Intellectual Property Office

Government response to the consultation on changes to the UK designs framework

CP 1697

November 2026

Intellectual Property Office is an operating name of the Patent Office

The Patent Office

Government response to the consultation on changes to the UK designs framework

Presented to Parliament by the Minister of State for Science, Innovation and Investment
by Command of His Majesty

November 2026

CP 1697

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ISBN 978-1-5286-6672-5
E03636089 11/26

Printed on paper containing 40% recycled fibre content minimum

Printed in the UK by HH Associates Ltd. on behalf of the Controller of His Majesty's Stationery Office

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Ministerial foreword

A strong and trusted intellectual property (IP) framework gives businesses and designers the confidence to protect their designs and bring products to market. It is especially important that individual designers and small businesses can access effective IP protection and compete fairly. The government is committed to ensuring that the UK's design system remains fit for purpose in a fast-changing economy.

According to a Design Council report[1], the UK's design sector contributed £136.7 billion to our economy in 2023. The design sector is made up predominantly of micro-businesses, with fewer than nine employees. Understanding IP and applying that knowledge to make informed decisions is critical, especially for designers and small businesses.

Designers and businesses need to know that their IP rights will be secured, respected and enforced, giving them the confidence to innovate and invest.

Last year, the government consulted on a range of policy interventions with the aim of maintaining a designs system that is fit for the future and which protects and supports businesses to drive economic growth. I am grateful to everyone who took the time to respond to the consultation. The responses received were invaluable in shaping the way forward. In response to the consultation, a package of targeted reforms to modernise and improve the UK designs framework will be taken forward. These include:

- a targeted search and examination of design applications to prevent bad actors registering designs that don't belong to them
- modernisation of the designs system to better protect animated designs and graphical user interfaces
- a longer statutory deferment period to bring alignment with the EU and international design systems
- targeted simplification of unregistered designs without reducing the breadth of protection which is a strength of the UK system
- a commitment to address the uncertainty with unregistered designs by allowing disclosure anywhere in the world
- wider access to enforcement by allowing registered design cases to be heard in the small claims track of the intellectual property enterprise court

Our aim is to build a designs system that protects creativity, supports enterprise and ensures the UK remains one of the best places in the world to innovate.

Chris McDonald MP

1 https://issuu.com/designcouncil/docs/design_economy_2026_report_a9dddf2d801d14

Introduction

The Intellectual Property Office (IPO) is responsible for the UK Intellectual Property (IP) framework including the patents, trade marks, designs and copyright systems. IP rights drive innovation and creativity, by giving people the confidence to invest, and helps to fuel economic growth.

The government has consulted on changes to the UK designs system. Prior to this, a call for views and accompanying survey in 2022 identified aspects of the designs system that could be improved. This included the registration process, complexity of unregistered designs and overlapping rights, how the system could be futureproofed, and enforcement. A further survey in February 2025 was conducted to identify what features of the system are most important to users when protecting designs. It found that users hold the low-cost and speed of the design system in high regard, with validity, simplicity and choice being equally important.

Responses to the call for views and surveys have informed proposals on targeted improvements to simplify and modernise the UK designs system. The consultation on changes to the UK design system launched on 4 September 2025 and ran for 12 weeks. The consultation sought views on:

- proposals to improve the registered designs system
- proposals to simplify the unregistered designs system
- options to address changes in how disclosures of supplementary unregistered designs are recognised following the UK's departure from the EU
- enforcement issues, including a call for evidence in relation to criminal sanctions for design infringement, and inclusion of registered designs in the Intellectual Property Enterprise Court Small Claims Track
- several smaller changes to simplify and streamline the design protection system for users

There were 90 responses to the consultation. Responses were received from:

- legal professionals
- representative and trade bodies
- designers and design businesses
- multinational companies
- academics

Responses varied in their level of detail, with some covering all sections of the consultation, and others giving views on a particular section. Consideration has been given to all responses, which have informed future policy and legislative changes. This report provides a summary of responses and sets out the government response for each issue considered.

Executive summary

Section A: Search, examination, bad faith and opposition/observation

It is evident that anti-competitive filings are an issue for users of the designs system, and that a quick and low-cost design registration system is important. To achieve its objective of improving the validity of registered designs, the government will:

- legislate when parliamentary time allows to give the registrar the power to conduct a search and examination of designs on the grounds of novelty and individual character in some circumstances
- undertake further work to define what behaviour would constitute bad faith and determine the evidential threshold, before deciding whether to seek a legislative vehicle to introduce a bad faith provision
- legislate when parliamentary time allows to remove the statutory obligation for providing the designs DF21 search service

The government will remove the proposal for a two-stage system, where a design would be partially registered without a search, but examined prior to enforcement. The government will also remove the proposals for an observation period and opposition process.

Section B: Deferment

The government will:

- legislate when parliamentary time allows to introduce a statutory 30-month deferment period to bring the UK in line with the EU and Hague design systems
- start the deferment period from the earliest of the priority or the filing date of the application
- maintain current practice of deferring both registration and publication
- make preparations to publish limited information about a deferred application - including the name and address of the applicant and representative where one is appointed, the filing date and priority date online when an application is deferred
- legislate when parliamentary time allows to extend prior use provisions to include deferred design applications

Section C: Graphical user interfaces and animated designs

The government will:

- legislate when parliamentary time allows to amend the definition of both a design and a product to clarify that designs containing an animation or a transition can be protected as registered designs
- consider technical solutions that would allow video file formats showing movement and animation, and 3D file formats, as part of the IPO's digital transformation programme
- make arrangements for publishing an optional description online as part of its digital transformation programme

Since the consultation closed, the UK IPO has published guidance[2] to help applicants seeking to register icons, graphical user interfaces (GUIs), web pages and other digital designs.

Section D: Computer-generated designs

The government will undertake further work to inform future policy on computer-generated designs. This will include:

- monitoring AI use in the design industry
- considering approaches across other intellectual property rights
- engaging with stakeholders and international partners

In the meantime, the existing legal framework will be maintained.

Section E: Miscellaneous changes

The government will legislate when parliamentary time allows to:

- allow the registrar to object to matter prohibited in law contained in a design application and share a designs application with appropriate bodies for the purposes of carrying out statutory duties
- remove the provision which allows applicants to file a physical specimen
- make clear that the registrar does not warrant the validity of registered designs, and limit liability of the registrar and officials

2 https://www.gov.uk/government/publications/designs-practice-notice-dpn-0126-practice-in-respect-of-graphic-symbolsicons-graphicalweb-user-interfaces-and-animated-designs/designs-practice-notice-dpn-0126-practice-in-respect-of-graphic-symbolsicons-graphicalweb-user-interfaces-and-animated-designs

- amend the rules so that substantive and formalities objections can be raised in the same examination report, and harmonise the time period for responding to objections at two months
- give the registrar the power to rectify the designs register, and consider the extent to which the power should be limited to only dealing with specific issues
- clarify that information about currently registered designs should be viewable online, and that historical information about designs will be recorded in the journal
- broaden the registrar's power to direct forms for any purpose relating to the registration of a design and any other designs proceedings

The government also intends to:

- require priority claim details in all cases and consider whether the provision of a priority document should be mandatory or optional once the IPO has joined the World Intellectual Property Organization (WIPO) Digital Access Service (DAS) for designs
- require a priority document, where a search is undertaken and one has not been provided, if the validity of the priority claim is relevant to the novelty or individual character of the design

The government will remove the proposal to give the registrar the power to raise a late objection.

Section F: Simplification of unregistered designs and overlap with copyright

The government will continue to consider options for simplifying the unregistered designs framework. As a minimum, the government seeks to harmonise qualification requirements and term of protection. Although there was support for harmonising the term of protection at 10 years, the government will fully assess the economic impacts of doing this before making any changes.

The government will also consider the impacts of harmonising repair/spare parts provisions, acts of infringement and defences, and visibility in use before seeking to harmonise. Once policy changes have been made, the government will further explore consolidating the existing legal instruments into a single piece of legislation.

On the overlap with copyright, the government will proceed with its preferred option of doing nothing and allow further clarity to develop through case law.

The government will remove the proposal to retain supplementary unregistered designs (SUD) and abolish UK unregistered design right (UK UDR).

Section G: Post-Brexit issues relating to unregistered designs

The government will legislate when parliamentary time allows to allow creation of a supplementary unregistered design (SUD) following global disclosure anywhere in the world. The government will further consider whether to incorporate a grace period.

Section H: Call for evidence on criminal sanctions for design infringement

There were differing views on this matter. However, the government has not received sufficiently robust evidence to demonstrate that introducing criminal offences for unregistered designs would be a balanced and proportionate remedy. This means that the government will not be seeking to introduce these offences.

Section I: Call for evidence on inclusion of claims made under the Registered Designs Act 1949 within the Intellectual Property Enterprise Court's (IPEC) Small Claims Track (SCT)

A carefully managed expansion of the IPEC SCT to include straightforward, lower value registered designs cases could improve access to justice for businesses and individuals. The government intends to explore these measures further and work with stakeholders in the coming months. This will assess how inclusion of registered designs in the IPEC SCT could be taken forward in a proportionate and effective way.

Detail of outcome

Section A: Search, examination, bad faith and opposition/observation

Government intervention could make it easier for the IPO and third parties to deal with designs which are not new and which may have been filed anti-competitively. However, the government needs to be satisfied that actions are warranted, before making any changes to the design registration process. Views were sought on a range of measures that could prevent anti-competitive behaviour which impacts legitimate businesses. This includes registering designs that do not belong to the person applying or registering designs that are already invalid. The government also wanted to better understand the issues that businesses experience in relation to anti-competitive registrations.

