

Response ID ANON-6TNE-VM6M-3

Submitted to Reviewing the designs framework: Call for views
Submitted on 2022-03-25 07:04:48

Introduction

1 What is your name?

Name:

[REDACTED]

2 What is your organisation?

Organisation:

CMS Cameron McKenna Nabarro Olswang LLP

3 What is your email address?

Email:

[REDACTED]

4 The Intellectual Property Office may wish to contact you to discuss your response. Would you be happy to be contacted to discuss your response?

Yes

Respondent information

5 If you are an individual, are you?

A legal professional

If you have selected other please specify:

6 If you are responding on behalf of an organisation, are you?

Any other type of organisation

If you selected other please specify:

Law firm

7 In which main industry do you or your business operate?

Other

If you selected other please specify:

Law

8 How many people does your business employ?

250+

Registered designs - search and examination

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

Please add your views here:

For some sectors, such as the fashion industry, and for products which undergo frequent changes, quick and cost-effective grant and enforceability are key considerations that can justify the cost of a design registration over relying on unregistered design rights.

By contrast, for other sectors, and for products that are intended to stand the test of time, it is more important to obtain a robust registered design that can withstand challenge, thereby strengthening the merits of introducing a prior art search and examination.

Any design legislation, and any search and examination, should ideally take the varying requirements of different sectors and different types of products into account. Increasing the barriers to entry, i.e. by introducing an additional layer of cost through prior art searching, may undermine the principal advantages of the registered designs system (cost and time) to specific sectors, which may inhibit access to IP registration and in itself have unintended consequences on sectors such as the fashion industry (i.e. an increase in copying, lowering of prices/margin to compete, with consequent impact on

sustainability).

10 Do you think it would be useful to introduce any of the options outlined? (please select all that apply)

Other

Please provide more detail below:

See answer to 9 above.

Simplifying the designs system

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

Please add your views here:

We are not submitting a response to this question.

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.

Please add your views here:

Complexity of the design framework

In our experience, the UK design industry has a relatively low level of knowledge and understanding about design rights, compared with (for example) trade mark law. The complexity of the design regime undoubtedly contributes to this. The problem is not the fact of overlap itself, as this provides stronger protection which is beneficial for most design businesses. The difficulty is the differences in detail between the various regimes which can be very difficult for non-lawyers to understand. This can put off many businesses from trying to take advantage of design rights at all. There are also widespread misconceptions about design law (notably the belief that 'token' changes will be enough to avoid infringement) which can severely undermine the deterrent value of design rights.

Design registration has also been undervalued as a form of protection, although we have noticed a slight uptick in registration work recently (likely caused by Brexit). Many designers, especially smaller businesses and start-ups, often fail to consider design protection strategies until it is too late to seek registration. Many of them also fail to keep adequate records to evidence the originality of their design rights for enforcement purposes. We therefore believe the industry would benefit from significantly more investment into raising awareness on design rights (both unregistered and registered), particularly for those designers who are not legally represented.

Uncertainty in overlap between copyright and design rights

There is considerable uncertainty around the UK courts' application of the CJEU's ruling in *Cofemel*, and whether an element of "artistry" is a requirement for copyright protection of 3-dimensional works under UK copyright law. This issue is of critical importance to many of our clients who deal in 3-dimensional works that could potentially attract copyright, including those in the furniture and interior design, consumer products and entertainment sectors. We would therefore call for clarity from the UK courts on whether (and to what extent) they intend to apply the CDPA in complete conformity with the guiding principles set out in *Cofemel* post-Brexit, that is, to grant copyright protection to "works of artistic craftsmanship" (and indeed other types of "original" works) regardless of aesthetic appeal. The most recent UK case on this issue (*Response Clothing v Edinburgh Woollen Mill*) did not fully resolve this important question, leaving uncertainty for designers in the affected sectors.

If UK copyright protection in 3-dimensional works arises regardless of any artistic character or merit, this effectively creates an additional "quasi design right" of author's life plus 70 years. This would undoubtedly benefit many businesses whose three-dimensional designs may be regarded as mainly functional and not artistic. We would call for a policy review of whether the distinction between designs and copyright works should turn on the question of 'aesthetic appeal' given how subjective it is. This depends on the Government's view on whether creativity and design innovation should be rewarded differently depending on whether a work is perceived as 'aesthetic', irrespective of the author's objective or originality. This is important when the term of protection differs so significantly between the two regimes.

