also supported by the ACID Council, ACID Members, ACID Legal Affiliates – (*McDaniels Law, Stone King, Howard Kennedy, Boulton, Taylors*). The British Furniture Federation (*British Furniture Manufacturers, British Contract Furnishings Association, National Bed Federation, Furniture Industry Research Association, the Association of Master Upholsterers Association, British Plastics Federation*) *Design Business Association, British Institute of Interior Design, Fashion Roundtable, Lighting Industry Association and the Association for Creative industries.*

Appendix 1

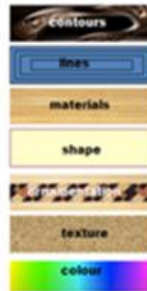
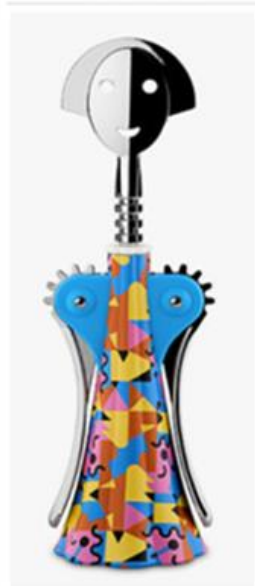
Alessi Corkscrew - an example of current complexity of design laws

Registered Designs – you pay for, not examined

UK – Registered Design lasts for 25 years, if renewed every 5 years. *Protects contours, lines, materials, shape, ornamentation texture, colour.*

Registered Community design registered before Brexit lasts for a max 25 years from September 1, 2021, or 25 years from date registered

Hague Agreement – 94 countries signed up, China the latest – protection with one application for at least 15 years.



Unregistered designs, arise automatically, you don't pay for, not examined

Unregistered UK design, last for 10 or 15 years depending on when first disclosed. *Protects Shape and configuration*

New Supplementary UK Unregistered Design, mirrors former Community Unregistered design, lasts for 3 years.

Post Brexit Community Unregistered design lasts for 3 years from September 1, 2021, or from when it was first disclosed

Works of Artistic Craftsmanship – copyright. Rare, never been legally determined

To complicate matters further there are different tests for registered and unregistered design rights.