Generally, respondents broadly recognised that anti-competitive filings are a real and growing issue. Several respondents stated they had experienced anti-competitive filings. Almost half of these had their marketing materials and pictures from their websites used by other sellers. Other respondents said that they had seen generic or well-known products being registered, and that these registrations had been used to issue take-down notices on online platforms. Although not experiencing anti-competitive filings directly, some legal professionals explained that they have acted on behalf of clients who have been affected by these filings.

Of the respondents to this section who have experienced anti-competitive behaviour, a range of measures were taken to address the issue. The most common was appealing take-down notices and applying to the IPO to invalidate a design. Costs to business ranged from under £10,000 to over £50,000. This depended on the action taken and whether it resulted in a product being taken down by an online marketplace.

The government acknowledged in the consultation that the lack of search has resulted in an increase of anti-competitive applications for registered designs being filed. Evidence received in response to the consultation confirms that users are experiencing anti-competitive behaviour. This also causes issues for online marketplaces where anti-competitive design registrations are used for the basis of multiple reports of infringement.

Section A1: Search and examination

The government did not consult on reintroducing a full search and examination of all design applications. This is because we know that users value the speed and low-cost of the current registration system. The government sought users views on several options for search and examination of designs:

- Option 0 - No change to the current system
- Option 1 - Introduce powers to allow the registrar to carry out a search
- Option 2 - Introduce a two-stage system, where a design can be partially registered without search, and a full search and examination is required to enforce a design

Views were mixed, but there was a small majority who agreed that option 0 of doing nothing should be discounted. Respondents favour the low cost and speed of the current registration system so would prefer the government to not introduce any search and exam options. Some questioned whether the estimated 9% of designs registered that aren't new justifies changes to the registration process.

There was also limited support for option 2 (a two-stage system), compared to option 1, with few respondents placing it as their preferred option. The main concerns raised related to delays to registration, higher costs and adding procedural complexity to an already complicated system. It was also felt that this would lead to delays in being able to enforce a design. This is due to the required search that would be needed to do so.

Though option 2 was unsupported overall, respondents views on how a two-stage system could operate and the potential impacts were still considered. More respondents felt that a pre-enforcement examination should be for novelty and individual character, as opposed to just novelty. One respondent felt that examination should be limited to novelty as searches for individual character could be difficult. However, they also recognised that restricting searches to novelty could limit the effectiveness of the service. This is because any applications that were invalid on grounds of individual character could not be refused.

Most respondents thought that litigation should be able to start before a pre-enforcement examination. They felt that this would allow for faster enforcement options and would allow applicants to act quickly against infringing behaviour. Some respondents opposed this option, believing it could make the system more complicated.

There were mixed views on whether a two-stage system would provide business with a benefit or challenge. Views were also mixed on whether the impact to business would be positive or negative.

Option 1 (giving the registrar powers to carry out a targeted, discretionary search) was most preferred over option 2. If this were introduced, most respondents thought that the following should be subject to a search:

- applications for re-filings of previously invalidated designs
- applications for apparently generic products
- designs that are suspected as being anti-competitive

A few respondents requested a more detailed definition of "generic" and details of what a search will entail. Whilst option 1 was deemed more favourable than option 2, some expressed concerns. These included additional costs, delays to the examination process and potential bias that a search could bring. This is because a search may depend on the knowledge and decision of the examiner. Some respondents felt that there should not be searching for some applications and not others, as this could introduce uncertainty for applicants. If better search tools become available, many respondents were in favour of extending searching to other design applications. Some felt that the IPO should monitor how technological advancements can improve the search process and it should utilise AI and machine learning tools.

Views were sought on the impacts of limited searching. Most respondents saw the introduction of limited searching as a benefit or opportunity to their business. Others, however, considered that it would present a challenge, namely by slowing down the registration process. Most respondents felt that the impact on their business would be

positive if searching was reintroduced. Few respondents felt it would have a negative impact whereas others did not know how their business would be impacted. The main concerns raised were primarily amongst legal professionals, that any type of search would negatively impact the speed and cost of registration. This is important to users of the system.

Conclusion and next steps

Whilst users want to preserve the low cost and speed of the registration system, the majority supported some intervention to deal with anti-competitive design registrations. The government considers that this provides sufficient justification to change the design examination process to improve the validity of registered designs.

The government will legislate when parliamentary time allows to give the registrar the power to conduct a search and examination of designs on the grounds of novelty and individual character. In practice, the search and examination will be carried out for a proportion of applications. This will be informed by guidance with criteria to inform when an examiner should conduct a search. The government will remove the proposal for a two-stage system (option 2), as this would bring too much complexity to the designs system.

Section A2: Bad faith

UK design law does not currently include a specific bad faith provision. The government sought views on whether to introduce this provision. This would give the IPO clear powers to object when an applicant seeks protection with dishonest intent. Of those who provided a view, most respondents agreed with the government's proposal that a bad faith provision should be introduced for designs. Many respondents agreed that such a provision would allow the IPO to address:

- re-filing of invalidated designs
- the use of competitors' photos in design applications
- applications for well-known products
- serial abusive/anti-competitive behaviour

Views were sought on the impacts of a bad faith provision. Overall, of those who responded, a bad faith provision was considered to have a positive benefit to business. Several respondents indicated that they didn't know whether bad faith would bring a benefit or challenge, and whether the impact would be positive or negative. Those unsupportive of a bad faith provision explained that it would be difficult for examiners to prove malicious intent. Clear guidance would need to be provided so examiners do not mistakenly classify applications as being made in bad faith.

Respondents also stated it is well known from trade mark law that bad faith provisions can be difficult to understand and apply. Some respondents stated that should a search and exam (section A1, option 1) be introduced, the need for a bad faith provision would be unnecessary. The reason given was that the examples provided at consultation of bad faith behaviour could be dealt with by raising a novelty objection. Additionally, designs filed in bad faith can already be challenged on novelty or entitlement post-registration.

Some respondents felt a bad faith provision would provide the IPO with a clearer legal basis to refuse applications. Others considered that the provision is needed to help deal with anti-competitive filings. Those who supported this option thought that the test for bad faith and evidential threshold needs to be clearly defined. Some suggested that the bad faith provision should be aligned as far as possible with trade marks. One respondent suggested that the IPO and courts shouldn't be prevented from dealing with bad faith behaviours that may arise in the future.

Conclusion and next steps

Whilst there was good support overall for a bad faith provision, the government recognises the concerns raised. These related to what the provision would add if a novelty search and examination is introduced, and the difficulties in establishing bad faith at examination. The government will undertake further work to define what behaviour would constitute bad faith and determine the evidential threshold. This will inform the decision on whether to seek a legislative vehicle to introduce a bad faith provision.

Section A3: Observation and opposition

Unlike trade marks and patents, there is currently no mechanism in designs law to allow third parties to oppose a registration. There is also no mechanism to provide the IPO with evidence on the allowability of a design application. Any third-party options are remedied by invalidation proceedings, either at the IPO or through the courts. The government sought views on whether introducing opposition and/or observation periods for designs would be beneficial. The options considered were:

- Option 0 - Do nothing/maintain the current system
- Option 1 - introduce a post-registration opposition period for designs ("registered at risk")
- Option 2 - Introduce a pre-registration opposition period for designs
- Option 3 - Introduce an observation period

Overall, support for the four options was mixed, with a formal opposition period pre-registration being the least favoured and doing nothing was most favoured. A small majority of respondents thought that pre or post-registration opposition would not provide an effective tool to address anti-competitive or invalid designs being registered. For observation, responses were split on whether it would provide an effective tool.

Respondents were asked about the likelihood of them using a pre or post-registration opposition period if they were introduced. A similar number said they would be likely or unlikely to use the services. For the observation period, more respondents said that they would likely use the service if it were introduced. Some respondents favoured observation over opposition. Several respondents in favour of post-registration observation expressed a preference for no strict time limit. This is because an invalid or bad faith registration only becomes apparent when rights are enforced against third parties, rather than at the time of registration.

Views were mixed on whether a two-month period for opposition or observation strikes the right balance between the needs of applicants and third parties. A slight majority of respondents disagreed. Respondents commented that opposition would favour larger

companies who have the resources to be able to monitor filings. This contrasts with SMEs and lone designers who may not have the funds to do this. It was also stated that a two-month opposition period would be too short for SMEs to be able to monitor any opposable registration. It was also said that opposition periods offer limited support and would risk adding uncertainty on what rights could be relied on during this period. It could also undermine the current speed and low cost of the system.

More respondents were of the view that publishing a design before registration could cause them or their client's problems. However, more respondents thought that publishing a design before registration would not cause problems when filing in other countries. Some respondents thought that publishing a design before registration would cause problems for deferment. Others thought it wouldn't be an issue if applicants can still defer publication. Some respondents also commented that publication could cause validity issues in other jurisdictions.

Overall, there were mixed views on whether an opposition or observation period would be a benefit or a challenge for business. There were also mixed views on what the impact these options would have on business. Instead of an opposition or observation period, several respondents highlighted that they would prefer the IPO to introduce a fast-track or expedited invalidation process. It was suggested that this would be a more cost-effective way of addressing the issue of anti-competitive filings.

Conclusion and next steps

The government recognises that an opposition or observation period could provide a mechanism for dealing with invalid designs. However, respondents overall felt that these processes would bring a significant change to the designs system, adding time, cost and complexity.