The above is coupled with a lack of clarity on whether the UK courts will grant copyright protection to foreign works that only benefit from design protection – but not copyright – in their country of origin (i.e. whether such copyright protection would be denied on the basis of Article 2(7) of the Berne Convention). A clear policy statement on this issue would be welcomed.

Simplification

We agree generally that some aspects of the design regime should be consolidated and simplified, except where there are clear policy reasons for treating certain types of designs differently. Consolidation could pave the way for reducing the number of unregistered rights in the longer term. In the medium term we would favour improving the current framework instead of radically changing it. We would support, for example:

- a disclosure requirement for UK design right to standardise the term of protection to 10 years (and reconsidering whether mandatory licences in last 5 years are still beneficial);
- revisiting whether the complex nationality/residency requirement for UK design right are still justified, especially if a UK disclosure requirement is introduced;
- making the spare parts and "right to repair" exemptions consistent across all design rights;
- reviewing the UK design right principle of 'originality' and whether this could be brought more in line with the 'novelty' and 'individual character'

concepts;

- reviewing the legal tests of infringement and whether the principles of 'substantiality' and 'overall impression' could be harmonised into a single test that would be simpler for design businesses to understand and apply;
- standardising (as far as possible) the infringing acts for both types of unregistered designs, threats provisions and the liability of "innocent" infringers;
- (as noted above) considering expanding UK design right to give enhanced protection for 3-dimensional artistic works that currently fall in the "grey area" between design right and copyright.

The above will naturally depend on the Government's policy view on whether the domestic legal framework should be consolidated "towards the EU", or away from it towards the domestic regime. We consider that a UK design framework that stays broadly consistent with the EU would facilitate international trade and help maintain the UK's leading position in the European design industry.

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

Please add your views here:

To date, we have not faced any particular difficulty in interpreting the terms of the Registered Design Act.

Having reviewed the terms of the RDA in further detail, we consider that there are terms absent definitions, for which it would be helpful to incorporate guidance into the legislation, particularly where there are agreed – or widely adopted- definitions from case law. We have listed the terms and applicable references below:

- s.1(3) "get up". Given the accepted scope of this term within the context of passing-off, it would be useful to clarify whether the same approach should be applied to registered designs
- s.1B(2) "immaterial details"
- s.2(1A) "money's worth"
- s.7B(1) "good faith"

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).

Please add your views here:

The lack of mutual recognition between the UK and EU for protection of designs "first disclosed" in the other territory has created real uncertainty and practical difficulty for design businesses operating across the UK/EU border.

Prior to Brexit, the ability to obtain automatic design protection across all 28 EU Member States shaped the business models and product launch strategies of many British designers. Since the end of the transition period, many of those businesses have been left with the difficult choice of whether to seek unregistered design protection in the UK only, or in the remaining 27 EU Member States. For some UK businesses, the increased difficulty of protecting their designs in the EU has left them more vulnerable to infringement in some of their key markets. More significantly, we anticipate that the inability to hold both UK and EU unregistered design rights will deter many British and international designers from showing their new collections for the first time at UK trade shows, as this would rule out unregistered EU-wide design protection. This places the UK at a significant disadvantage to its continental neighbours and threatens the UK's status as a hub for European design innovation.

Our design clients regularly ask us why unregistered design protection could not separately exist in both territories simultaneously, when the commercial reality is that many design businesses continue to operate seamlessly across the UK/EU border. The current rule that an unregistered design can only be protected in the territory where it is "first" disclosed is seen by many as arbitrary, when both territories provide the same scope of protection for unregistered designs and there is often a legitimate need to protect a design across both the UK and the EU.

