

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.