The government has removed the proposals for an observation and opposition process. The suggestions made on a fast-track invalidation process will be considered further.

Sections A1, A2, A3 – Combination of options

Introduction of one of the options discussed previously could address the issue of anti-competitive filings. However, combining some or all the options could give more options for businesses to tackle this behaviour. The government sought views on whether several options should be brought forward as a combination of measures.

There were fewer responses to this section, compared to sections A1, A2 and A3. Many respondents felt that it would be useful to have different ways of addressing anti-competitive behaviour. For example, a strengthened and fast-track invalidity proceedings and "preliminary view". This could be used to overturn take-down notices brought because of bad faith filings. Some respondents felt that having multiple ways to address anti-competitive behaviour would not complicate the legal framework. However, others opposed this, with one respondent stating that overlapping routes would introduce unnecessary complexity to the system.

Those that gave a view on combinations, preferred a combination of search and exam and a provision on bad faith. There was very little support for observation and opposition periods. Only a couple of respondents thought that observation and opposition should be in used combination with search and exam. This supports overall views on opposition and observation in section A3, that opposition and observation should not be introduced.

Section A4: Information on the existence of a right in a registered design (DF21 search)

The IPO is legally obliged to provide information on the existence of rights in a registered design. This obligation is set out in section 23 of the Registered Designs Act (RDA) and rule 31 of the Registered Designs Rules (RDR) 2006

Customers can submit a request for this information via form DF21 and the appropriate fee. This type of search is not a full novelty search as it is limited to UK registered designs and is only carried out on specific classes. The number of requests for a search is very low. The IPO therefore wanted to find out how useful the search is to customers to enable a decision on whether it should be retained.

Awareness of the service amongst respondents was low. Only a few respondents had previously used the service, but none of them had used it in the last 5 years. The main reason for using this service was for due diligence and to know if identical designs exist.

Those who were aware of the service saw limited value of the search, compared with using online tools. Several respondents said they perform their own search rather than use the service. Many respondents believed that the search covered UK, EUIPO and global designs. Some suggested that better promotion of the service, or improving it, may attract more users.

Conclusion and next steps

It was evident overall from those who responded that users saw limited value of the search service provided by the IPO. The government will legislate when parliamentary time allows to remove the statutory obligation for providing this service.

Section B: Deferment

Deferment or delaying publication, can allow applicants to keep their design secret whilst preparing for commercialisation. The current deferment process is not defined in law but operates as a matter of practice. The consultation sought views on introducing a specific deferment provision into the RDA to give certainty and greater legal clarity.

Publication of a design at registration can cause commercial difficulties for businesses with long product lead times before they are placed on the market. However, it can be helpful for third parties to know what designs are out there. This minimises the risk of potentially infringing a design once it is registered. The government initially considered that this balance would be best met by a deferment period with an 18 month duration. This is longer than the current deferment period of 12 months. The consultation sought user's views on a 12,18 or 30 month deferment period.

Introducing a formal provision for deferment in law was clearly favoured amongst most respondents. However, there were mixed views on the duration of the deferment period. There was almost an equal split between those who wanted an 18 month deferment period and those who expressed a preference for 30 months.

Reasons given for a 30 month deferment period were that it would bring the UK into line with the EU. It would also reflect the maximum deferment period allowed by the Hague design system. Respondents stated that 30 months would help to reduce complexity. The reason given was that applicants who want to protect their designs in multiple jurisdictions could align their filing strategies. Additionally, a longer deferment period would support businesses whose products have a long lead-time to launch. A few respondents said the risk of inadvertent infringement by third parties would increase if the deferment period was 30 months.

Conclusion and next steps

Although views were mixed on the length of the deferment period, the government found the benefits of a 30 month period persuasive. Bringing the UK in line with the EU and Hague systems would make it easier for UK businesses to protect their products outside the UK. The government will legislate when parliamentary time allows to introduce a statutory 30 month deferment provision.

Commencement of the deferment period and deferment of publication

Currently under UK law, the registrar must publish a design as soon as possible following registration. Current practice is for the deferment period to start at the filing date of the application. The government sought views on its preferred option for the deferment period to start at the earliest date of application. This would be either from filing date or from the priority date, if there is one.

Most respondents agreed with the government's preferred option to start the deferment period from the earliest date. Respondents felt that this would bring harmonisation with the EU and the Hague international design systems. Some explained that this would help to simplify administration of filings by allowing a single end date for deferred applications in the UK and EU. Other comments included that this option would mirror the UK patent

system. Some thought it would also avoid giving undue advantage to applicants who defer filing in the UK until the end of the priority window.

Views were also sought on the extent to which respondents agreed with retaining current practice of deferring both registration and publication. There was consensus amongst respondents to maintain current practice. Respondents felt that this approach maintains the consistency with current UK practice and avoids any confusion for applicants. Some added that this also ensures that the design is not enforceable until it is publicly disclosed.

Conclusion and next steps

It was evident that respondents would like the UK deferment process to be straightforward. Harmonisation with the EU and international design systems will simplify filing strategies. Starting the deferment period at the earliest date will help applicants keep their designs confidential for the same time period regardless of where they first file. When the government introduces a statutory deferment provision, the period will start from the earliest of the priority or the filing date of the application. Current practice of deferring both registration and publication will be maintained.

Information published in respect of a deferred application

At present, no information is published in the UK when an application is deferred as there is no mechanism to do so. This gives applicants complete confidentiality, until the design is registered and published. The government proposed that basic information about a deferred application could be displayed online. This would allow applicants to keep specific details of their design secret but indicate to third partes that a design application has been filed.

Of those that gave a view, there was clear support for the following details to be published when a deferred application is made:

- the name and address of both applicant and representative
- the filing date and priority date, if there is one

Fewer respondents thought that Locarno information should be included. Respondents considered that this would balance confidentiality with giving some notice to third parties about the existence of a design. Some commented that it is also similar to the patent system and helps with legal certainty. Additionally, the information helps prevent infringement while keeping the applicant’s control over disclosure.

Some respondents did have concerns about publishing information, as limited bibliographic information may not necessarily help third parties to avoid conflict. Similar to views given on other aspects of deferment, several respondents highlighted that publishing bibliographic information online would however align UK practice with the EUIPO.

Conclusion and next steps

There was clear evidence that respondents support the publication of some information about a deferred application. The government considers that this would help strike a balance between keeping a design representation confidential, whilst giving third parties notice about the existence of a deferred application.

The government will prescribe the publication of information about a deferred application in legislation. Preparations will then be made to publish online:

- the name and address of the applicant and representative where one is appointed
- the filing date and priority date when an application is deferred

Further consideration will be given to any possible impacts of also publishing Locarno class and sub-class, before deciding whether these should also be published.

Prior use and co-pending applications

UK designs law (Section 7B RDA) contains a prior use provision. This gives limited rights to a third party in relation to a design that is subsequently registered by somebody else. However, the provisions only apply where a third party has acted in good faith. The consultation sought user's views on whether the prior use provision should be extended to include deferred designs to balance applicant and third-party interests. The consultation also sought to understand how extending prior use provisions would impact businesses.

Of those that gave a view on prior use, respondents generally thought it would be useful to extend existing prior use provisions to include deferred designs. Some respondents thought that if the deferment period was extended to 30 months, extending the infringement defence to include non-copying would be reasonable. It was suggested that this would protect businesses who may innocently use a design during the deferment period and protect them against litigation. Some respondents thought strengthening prior use provisions however could make deferment less attractive for designers.

Conclusion and next steps

The government recognises that extending prior use provisions could help to protect third parties who act in good faith when the deferment period is extended to 30 months. Arguably, extending prior use provisions could make deferment a less attractive option. The government recognises this viewpoint, but on balance considers that third parties should be safeguarded against innocent use of a design during the deferment period. When a legislative vehicle becomes available the government will extend prior use provisions to include deferred design applications.

Section C: Graphical user interfaces and animated designs

The last twenty years has seen a digital revolution, with society relying on and interacting with electronic devices to perform everyday functions. The government wants to ensure that the designs system reflects advances in technology and provide clarity for those applicants filing GUIs. This was with the aim of:

- making it easier to file digital/animated designs and
- ensuring the system remains relevant for emerging technologies

Options 0 and 1 – Do nothing, provide further guidance on what can be protected as a design

Due to the lack of relevant case law, it can be difficult to determine what can be protected as an animated or moving design. The government wanted to understand the extent to which respondents typically register animated designs/GUIs and whether the current system is fit for purpose.

Of those who responded, the majority stated that they register animated designs/GUIs, typically between 0-9 animated designs/GUIs in the last 12 months. Several also stated that they had registered over 50. Most respondents felt that the current system for registering animated/GUIs designs is not fit for purpose, commenting that it is less than ideal. Additionally, respondents highlighted that current IPO practice is out of step with the rest of the world. It was said that this leads to confusion and gaps in registered design portfolios. Most respondents were content with the government's proposal to discount option 0 of doing nothing

Most respondents would like additional guidance to clarify what can and cannot be protected as a design. Most respondents would find further guidance helpful on what is considered acceptable as an animation/moving design. This included how a progression is assessed in a sequence of still images representing an animation. Respondents would also like guidance on use of additional descriptions and how the relationship between different screens is assessed in a piece of software or an app.

Several respondents gave examples of animated designs that they would like guidance on in relation to whether they would be considered a single design. These included GUIs with progression or where there is no perceived commonality between views. Some respondents also gave examples of animated designs for which they believe guidance would be helpful. These included drop-down or expanding menus, animated designs that evolve in response to user interaction, and animations where multiple elements move.