Alternative forms of protection, notably registration of designs in the non-qualifying territory, are a viable option in some cases where protection is sought for a handful of high-value designs. However, in our experience, short-term unregistered design protection has been most valuable for (and most frequently relied on as an enforcement tool by) those businesses who generate large volumes of new designs for each new collection. For those businesses, replacing the "lost" unregistered design coverage with individual registrations is practically and financially unsustainable. They face a choice between higher (sometimes prohibitive) costs of protection, and suffering losses from the heightened risk of copying.

We have also observed that simultaneous disclosure (through live-screening or online streaming) is already being used by some leading design businesses as a means of securing both UK and EU design rights. Therefore, the continuing uncertainty and lack of judicial guidance about the legal status of 'virtual' product launches is highly problematic. Clients who opt for these legally untested solutions are taking the risk that any dual UK/EU design protection obtained in this way could later be deemed invalid by a court. Unless the position is clarified, more disputes are likely to arise as infringers take advantage of this 'gap' in the law. UK designers will be greatly disadvantaged if their unregistered designs are at risk of being copied by competitors in the EU with impunity simply because they were "first disclosed" in the UK.

The conservative approach (which we currently recommend to clients, in the absence of clear guidelines) is to rely on unregistered rights only in the geographical territory of first disclosure, and to seek registration in the other. However, we have identified several issues with this approach:

1. Many of our clients (ranging from start-ups to major international businesses) are put off by the administrative burden and high cost of securing registered protection for large design portfolios.
2. The complexity of the two parallel regimes has created misunderstandings about whether (and on what basis) any UK and EU design rights can co-exist (for example, whether the mere filing of a UK design application can destroy the novelty of a design that is subsequently "first" disclosed in the EU, and vice versa; or whether simultaneous UK and EU design filings could be mutually novelty-destroying if priority is not expressly claimed).
3. If registration is the only means of obtaining dual protection, there is a risk that both the UK and EU design registers will become increasingly cluttered

with designs which would have been adequately protected by a shorter term of unregistered protection (notably in the fashion sector).

4. Whilst the UK and EU registered design regimes are currently harmonised, this may not always be the case if the UKIPO examination practice starts to diverge from that of the EUIPO. In the future, this could leave many designers with an even more difficult choice between unregistered design protection or registration, if in due course the UK and EU regimes provide different levels of protection.

We comment further on simultaneous disclosure at question 15 below.

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.

Please add your views here:

We recognise that making the EU a “qualifying territory” for UK supplementary unregistered design rights is not straightforward. However, we do not think it necessarily follows that unregistered design rights should be incapable of separately and concurrently existing in the UK and the EU, which is the effect of the current strict “first disclosure” and “novelty” principles.

The ability to obtain UK and EU unregistered design protection through alternative means would still reflect the changed legal landscape post-Brexit. We would strongly advocate for alternative forms of disclosure which require designers to take active steps to disclose their designs in both markets, rather than ‘passively’ benefiting from automatic protection across both with a single disclosure. This should side-step any concern that protection would become territorially over-broad if a design that was only ever intended for sale in the UK was automatically protected in the EU, where it will not be exploited – and vice versa.

Simultaneous disclosure

As noted at question 14, we are already seeing businesses opt for simultaneous disclosure as a route for obtaining both UK and EU unregistered rights. At present, those businesses are doing so at their own risk, with no guarantee that any resulting design rights will be deemed valid in either territory. This is a serious concern which some of our clients (for example in the consumer goods sector) have specifically highlighted to us.

In principle, we believe simultaneous disclosure is the most pragmatic alternative to direct reciprocal recognition of UK/EU disclosures. This would be subject to having clear rules on precisely which forms of disclosure would be recognised and what evidential requirements would apply in each case.

(i) Live-screening or ‘simulcasting’ of launch events. We consider that a live-screening event hosted in the UK and attended by relevant UK industry representatives showing a physical launch event that is taking place in the EU should, in principle, be capable of qualifying as a “disclosure” event in the UK. We do not believe unregistered design rights should necessarily be limited to designs physically shown within the geographical borders of a particular territory. This is so especially when (conversely) the rules of novelty take into account prior disclosures made anywhere, provided they “come to the attention of the relevant specialist trade circles” in the territory in question. We would argue that an equivalent test of “making available” could be applied to both.