It was also mentioned that UK designers put significant creativity and effort into designing animations and graphical user interfaces, which should be worthy of protection in the UK. Most of the responses to this section make clear that stakeholders want clarification on what can and cannot be registered.

Conclusion and next steps

There is clear evidence that respondents want it to be easier for applicants to file animated designs/GUIs. The government considers that maintaining the status quo would not address the issues raised. Since the consultation closed, the UK IPO has already published guidance for applicants seeking to register icons, GUIs, web pages and other digital designs. The Designs Practice Notice (1/26)[3] clarifies examination practice in relation to designs that contain, in particular, any form of animation or movement.

Option 2 - Amend legislation

The government asked for views on whether the legal definition of a design, product or both should be updated. Amending legislation would provide clarity to users of the designs registration system and for the IPO. Any changes would make clear that animations and transitional designs can be registered in their own right. Legal changes could be made in several ways.

These include:

- amending the definition of a design in the RDA
- amending the definition of a product clarifying that 2D designs such as GUIs and animations can be considered as a product in law
- amending both definitions of a product and design in the RDA

The majority of respondents thought that the current definition of a design within the RDA does not meet the needs of applicants who want to protect animated designs and GUIs. Similarly, most respondents also thought that the current definition of a product within the RDA is inadequate. Some stakeholders mentioned that movement or transition not being expressly mentioned leaves room to argue that animations (including in a GUI) are not covered.

The majority of respondents were in support of the UK amending the definition of a product and design, and that the UK should make similar changes to the EU. There was also support among most respondents for extending the rights conferred by a registered design. This would prohibit third parties creating, downloading, sharing or distributing to others any medium or software which records the design for the purposes of enabling a product to be made (similar to Article 19 of Regulation (EU 2024/2822)[4].

3 https://www.gov.uk/government/publications/designs-practice-notice-dpn-0126-practice-in-respect-of-graphic-symbolsicons-graphicalweb-user-interfaces-and-animated-designs

4 https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202402822

Conclusion and next steps

The government recognises that it is important to ensure that legislation adequately protects emerging forms of designs, including virtual and animated designs. The government will legislate when parliamentary time allows to amend the definition of both a design and product. The rights in a registered design to prohibit creating, downloading, sharing or distributing to others any medium or software which records the design will also be extended. The government will further consider the extent to which these legal changes should be similar to corresponding EU provisions.

Option 3 - Allow users of the designs registration system to file different file formats

The consultation sought views on whether the IPO should increase the range of acceptable file formats that applicants could file. This would allow designs to be represented more fully than is possible through a series of still images. Video formats would make presenting an animated design easier than by way of snapshots with the whole design shown as it would in use. 3D computer aided design files could make it easier to show non-animated designs in its entirety.

The majority of respondents thought that the IPO should accept file formats that show movement and animation, and computer aided design (CAD) file formats. Of the suggested file types that applicants could use to file, MP4 and MPEG were the most popular. There was a similar preference for the remaining file types of OBJ, STL, X3D, DWG, WMV, WebM, with SWF being slightly less popular.

Several respondents typically felt that claiming priority, displaying a registered design on the registration certificate and certified copies would be problematic for video represented designs. Visual disclaimers were also considered to be problematic, while fewer respondents thought that displaying the registered design on the register would be problematic. Respondents similarly felt that claiming priority, displaying a registered design on the registration certificate and certified copies would be problematic for CAD represented designs. For a CAD represented design, respondents felt that visual disclaimers and displaying the registered design would be less problematic.

It was felt that by allowing applicants to file a sequence of still images alongside a video or CAD file, this could help mitigate potential issues with claiming priority. Also, providing an additional description alongside stills or videos would allow applicants to demonstrate the nature of the design. This could also assist with claiming priority in different countries where these file formats are not allowed. Some respondents felt that these issues shouldn’t stop the UK allowing applicants to using video or CAD formats.

There were some concerns that allowing video or CAD files may add complexity and narrow the scope of protection compared to more traditional representations. Some highlighted that it may also be costly for applicants to avoid being limited to the colours or tones used in the video or CAD representation. On certified copies and registration certificates, some respondents suggested that the document could link to the register or online website with the digital representation. Some also suggested that the UK IPO implement something similar to the ‘dynamic views’ feature in the EUIPO’s system whereby software selects 2D stills from a 3D design to display on the designs register.

Lastly, there was a roughly equal number of respondents who either agreed that there aren't any significant equality impacts from these changes or didn't know. Only a few respondents disagreed. The government recognises that the design system needs to be modernised so that animated designs/GUIs can be adequately protected.

Conclusion and next steps

There is evidence that allowing more file formats will help to fully represent designs where movement or a transition is integral to the design. Although there were some concerns that representing a design using a video may narrow the scope of protection, multiple static images can be used instead. Bringing the UK closer to the EU and other jurisdictions which already allow a wider range of file formats, will also help to address concerns over claiming priority. The government will consider technical solutions that would allow video file formats showing movement and animation, and 3D file formats, as part of the IPO's digital transformation programme.

Option 4 - Publication of an additional description filed alongside stills/video clips

Currently under UK law, the rights of a design are defined by the representations and any disclaimer which form the registration. Applicants can file an optional description which is not published online. Once a design is registered, an optional description is only available to third parties who request a copy of the application. The consultation sought views on publishing the optional description. This means applicants could provide a description, for example to explain the transition from one still to the next. Publishing this online would help provide clarity to third parties on the scope of protection.

There was a clear consensus that respondents would like to file a description to describe an animation or transition and for the description to be published. Respondents were clearly in favour of the scope of protection of a design being assessed in light of the optional description. A considerable number of stakeholders felt it would be easier to understand the register if a description was allowed when filing an application and carrying out due diligence. Several respondents thought that filing in the UK based on a foreign priority or filing abroad based on a UK priority would be easier. Others thought it would be harder in both scenarios.

Conclusion and next steps

The government recognises that respondents would find publication online of a description explaining an animation or transition useful. Since the consultation, the IPO has published guidance on practice where designs incorporate animation or movement[5]. The guidance covers how a disclaimer could be used to explain the nature of a transition. Once a design is registered, this information would be clear to third parties using the register. The government will seek to make arrangements for publishing an optional description online as part of the IPO's digital transformation programme.

5 https://www.gov.uk/government/publications/designs-practice-notice-dpn-0126-practice-in-respect-of-graphic-symbolsicons-graphicalweb-user-interfaces-and-animated-designs/designs-practice-notice-dpn-0126-practice-in-respect-of-graphic-symbolsicons-graphicalweb-user-interfaces-and-animated-designs

Combining options

The options of additional guidance, amending legal definitions, increasing file formats and publishing a description as part of the registration could be introduced alone or in combination. The consultation sought views on how these options could be introduced. Amending either the legal definition of a design only or a product only had limited support, compared to amending both legal definitions.

Responses confirmed that users would like the government to make several changes to improve protection of emerging forms of designs. Respondents said they would like a combination of:

- increased file formats
- additional guidance
- amendments to the definition of a design and product
- for a description to be published as part of the registration

This is so that designs that incorporate animation and movement can be adequately protected.

Section D: Computer-generated designs

Registered design law and UK unregistered design right (UK UDR) law include provisions relating to computer-generated designs. These apply where a design is generated by a computer in circumstances where there is no human author or designer, respectively. In those cases, the person who made the necessary arrangements for the creation of the design is treated as the author or designer. There is no equivalent provision in supplementary unregistered design (SUD) law.

In light of recent developments in AI, the government considered whether the existing legal framework for computer-generated designs needed amending. In stakeholder engagement before the consultation, concerns were raised about providing protection for designs without a human author. It was suggested that this could make it more difficult for human-created designs to obtain protection. Concerns were also raised that there is limited evidence that the existing provisions are used or deliver clear benefits. On this basis, the consultation set out the government's preferred option to remove the existing provisions (option 2).

The consultation also presented options to:

- maintain existing provisions in law and potentially introduce an equivalent provision into SUD law (option 0)

- reform protection for computer-generated designs without a human author (option 1)

In addition, views were sought on whether the IPO should collect data on the use of AI in the creation of registered designs (option 3).

Many respondents supported a consistent approach in principle across registered designs, UK UDRs and SUDs. However, views were mixed as to whether the existing computer-generated designs provisions should be removed. The majority opposed removal, although significant numbers supported removal or expressed uncertainty.

Respondents who opposed removal frequently indicated that the provisions provide legal certainty. They noted that designers are likely to rely increasingly on AI, making it more difficult to distinguish between computer-assisted and computer-generated designs. While most respondents indicated they had not knowingly relied on the provisions, several of those opposing removal cautioned that designers may do so unknowingly. Some warned that removing the provisions could increase litigation and evidential burdens. Parties may need to demonstrate the extent of human involvement, for example by retaining AI prompts or instructions. It was commented that difficulties in evidencing human involvement could reduce the ability of designers to enforce rights. Those rights would be currently enforceable but may be harder to enforce if the provisions are removed.

Some respondents also suggested it was appropriate for computer-generated designs without a human author to benefit from protection. Potential benefits cited included encouraging innovation and investment in AI design tools.

Respondents supporting removal commented that AI enables the rapid generation of large volumes of designs. They considered that removal would reduce the associated risks of system flooding and design troll behaviour that could crowd out human-generated designs. Several respondents also emphasised that design protection is

intended to incentivise or reward human creative effort. They considered that there is therefore no persuasive rationale for protecting computer-generated designs without a human author.

There was no consensus as to whether a conflict exists between the UK UDR provision and the requirement for UK UDRs to be original. However, a number of respondents considered that such a conflict does exist and cited this as a reason for supporting removal of the provisions.

Some respondents who expressed uncertainty considered that policy change on computer-generated designs would be premature. This was because the impact of AI on the design framework remains unclear. Others argued that the question of whether computer-generated designs should be protected should not be addressed in isolation. They considered that it should form part of a wider review of related issues across intellectual property rights.

Views were again mixed as to whether information should be collected on the use of AI in the creation of registered designs. Some respondents suggested this could provide useful evidence, particularly if protection was excluded for computer-generated designs without a human author. Others opposed data collection, citing concerns about practicality, confidentiality and potential incompatibility with the Hague system.

Conclusion and next steps

Responses to the consultation demonstrated a range of views on protecting computer-generated designs and on collecting information about AI use in creating registered designs. While the consultation set out the government's preference to remove the existing provisions, many respondents supported their retention.

In light of these views, and without evidence at this stage that the existing provisions are causing harm, the government will undertake further work. It will then determine the most appropriate way forward. This will include gathering and monitoring evidence on the use of AI in the design industry. It will also include reviewing approaches being considered in relation to other intellectual property rights and engaging further with stakeholders and international partners. In the meantime, the existing legal framework for computer-generated designs will be maintained.

Section E: Miscellaneous changes

In the government's review of the UK designs system, several miscellaneous issues were identified which if addressed, could improve the system. The government sought views on several proposals. These could provide greater consistency across registered IP rights improve the clarity of designs legislation and streamline designs examination procedures.

Matter prohibited by law contained in a design application

Designs legislation does not list all emblems which should be refused if present in a design application. The government proposed introducing a provision similar to section 3(4) of the Trade Marks Act (TMA) 1994 into the RDA 1949. This would provide the registrar with a clear legal basis to object to the use of an emblem, symbol or matter which is prohibited elsewhere in legislation.

The majority of respondents agreed that the government should introduce an express provision into the RDA. This will provide a legal basis to object to an application if it contains matter that is prohibited in law. Only three respondents gave reasons for disagreeing with the proposal to introduce such a provision in designs legislation. Reasons given included a desire to keep the system simple so that applicants don't require legal representation.

Conclusion and next steps

There was agreement for the government to introduce a clearer legal basis for the registrar to object to an emblem, symbol or matter that is prohibited in law. This will allow the registrar to object, even when legislation elsewhere is updated to bring in new prohibitions without needing to amend designs law. The government will legislate when parliamentary time allows to introduce a provision that will allow the registrar to object to matter prohibited in law contained in a design application.

Harmonising time periods for response to an official action

Designs law currently sets out the sequencing of when an objection to a representation of a design and a substantive or formalities objection can be made. The time periods for the different objections are also different. This results in applicants or their legal representatives receiving multiple office actions from the IPO. The government proposed amending the Registered Designs Rules 2006 to allow objections to be made at the same time. Also proposed was harmonisation of the time limits for response at 2 months. This would simplify administration procedures for applicants and the IPO.

The majority of respondents agree that the registrar should be able to respond to substantive and formalities objections in the same examination report. Most respondents also agreed that the time limit for responding to both types of objections should be harmonised at two months. Several respondents were concerned that two months is too short to deal with substantive objections. Some suggested that three months would be preferable. Some expressed that with the upsurge in design applications, the IPO may not have the capacity to deal with all matters in two months.

Conclusion and next steps

On the basis that users value the speed of the design registration process, the government will seek to harmonise the time limit for responding to objections at two months. The government will also seek to amend the rules so that substantive and formalities objections can be raised in the same examination report. To address concerns that two months may be too short for substantive objections, the government will ensure that guidance on seeking extensions is readily available.

Removing the ability to file specimens

Although UK design law allows physical specimens to be filed alongside a representation of a design, in practice, very few have been filed in recent years. The government proposed removing the legal provisions which allows physical specimens to be filed and sought views on this change.

The majority of respondents agreed that the filing of a physical specimen as part of a registered design application could be disallowed. Among those that disagreed, a couple of respondents stated that they like having the option. A few respondents thought that only a physical sample can properly represent their design. Several respondents gave examples of circumstances where a design is best represented by a specimen. These included when texture is central, or in certain areas of work such as geology, chemistry. One respondent expressed that they would not support the disallowing of specimens until the IPO allows submission of 3D digital designs and models. One respondent recognised that it would be difficult for the IPO to store specimens and for the public to view them. However, they felt that the filing of specimens is probably rare, so it would do no harm to maintain the provision.

Conclusion and next steps

The government appreciates that some respondents like having the option of filing a physical specimen. However, the majority supported removal of the provision which is very rarely used in practice. The government will legislate when parliamentary time allows to remove the statutory provision which allows applicants to file a physical specimen.

Provision to allow the registrar to share an application before publication

Design law requires the registrar to refuse designs that contain protected coats of arms, heraldic devices, or other restricted emblems. In practice, however, it is extremely difficult for the IPO to meet its obligations in this respect. There is no official searchable register of coats of arms, and armorial bearings are issued as blazons which consist of technical textual descriptions rather than fixed images.

To ensure the registrar can properly discharge these statutory duties, the government proposed the introduction of a legislative provision allowing the IPO to share design applications before publication with competent external authorities for verification purposes. This would enable consultation with relevant bodies responsible for protected emblems.

The majority of respondents agreed that the registrar should be allowed to share an application before publication. However, amongst those answering ‘yes’, concerns were

raised about confidentiality and the impact on novelty. There were also concerns about the risk to high value designs and designers if information is shared.

Conclusion and next steps

There was clear support to allow the registrar to share a designs application in specific circumstances during the examination process. However, the government recognises the concerns raised about confidentiality and will consider what safeguards could be put in place to protect applicants. The government will legislate when parliamentary time allows to introduce a provision which allows the registrar to share a designs application with appropriate bodies for the purposes of carrying out statutory duties.

Powers to make a late objection

Trade mark legislation (section 40(1) of the TMA 1994) gives the registrar the power to revisit an accepted mark and raise an objection. A late objection can be raised if, by the end of the opposition period, new information comes to light that is relevant to the original acceptance. No equivalent mechanism exists for designs, as there is currently no opposition period in the designs legal framework.

In Section A of the consultation, the government sought views on whether an opposition or observation period should be introduced for designs. If such a period were implemented for designs, it may also be appropriate to introduce corresponding provisions allowing the registrar to raise late objections. This would enable the registrar to act on relevant observations submitted by third parties after initial acceptance.

Most respondents agreed that the registrar should have the power to raise late objections. However, comments raised concerns about any proposed opposition period having a certain endpoint, after which objections cannot be raised. Another suggested an ‘observation period’ rather than an opposition period. Others pointed out that the invalidity process already provides a mechanism for this. There were also concerns that the introduction of an opposition period adds unnecessary complexity to the application process and may affect efficiency.

Conclusion and next steps

The government has decided not to introduce an opposition or observation period into the designs examination process. As a result, the government will remove the proposal to give the registrar the power to raise a late objection.

Warrant of validity and liability

The registrar cannot guarantee the validity of any registered IP right. For this reason, section 116 of the Patents Act 1977 and section 70 of the TMA 1994 include provisions that exclude liability for official acts. These provisions make clear that the registrar does not warrant the validity of granted patents or trade marks. They also limit the registrar’s and officials’ liability in relation to examinations carried out under domestic law or international agreements.

The RDA 1949 contains no equivalent provision. There appears to be no justification for official acts relating to designs to carry greater potential liability than those concerning other registered rights. To ensure consistency across registered IP systems, the

government proposed the introduction of comparable provisions for registered designs. The majority of respondents agreed that comparable provisions of validity and liability should be introduced for registered designs.

Conclusion and next steps

There wasn't any evidence provided to suggest that design law shouldn't have provision which limits the liability of the registrar and does not guarantee the validity of registered designs. The government will legislate when parliamentary time allows to introduce provisions which makes clear that the registrar does not warrant the validity of registered designs, and limits liability of the registrar and officials.

Rectification of the register

Under Section 20 of the RDA 1949, any application for rectification must be made to the court. This is because the registrar does not have the authority to amend the register. The government proposed the introduction of the option for rectification requests to be submitted either to the registrar or to the court. This would make the rectification process more accessible and may be particularly suitable where the request is unopposed or where both parties agree.

The majority of respondents agreed that the registrar should have the power to rectify the designs register. There were some additional comments made regarding possible safeguards and limiting in a similar way to rectification proceedings for trade marks. Some suggested that rectification should not allow alteration of a design representation, but deal with clerical errors and changes of ownership, for example. They also suggested the decision should be appealable.

Conclusion and next steps

There was clear evidence that respondents supported the proposal to allow rectification requests to be dealt with at the IPO. This would allow clerical errors, entitlement and ownership requests to be dealt with more quickly and at a lower cost, compared to applying to the court. The government will legislate when parliamentary time allows to give the registrar the power to rectify the designs register. The government will also further consider the extent to which the power should be limited to dealing only with clerical errors, entitlement and ownership.

Updating provisions relating to inspection of designs

Sections 22 and 17 of the RDA set out the registrar's duties regarding the register of designs and the inspection of registered designs. The wording of these provisions reflects a time before such information was available online. The government proposed updating the Act to reflect that details of currently registered designs should be accessible online. It was also proposed that the journal should provide a record of information about designs that have been registered.