(ii) Real-time live streaming of launch events. We also consider that a web-based live stream of a launch event physically taking place in the EU should in principle be capable of qualifying as a “disclosure” in the UK, if it is directly streamed to relevant UK industry representatives giving them the same information as they would receive if attending in person. We do not consider that there should be a blanket rule against recognising disclosures made in a digital environment.

Both of the above would be subject to setting out some guidelines on how the attendance of industry professionals at these launch events would be measured and documented.

(iii) Simultaneous physical launch events in the UK and EU. This option is potentially unworkable if it is determined that the relevant “disclosures” need to happen at exactly the same time. For this to be a viable option, the concept of a “simultaneous” disclosure would need to accommodate some flexibility on timing (we elaborate on this below under ‘Timing of simultaneous disclosure’).

(iv) Online-only disclosure. It has also been suggested that a valid disclosure could be made via an online-only launch (where there is no physical launch event taking place anywhere) simultaneously directed at the relevant industry audiences in both UK and EU markets. In our view, it should be possible in principle for online launches of new designs to be recognised as valid “disclosures” under supplementary unregistered design legislation, subject to certain conditions. Specifically, the extent of disclosure to the relevant target industry specifically in the UK would need to be quantifiable and documented, to avoid obscure or ‘token’ online disclosures automatically attracting UK design rights. This might be achievable by requiring such disclosures to take place through designated web platforms or other digital environments that can track viewership data. (We also note that the concept of ‘obscure’ disclosures is already embedded in the legal test for assessing prior art for novelty purposes.)

Policy considerations

- Acceptance of concurrent rights by the UK and EU. In order for simultaneous disclosure to be a meaningful alternative to reciprocal recognition of UK/EU unregistered design rights, both territories would need to accept the basic principle that SUDR and CUDR can co-exist. This is ultimately a matter for trade negotiations, but we believe there would be considerable benefits for both territories in keeping the door open for dual UK/EU unregistered design protection. It is not clear what economic benefit is gained by forcing designers to choose one or the other, when registered protection can be obtained in both concurrently.

- Recognition of ‘virtual’ forms of disclosure by the UK and EU. Both territories would also need to recognise the validity of virtual and/or digital disclosures and adopt consistent qualification criteria for each.

- Risk of 'floodgates' of UK design rights. We recognise the concern about the consequences of disclosures anywhere in the world potentially giving rise to UK design rights if shown in the UK through virtual media. We suggest this could be mitigated by only recognising 'simulcasting' or live streaming of launch events that are taking place in the UK or EU. For the purposes of consolidating the post-Brexit design protection framework in Europe, there would be no need to go any further to recognise events live screened or streamed from other countries. The scope of qualifying online-only disclosures could also be narrowed by limiting the digital environments through which such disclosures can be made.

Practical considerations

- Evidential requirements. Designers relying on virtual or online simultaneous disclosures will need to have clarity on what evidence will be required to establish that the disclosure has "become known in the normal course of business to the circles specialised in the sector concerned" in the UK/EU, as applicable. Our general view has been that designer should:

- o collect and retain clear documentary evidence to demonstrate that their launch event was in fact attended or viewed by representatives from the relevant trade circles operating in the UK and/or EU (as applicable); this should include keeping verifiable records of the number of attendees, their names and titles, and their physical location;
- o ensure that the design in question is disclosed clearly enough for its features to be easily identifiable and recognisable (e.g. by clear footage if shown on a catwalk or exhibition); and
- o seek maximum exposure for their virtual launch, to support the argument that their designs have genuinely "become known" in the relevant territory.

However, this is mere speculation at present. In order for simultaneous disclosure to be a reliable form of disclosure, clear guidelines would be needed on what minimum requirements and evidential hurdles must be satisfied in order for a simulcast or online disclosure to qualify as a genuine "first disclosure" in both the UK and the EU.

- Timing of simultaneous disclosure. The UKIPO has raised the question of whether a delay in transmission could destroy the novelty of a design for the affected territory. This is a very valid concern, which we share. An overly strict or rigid interpretation of "simultaneous" would clearly be problematic, if a technical delay (perhaps of mere seconds) could turn the first disclosure into a novelty-destroying one. This would also make simultaneous physical launch events unworkable in practice if their precise timings needed to be in perfect 'sync'.