The majority of respondents agreed that details of currently registered designs should become available online. A significant majority of respondents stated that access to

historical designs is important to them. Those who provided a reason cited access to historical designs records would enable the public to research, locate and track prior art.

Others felt that historical design records are important for determining third party rights and providing access to justice, which is in the public interest. Some respondents recognised that such a body of records may be burdensome or prohibitively costly to maintain. A hybrid version that either cuts off after a certain time or is by request only was also suggested.

Some respondents stated that access to historical records would be useful. However, they felt that the true design corpus is often found in the marketplace rather than in historical records.

Conclusion and next steps

It was evident that there is a need for information about current registered designs to be easily accessible online. Information about historical designs no longer in force would also be beneficial for research and understanding prior art. The government will legislate when parliamentary time allows to clarify that information about currently registered designs should be viewable online. Historical information about designs will be recorded in the journal. The government will also seek to introduce an online document inspection service for designs as part of its digital transformation programme, as previously announced.

Power to direct the use of forms

Section 31A RDA gives the registrar power to prescribe forms for three specific purposes: applying for registration, filing representations or specimens, and submitting other documents to the UK IPO. However, some design-related processes fall outside these categories. The government proposed expanding the registrar's power to prescribe forms.

The registrar could direct forms for any purpose connected with the registration of a design or with any other designs proceeding. This would enable the registrar to update and improve designs forms more quickly and efficiently. It would also align design law with the existing provisions for trade marks and patents, where the registrar already has broader powers to prescribe forms.

Of those who gave a view, almost all respondents agreed that the registrar should be able to direct forms for any purpose relating to the registration of a design or for any other design proceeding. The single respondent who answered 'no' commented that any implementation of a revised system should be entirely digitally mediated. However, they agreed that a broad provision to allow the registrar to change the detail of online interactive forms is a good idea.

Conclusion and next steps

There was no evidence provided which raised any issues or concerns with broadening the power to direct the use of forms. The government will amend legislation when parliamentary time allows to broaden the registrar's power to direct forms for any purpose relating to the registration of a design and any other designs proceedings.

Priority claims

To make a priority claim for a UK design application, applicants must currently provide priority details on the application form. They must also either make the required declaration or submit a certified copy of the priority application (the priority document). The declaration confirms that the design disclosed in the priority document is identical to the corresponding design in the UK application. Where a priority document is submitted, examiners compare it with the application and may object if they doubt the claim's validity.

The consultation explored whether to change this approach. The government proposed simplifying the system by requiring only priority claim details. Alternatively, it proposed requiring both priority claim details and a priority document. This would apply once the IPO has joined the World Intellectual Property Organization (WIPO) Digital Access Service (DAS) for designs. Under the latter approach, priority documents would not be routinely inspected but would be available for public inspection.

Most respondents favoured this latter approach. Respondents noted that making priority documents available would enable third parties to assess the validity of priority claims. Requiring priority claim details only was the second most preferred option, followed by retaining the current system.

Respondents were also asked if they supported the IPO being able to request a copy of the priority document in some circumstances. This would apply where searching is introduced and the validity of the priority claim is relevant to the novelty or individual character of the design. The vast majority were supportive, but a minority raised concerns that this could delay delivery of the search report.

Several respondents expressed general support for the IPO joining WIPO DAS for designs. Some emphasised the importance of participation as both a depositing and accessing office.

Conclusion and next steps

Most respondents favoured requiring both priority claim details and a priority document once the IPO has joined WIPO DAS for designs. However, the government considers that it remains unclear whether requiring a priority document in all cases is justified. The benefits of such an approach would need to warrant the additional burden on applicants, including those who are unrepresented.

The government intends to require priority claim details in all cases. It will consider further whether a priority document should be mandatory or optional once the IPO has joined WIPO DAS for designs.

Where a priority document is not provided and a search is undertaken, the IPO will in some circumstances request it. This will apply if the validity of the priority claim is relevant to the novelty or individual character of the design.

Section F: Simplification of unregistered designs and overlap with copyright

The designs framework has evolved over time, resulting in a patchwork of overlapping rights, which can be complex and difficult for designers to understand. The consultation sought views on various options to simplify the UK designs framework, including the overlap with copyright.

The majority of respondents agreed that the government should discount the options of:

- abolishing supplementary unregistered designs (SUD) and retain UK unregistered design right (UK UDR)
- abolishing unregistered designs and extend copyright
- keeping the system the same and provide improved guidance

Some respondents thought that the government should further consider abolishing SUD and retaining UK UDR. Reasons given included that this would achieve the government's aims of a balanced and simplified IP system whilst maintaining an incentive to register designs.

A few respondents considered that the UK would be in breach of Article 247.1 of the UK-EU Trade Cooperation Agreement[6] if it abolished SUD protection. Only two respondents thought that the government should further consider abolishing unregistered designs and extending copyright protection with no reasons given.

Several respondents thought the government should keep the designs system the same and provide improved guidance. Some respondents qualified their response to say that was preferable to any proposals that would reduce the current scope of design protection. Several respondents agreed that the design framework is complex, but that the diversity of the different forms of protection gives designers different options. However, some highlighted that this makes it difficult for designers and SMEs to understand IP protection.

Conclusion and next steps

The government recognises that some respondents would like the government to maintain the current approach to unregistered designs. However, this would not achieve the government's objective of simplifying the complex designs regime. The government has decided not to pursue the above options. The government however will change and improve guidance as the measures committed to in this response are implemented.

Options

The consultation sought views on two options to simplify unregistered design protection alongside doing nothing and maintaining the current system (option 0). Option 1 proposed retaining SUD protection and abolishing design right (UK UDR), to offer maximum simplification of the designs system. Option 2 proposed consolidating existing

6 https://assets.publishing.service.gov.uk/media/608ae0c0d3bf7f0136332887/TS_8.2021_UK_EU_EAEC_Trade_and_Cooperation_Agreement.pdf

unregistered designs to offer maximum protection, by having a single unregistered designs framework. The consultation suggested that the framework could be consolidated by:

- harmonising certain provisions, but keeping two separate rights e.g. retaining SUD and design right legislation but harmonising term and qualification requirements
- creating a single consolidated right which is harmonised in some respects, but has different provisions applying to the protection of features currently protected by SUD and those protected by UK UDR
- creating a fully consolidated right which protects both aesthetic and functional elements and to which the same legal provisions apply

Of those who gave a view, maximum protection was more important to most respondents, over maximum simplification. Those that opted for maximum protection value the flexibility that different forms of protection offer designers. Some cautioned that any simplification should not lead to any loss of protection. Some respondents highlighted the issues that designers and SMEs experience with a complex system. These included difficulties in understanding their IP protection, proving ownership and enforcing their rights.

The proposal to consolidate the unregistered designs framework (option 2) received most support, with more respondents ranking it as their most preferred option. Option 0 was moderately supported overall, and a higher proportion of respondents ranked it as their second preference. Option 1 was least preferred.

Those that favoured option 1 wanted to see meaningful simplification of the designs system, with two respondents wanting alignment with the EU. It was evident in responses from those who were opposed to option 1, that they felt very strongly that UK UDR should not be abolished. Several respondents highlighted how valuable UK UDR is to designers and businesses, commenting that abolishing UK UDR would lead to an unacceptable loss of protection. Some examples were given of the benefits UK UDR can be in litigation. This included where claimants have been unsuccessful in a claim of registered design infringement, but successful on design right infringement. One such example provided was Kohler Mira Ltd v Bristan Group Ltd [2014] EWHC 1931 (IPEC)[7].

Some respondents raised concerns about option 2. One recognised the difficulty of amalgamation and another respondent warned that consolidation could result in over protection. Those that preferred option 2 however tended to feel strongly that maximum protection should be prioritised so that there isn't a loss of rights. It was evident that the existing different protections offered by existing types of unregistered designs are important to sectors, such as architecture.

The government proposed that harmonising term of protection and qualification requirements across unregistered designs would be desirable as a minimum to remove some complexity. For qualification requirements, the consultation proposed that an unregistered design should be created when first disclosed to the public. This would be more easily understood by users of the designs system. Most respondents thought that harmonising qualification requirements would make the system easier to use.

7 https://uk.westlaw.com/Document/IF0EB5200F7B211E397E7DD088AAB09BF/View/FullText.html

Respondents also agreed that a single qualification requirement should apply to both the appearance and shape or configuration aspects of a design.

One respondent felt that unregistered design protection should start from when a design is first made for sale, rather than subsistence being linked to disclosure. They said that this could leave designs unprotected pre-launch. Some respondents also suggested that between SUD and UK UDR, it should be a single event from where protection commences from for simplicity. If a design qualified for SUD and UK UDR protection, it would start from that single event date. This would be instead of UK UDR starting at the end of the calendar year.

For term of protection, the government's preferred option was a 5-year term. This would increase the term of protection for SUD and align with the exclusive period of protection available for UK UDR. Almost all respondents thought that harmonising term of protection would make the designs system easier to use. The majority of respondents expressed a preference for a term of 10 years. A similar number of respondents expressed a preference for 3, 5 or 5 years plus 5 years licence of right (LOR). A couple of respondents thought that the term of protection should be 20-25 years. Some that expressed a preference for 3 years, thought that this duration would provide sufficient time for designers to commercialise their creations. They also felt it would be good to be consistent with the EU term of protection for EU unregistered designs. On the other hand, those who preferred a longer term felt that the 3-year term was too short. Some stated that in litigation proceedings, the unregistered design concerned will have often expired before the judgement.

Some respondents who expressed a preference for a 5-year term plus 5 years LOR, thought the LOR period discourages infringement by competitors. They also felt it helps to encourage rights holders to settle disputes. Those that opted for 10 years, expressed that 3 years was too short. Some said that 10 years was a better period due to time required for litigation, and for rewarding creativity.

Some mentioned that TRIPs requires a minimum of 10 years protection for designs. A couple of respondents warned that extending the term of protection from 3 years to a longer term may deter people from registering their designs.

Conclusion and next steps

The government recognises that maximum protection is important to respondents. The government also acknowledges concerns that simplifying the unregistered designs system could remove some elements of protection. The government understands how valuable UK UDR is to users of the designs system, and how it is relied upon in litigation. The government will remove the proposal to abolish UK UDR and retain SUD (option 1). The government will continue to consider the options for simplifying the unregistered designs framework (option 2). As a minimum, the government will seek to harmonise qualification requirements and term of protection. There was good support for harmonising the term of protection at 10 years. However, this would be a large increase in term for SUD which could deter people from registering their designs. The government will continue to consider the appropriate duration for a harmonised term, in light of its likely economic impacts, before making any changes.

Other legal considerations

As well as term of protection and qualification requirements, there are other legal differences between SUD and UK UDR, which could be harmonised to further simplify the system. The consultation sought views on the extent to which harmonisation of unregistered designs is desirable.

Consolidation of the unregistered designs framework could involve harmonising some legal provisions but keeping two separate regimes. For example, this option could retain the existing, separate, UK UDR and SUD legislation but harmonise the legal provisions for term and qualification requirements. Consolidation could also involve the creation of a single right, which is harmonised in some respects, but where different provisions apply to the aesthetic and shape or configuration of a design. Alternatively, consolidation could be achieved through the creation of a consolidated right. This would protect both aesthetic and shape or configuration elements, with the same legal provisions applying to each.

More respondents favoured a single right with the same provisions applying to both aesthetic and shape or configuration of a design, over harmonising some provisions but keeping separate regimes. This could arguably achieve the most simplification in some respects by having a single unregistered right. Some cautioned against creating a single right. Some respondents warned that this could cause uncertainty with litigation, which is not ideal for the court system, designers or users of the system. One respondent who saw merit in the creation of one single unregistered design right warned that a comprehensive risk assessment be carried out.

Harmonising some legal provisions but keeping separate regimes, was second most preferred. As well as harmonising term of protection and qualification requirements, respondents also suggested the acts of infringement and defences, and ownership requirements could be harmonised. Those in favour of keeping separate regimes considered that this option would retain the breadth of protection which is a strength of the UK system. This option would also give legal certainty by preserving existing case-law.

If a simpler consolidated unregistered design system were to be achieved by creating a single consolidated right, this could be implemented by applying the supplementary unregistered design provisions. For example, provisions relating to proprietorship/ ownership of a design, the rights conferred by a design, and infringement provisions could be harmonised using this approach. If a new consolidated unregistered design was to be introduced, most respondents agreed that the SUD legal framework should apply. Some respondents who preferred keeping separate regimes, were also of the view that if consolidation is preferred then the SUD legal framework is a better starting point.

Of those that gave a view, almost all respondents agreed that the repair/spare parts provisions should be harmonised. However, there were mixed views on what provisions should be used. A similar number of respondents thought the registered designs or SUD provisions should be used and less opted for the UK unregistered design right provisions. Most of the respondents who opted for using the SUD provisions, consider that the existing SUD provisions should be modified. It was suggested that the modification should align with the interpretation in Motoren Werke Aktiengesellschaft v Round and Metal Ltd and another[8]. It was suggested that this would provide a level playing field for the UK automotive sector with the EU.

8 https://www.bailii.org/ew/cases/EWHC/Patents/2012/2099.html

Most respondents did not think that design protection for a component part of a complex product should be limited to features which are visible in normal use. The majority of respondents did not think that design protection for any product should be limited to features which are visible in normal use. A few respondents referred to Ferrero and CSPA's Application, (1978) RPC 473. This case stated that internal features of a product that are visible at the point of sale may form part of the appeal to the user even if they are not visible during 'normal use'. A couple of respondents also commented that this is now explicit in EU law (Recital 16 of the Re-Cast EU Directive). Some respondents stated that they would prefer to see alignment with the EU.

Most respondents thought that it is important to protect the internal configuration of a product. A couple of respondents were neutral on this as it would depend on the type of product. One respondent expressed that the configuration of a product, even if not visible, could have been conceived using skilful design which should be valued. One respondent mentioned a specific sector where registered design protection is sought to protect internal configurations, such as vehicles.

Several respondents suggested elements of the design right regime which should be used in a consolidated right, rather than going fully with the SUD regime. Some respondents thought that making a design document should remain an infringing act. It was suggested that this could be expanded to include uploading and distributing design documents electronically, in line with Art 16(d) of the Re-Cast EU Directive. Several respondents also thought that the existing secondary infringement provision in s.227(1) CDPA should be retained to protect innocent dealers. Introducing an innocent infringement exception was also suggested.

Conclusion and next steps

The government recognises the caution respondents have expressed on simplification and consolidation of unregistered designs. The risks associated with creation of a new single unregistered design is also recognised. The government will further consider the impacts of harmonising repair/spare parts provisions, acts of infringement and defences, and visibility in use before making any legal changes.

Consolidation

It can be difficult for users of the system to navigate the different pieces of designs legislation and understand the interactions between them. The government sought views on the problems that this causes users and whether designs law should be consolidated into a single piece of legislation.

Most respondents find the number of legal instruments relating to design law confusing. A few legal firms said that practitioners do not find the law complex, but their clients do. Almost all respondents who answered the question on consolidating designs law, agree that the government should consider consolidating designs law into a single piece of legislation.

There were concerns raised about consolidation, as replacing the existing legislation with a new single piece of legislation could risk losing the legal certainty and established case-law in the current regime. It was recognised however that a single piece of legislation covering all aspects of registered and unregistered rights would make interpretation

and legal analysis more straightforward. Respondents do not want simplification and consolidation to come at the expense of losing breadth of protection.

Conclusion and next steps

The government recognises that consolidating existing legal instruments covering registered and unregistered designs into a single consolidated piece of legislation. This could help users to navigate the designs system more easily.

The government will explore this further once legislation has been made to achieve the policy changes in in this response. It can be difficult to ensure that the new statute accurately reflects the true effect of the law when consolidating, and policy changes need to be implemented first.

Overlap with Copyright

Copyright protects original artistic works, including graphic works, photographs, sculptures, collages, works of architecture, and works of artistic craftsmanship (s 4, Copyright, Designs and Patents Act 1988, CDPA).

There is an overlap between design and copyright protection. This means that some products will be protected by copyright (as artistic works) as well as by one or more design rights. Copyright provides longer and, in some ways, more extensive protection compared to other rights. This raises questions as to whether the current application of copyright to industrial design products is proportionate.

In addition, there is some uncertainty about the degree to which copyright and design protection overlaps. EU case law (including the Cofemel and Brompton Bicycle judgments) has taken an expansive view, considering that many industrial designs will benefit from copyright, as long as they are sufficiently original. On the other hand, the CDPA requires that a work must be a work of artistic craftsmanship in order to qualify. This is as well as being original. This requirement was confirmed in the WaterRower ruling[9].

The relationship between copyright and design protection needs to be sufficiently clear and provide the right balance between creators and designers of original products on the one hand, and users and follow-on innovators on the other.

The consultation sought views on whether there remains confusion about the extent to which copyright applies to products protected by design rights. Views were also sought on the following options:

Option 3 - make no changes to copyright legislation. This would preserve the current approach to protection and leave interpretation to the courts

Option 4 - amend copyright legislation in relation to design products. This could be done in various ways, including redefining or removing protection for “works of artistic craftsmanship”, and changing the approach to originality

9 https://caselaw.nationalarchives.gov.uk/ewhc/ipec/2024/2806?query=IPEC+judgment+%5B2024%5D+EWHC+2806+%28IPEC%29

Option 5 – make no changes to the overall approach but update the exceptions framework. This could better align exceptions across designs and copyright or target them to address specific issues

The government's preferred option at consultation stage was to make no changes to the copyright system and to allow further clarity to develop through case law. There were mixed views amongst those that expressed a preference about the options presented. Only two respondents opted for none of these, with options 3, 4 and 5 having similar levels of support.

Of those who preferred option 3, the main reason given was that case law is still developing. Respondents felt that legislative intervention was premature or unnecessary, given the ability of the courts to provide greater clarity. However, most respondents to the consultation said that confusion still exists about items protected by copyright and design rights. This was the case even following recent case law, and many advocated legislative change. Several noted that the position will remain unclear following the WaterRower ruling[10] until either a change in the law or until the higher courts rule on similar issues. Some respondents warned that there will continue to be cases relying on CJEU case law in Cofemel[11] that seek to expand the scope of copyright protection.

One way to provide further clarity in the copyright framework would be to amend the CDPA (option 4). This could be done through redefining the approach to originality (s1 CDPA), or artistic craftsmanship (s4 CDPA), or both. Alternatively, works of artistic craftsmanship could be excluded from copyright protection altogether.

Several respondents put forward proposals to amend the CDPA. Some considered that s4(1) CDPA should be amended to explicitly define the closed list of types of works which are eligible for copyright protection. One reason given for this was to remove any ongoing interpretive effects of the CJEU Cofemel and Brompton Bicycle[12] cases.