A strict interpretation would therefore not be appropriate. If it is accepted that SUDR and CUDR are capable of co-existing in a design that is made available in both markets concurrently, then we would propose that it should not matter which disclosure technically happened "first" provided they happen on the same calendar date. The benefit of this approach would be to keep the term of protection identical, and to provide certainty from the outset on whether the designer has claimed unregistered protection in one or both markets. This could be achieved by introducing a 'one day grace period' exception during which neither disclosure (as between the UK and EU only) destroys the novelty of the other. Any concerns about intervening prior art disclosures made in other territories could be mitigated by keeping any time lag between UK and EU launches to a minimum.

Future technologies

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

Please add your views here:

We are not submitting a response to this question.

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

Please add your views here:

We are not submitting a response to this question.

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 add your views here:

We are not submitting a response to this question.

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

Please add your views here:

Section 2(4) of the Registered Designs Act 1949 (RDA) states that the author of a design shall, "In the case of a design generated by computer in circumstances such that there is no human author, [be] the person by whom the arrangements necessary for the creation of the design are made". A similar provision exists in relation to design rights at Section 214(2) of the Copyright Designs and Patents Act 1988 (CDPA). That section provides that "In the case of a computer-generated design the person by whom the arrangements necessary for the creation of the design are undertaken shall be taken to be the designer". It is noted that the provisions for computer generated works in the field of designs effectively mirror the position in connection with the authorship of computer generated works under the law of copyright, which is set out at Section 9(3) CDPA.

It is our contention that the protection extended to 'computer generated works', whether in the context of registered designs under the RDA or design rights under the CDPA, should be removed.

Although the legislature should be commended for attempting to anticipate future technological developments, the provisions as drafted are not

sufficient to address the complex processes that underlie the relevant technology, particularly within the context of works ‘created’ by tools/applications powered by artificial intelligence. The generation of such works by artificial intelligence in practice entails numerous inputs/processes, including training datasets, training algorithms, model architecture, neurons, weights and thousands of layers. Each of these inputs/processes is likely to be overseen/managed by numerous human operators. However, the formulation in the RDA and CDPA distils the author/designer to a single ‘person by whom the arrangements necessary for the creation of the design are undertaken’. Quite aside from the practical challenge of determining who has made a relevant arrangement (when there may be a large team of human operators responsible for the AI tool), the provisions as drafted are evidently insufficient to address the technological complexities of computer-generated works, which may in fact have numerous contributors.

In the context of unregistered designs, the subsistence of which relies at least partially (in line with case law jurisprudence) on the concept of originality, the grant of protection for computer-generated rights is – as a concept – illogical. Irrespective of whether ‘originality’ is construed according to the criteria of ‘skill, labour and judgment’ of the author, or through the European lens of the author’s own intellectual creation, both concepts involve the exercise of input that is tied directly to an author’s contribution. In the context of computer-generated works, the author will be the person who made the arrangements necessary for the creation of the design. In practical terms, this may be the programmer who writes the algorithm, or the person who trains the relevant model. However, neither of those individuals could be said to have exercised skill, labour or judgment in connection with the creation of the design itself, as opposed to the output of the AI program: their contributions will be too remote. Yet the originality criterion is tied specifically to the design, rather than a process, the execution of which leads to the design. Thus there is a disconnect between the authorship requirement regulating computer generated works in the context of unregistered design rights and the subsistence of an original design itself.

Finally, it is submitted that protection for computer generated designs should be excluded for policy reasons. An AI-enabled tool that is used to create designs could have the capacity to generate a significant number of works in a very short period of time. Subject to satisfying the requisite novelty/originality threshold, the author of those works (whoever that might be) is then placed in a powerful position, as they will have at their disposal a constantly expanding portfolio of unregistered design rights, which in the UK will give rise to at least a 10-year monopoly period. It is therefore possible that the extension of such protection for computer generated designs will lead to the rise of design trolls, thereby inhibiting innovation.

Better regulation

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

Please add your views here:

We are not submitting a response to this question.

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

Please add your views here:

We are not submitting a response to this question.

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

Please add your views here:

We are not submitting a response to this question.

Enforcement

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

Please add your views here:

In our experience of working for a broad range of clients, from start-ups to multinational corporations, we consider that the current system is still broadly effective. However, that is not to say that the system is perfect. Based on recent cases that we have worked on, it is clear that start-ups and SMEs are disproportionately disadvantaged when making use of the designs enforcement framework, particularly on the issue of costs. Indeed, it is well-established that a party with a clear financial advantage can often leverage its position to secure settlement on favourable terms that do not reflect legal reality. Even with the application of discounts and innovative fee structures, the cost of retaining counsel, drafting particulars and prosecuting the case can ultimately dissuade an aggrieved party from pursuing a case, or at least influence it to take a less bullish approach. In our experience, in cases where there is a clear mismatch in financial resource, the party with the fiscal advantage can often fail to approach the proceedings constructively with the overriding objective in mind, i.e. by hedging its position on the assumption that the counterparty will be unable to sustain the proceedings from a financial perspective.

Notwithstanding the above, the case of Oh Polly (in which significant additional damages were awarded) has certainly helped to focus the attention of parties, who may now have far more to lose financially in the event of a finding of infringement.

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

Please add your views here:

The definition of ‘commercial purposes’ at section 226(1) CDPA should be broadened to capture activities that may not amount to sale or hire but will still cause damage to the designer, such as advertising.

The definition of “commercial purposes” is restrictive: it says that the acts must be done “with a view to the article in question being sold or hired in the course of a business” (section 263(3) CDPA).

For fashion designers in particular, this restriction is extremely problematic. Take for example the hypothetical scenario whereby unregistered design rights subsisting in articles of clothing are copied and subsequently paraded on fashion runways and social media. Provided the party that has copied the designs is able to demonstrate that the copies in question have been produced purely for marketing purposes, and have not been (nor will be) sold or hired, liability for infringement can be evaded.

It is hard to see, however, how such a narrow interpretation is justified. In the example discussed above, the party copying the earlier designs could become associated unjustifiably with the original (perhaps also benefitting from positive press coverage and professional praise as a result). The hard work, investment and emotional energy expended by the original designer in creating its design is therefore not rewarded, with the copyist instead taking the reputational credit. Consequently, while the copied items may themselves not have been sold or hired, the copyist’s appropriation of the original designs for the purposes of, say, a cat walk show may help to lift its profile and increase its sales more generally. The definition of ‘commercial purposes’ should therefore be broadened to mitigate the risk of IP theft of this nature.

The IPEC small claims track should be expanded to include infringement proceedings premised on registered designs. It is already possible to initiate a claim in the small claims track based on unregistered design rights and registered trade mark rights. The basis of the exclusion for registered design rights is therefore unclear. For the purposes of determining the validity of an unregistered design right, an assessment of prior art must be undertaken to determine whether the design in question is commonplace. This search is not dissimilar to a search for novelty/individual character, which are relevant to the validity of registered designs. Accordingly, the small claims track should already be equipped to handle the technical challenges posed by registered design claims. In cases where it appears that evidence/disclosure will be critical, the claim could in any event be transferred to IPEC or the High Court.

There appears to be little justification for the grant of a licence of right (section 237 CDPA), particularly within the context of unregistered designs, many of which arise in respect of designs that are not sold to the public, but remain iconic of a specific designer. In the fashion industry, for example, many designs are created specifically for runway shows, as a means to enhance the reputation/exposure of the designer, although the clothing items themselves may never actually be sold. The Licence of right provision entitles an unaffiliated third party to appropriate a famous design together with the goodwill/reputation attached thereto, without having contributed to the creative process that led to the creation of the design in the first place. While the licence is subject to the agreement of satisfactory financial terms, the reputational transfer (in the sense that consumers will associate the item(s) in question as originating from the licensee rather than the original designer) may end up being far more valuable, thereby giving the licensee a significant commercial advantage. A designer should be entitled to enforce his/her rights for the full duration of the design term without qualification.

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

Please add your views here:

We are not submitting a response to this question.

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

Please add your views here:

We are not submitting a response to this question.