On the other hand, some respondents questioned whether the closed list approach of s4(1) (where only specific types of work are eligible for protection) should continue. Others questioned whether we should adopt an open list approach (where any original work is eligible for protection) in line with EU law.

Some respondents would like the confusion over the meaning and scope of copyright protection for applied arts to be addressed. They called for greater clarity over how 'technical' or 'functional' a work of applied art must be before it is deemed to lack originality.

Suggestions were also made to more clearly define "works of artistic craftsmanship". These included clearly excluding functional works that are not appreciated as works of art, and clarifying whether mass-produced articles are works of artistic craftsmanship.

The overlap between copyright and designs also raises questions over the types of use that are restricted or permitted by each form of protection. For example, design law has certain exceptions not present in copyright law, such as to support the repair of a

10 https://caselaw.nationalarchives.gov.uk/ewhc/ipec/2024/2806?query=IPEC+judgment+%5B2024%5D+EWHC+2806+%28IPEC%29
11 https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62017CJ0683
12 https://infocuria.curia.europa.eu/tabs/document/C/2018/C-0833-18-00000000RP-01-P-01/ARRET/227305-EN-1-html

product. The government sought further suggestions on exceptions in the copyright framework which could be added, amended or removed to provide more balance in the system.

Possible options included:

- reintroducing a copyright exception for industrially manufactured items, providing a shorter term of copyright protection for items where more than a certain number are made
- introducing a spare parts exception to copyright, to harmonise with the equivalent designs exceptions
- amend section 62 CDPA (the so-called panorama exception) which would allow works of artistic craftsmanship to be represented in new artistic works, such as photographs

Several respondents suggested considering the reintroduction of a provision similar to the repealed s52 CDPA. This provision reduced copyright duration in industrially manufactured articles, to bring the copyright term of protection into line with the term for registered designs. This would address concerns from some who argued that the duration of copyright protection in such articles is excessive.

Several respondents proposed other changes to copyright exceptions. Some proposed applying the defences in design legislation (such as repair/spare parts exceptions) to industrial articles protected by copyright. Others proposed a wider harmonisation of exceptions across IP rights. A further suggestion was made to introduce an exception to designs law for comment, critique or parody, in line with recent EU changes.

Other proposals included a suggestion that incidental inclusion (s31 CDPA) could be construed more narrowly to exclude everyday uses of artistic works (in photographs, etc). Other respondents flagged the exception relating to design documents (s51 CDPA) and asked whether that needed review. Some respondents did not express a preference for the options presented previously. Instead, they called for the government to consult specifically on the overlap between designs and copyright.

Conclusion and next steps

Responses to the consultation suggest that there is still confusion about the extent of overlap between design rights and copyright. Many also felt that the current balance between copyright and design protection is unsatisfactory, or that specific issues should be tackled. Although a majority were in favour of legislation to address these issues, there was no consensus on what the appropriate intervention should be. In view of this, the government will proceed with its preferred option of doing nothing and allow further clarity to develop through case law. However, we will continue to keep these questions under review as the case law develops.

Section G: Post-Brexit issues relating to unregistered designs

Before Brexit, a product disclosed anywhere in the EU would be protected as an unregistered Community design (UCD) in every Member State. Following Brexit, the government created supplementary unregistered designs (SUD) in the UK. This provides an equivalent to the UCD which UK businesses valued and were familiar with. This change may have caused legal uncertainty for UK companies and impacted their business. The government wanted to hear users' views on several options to help businesses protect their designs in the UK and EU.

Discounted options

The government proposed discounting the options of seeking reciprocal recognition of disclosure with the EU and allowing any disclosure abroad to give rise to a SUD. There were mixed views on discounting those options, with a slight majority of respondents who disagreed that they should be discounted. Several respondents thought that the government should further consider both.

Some respondents who agreed that allowing any disclosure abroad to give rise to a SUD should be discounted, commented that obscure disclosures would create ambiguous rights. For those who thought allowing any disclosure abroad to give rise to a SUD should be considered further, two qualified their view.

One respondent stated that it should only be considered further if the disclosure is not obscure. One respondent said this would protect designers who disclose overseas first. Designers could challenge someone who launched a copy of their design in the UK following an earlier overseas disclosure, before the designer had launched themselves in the UK.

Some respondents disagreed with the government's position that a single disclosure does not give rise to protection in both the UK and EU. It was argued that a single disclosure might already be capable of unregistered protection in both territories. Similarly, some urged the government not to rule out that a single disclosure could be capable of unregistered protection in both territories. Some commented that as case-law develops, overseas disclosures may be recognised and give rise to EU UDR protection. One respondent further elaborated that a mutual or simultaneous recognition of disclosures between the UK and EU would be possible. A couple of respondents commented that this issue should form part of the UK Government's wider reset with the EU.

Conclusion and next steps

Although a small majority of respondents disagreed with discounting the options, on balance, the government has decided to discount both options. The government will monitor legal developments for any further clarity on whether a single disclosure could give rise to unregistered design protection in both the UK and EU.

Options

The consultation sought stakeholder views on several options to help businesses who want to protect designs in the UK and EU. These were:

- Option 0 – do nothing
- Option 1 – unilaterally recognise simultaneous disclosure in law
- Option 2 – introduce a grace period
- Option 3 – create a SUD following first disclosure anywhere in the EU which has come to the attention of relevant trade circles in the UK
- Option 4 – create a SUD following first disclosure anywhere in the world which has come to the attention of relevant trade circles in the UK

The government did not have a preferred option and wanted to hear users views to inform whether to make any changes in this area. The government also asked for evidence of any issues which businesses have experienced since the UK left the EU. This included any mitigations used as well as legal analysis to show the difficulties faced.

No quantifiable evidence was provided on cost impacts for businesses. However, several respondents highlighted that there has been disruption, additional complexities and costs placed on UK businesses. Some additional cost stems from the need to obtain and maintain multiple rights. One respondent highlighted how the current system complicates collaboration. Another said that deciding on where to disclose creates practical burdens, especially for fast moving sectors. It was evident that most respondents would like the government to take action to resolve uncertainties around disclosure.

Option 1 would involve setting out in legislation that the simultaneous disclosure of a product in the UK and in a territory outside the UK would give rise to SUD protection. For example, a disclosure at a fashion show outside the UK which is live streamed on the internet and available in the UK would give rise to SUD. If a simultaneous disclosure provision was introduced into UK law, respondents typically thought that simultaneous disclosure should be recognised either anywhere in the world, or in the EU.

Most respondents thought that a disclosure within the same day should count as simultaneous disclosure. One respondent commented on option 1 to suggest that there would need to be clear criteria on what is considered ‘simultaneous’ and a ‘qualifying disclosure’. Not doing this could risk giving designs disclosed overseas protection in the UK, when there is no intent to trade in the UK.

Option 2 would involve the introduction of a grace period, so that disclosure of a design outside of the UK would give rise to a SUD. This would apply if the design was subsequently disclosed or put on the market in the UK within a certain period of time. Several respondents supported the introduction of a grace period in the UK, and the most preferred time period was 3-6 months. Some considered that a grace period would allow businesses to devise launch strategies without the worry of losing protection.

It would also be a way of ensuring that SUD rights are given to those who legitimately want to trade in the UK. Some also thought that this option should be considered further to look at the practicalities. This included when the term of protection would start and what would count to satisfy the grace period. There were also questions about how

infringement would be dealt with between the international disclosure and date of marketing in the UK. Some respondents however thought that a grace period would be tricky or unclear, with questions around the date of relevant disclosure. Another respondent commented that a grace period would add an additional layer of complexity for businesses.

Options 3 and 4 would involve creation of an SUD following first disclosure in the EU, or anywhere in the world, respectively. This disclosure would need to come to the attention of trade circles in the UK. For both options, it was suggested that "known to UK trade circles" would need a precise legal definition and clear guidance. Some considered that option 3 would restore some of what was in place prior to Brexit and would give legal certainty. This option would allow businesses to disclose in the EU first, gain an EU unregistered design right without losing the opportunity to then get unregistered protection in the UK as well.

Option 4 of creating a SUD following first disclosure anywhere in the world was most preferred, followed jointly by option 2 of introducing a grace period and option 3. Most respondents thought that disclosures anywhere in the word should give rise to an SUD if simultaneous disclosure was introduced. Those in favour of option 4 felt that this would benefit businesses who operate globally. It was stated that this would give UK designers freedom of choice over where to operate without the worry of losing protection in the UK and signal that UK is open for business. One respondent however warned that this option could come with a risk of entities gaining UK SUD protection with no intention of doing business in the UK. They felt this could make freedom to operate searches more difficult and could stifle creativity. A couple of respondents ranked option 4 in combination with option 2 as their most preferred option. This would ensure that UK SUD protection is only given to those who legitimately want to trade or do business in the UK. This could help to overcome the risks mentioned previously with option 4.

Conclusion and next steps

Responses to the consultation show that businesses have experienced costs and disruption from the lack of mutual recognition of disclosure. Although there were some mixed views, more were in favour of a first disclosure anywhere in the world giving rise to a SUD, over a first disclosure in the EU. The government considers that this would address the issues raised around practicalities of deciding where to launch a product without the additional worry of losing unregistered protection. This would also benefit businesses operating globally. The government intends to legislate when parliamentary time allows to implement option 4 of creating a SUD following global disclosure anywhere in the world. The government will further consider whether to also incorporate option 2 of a grace period.

Section H: Call for evidence on criminal sanctions for design infringement

There is an existing criminal offence for the unauthorised copying of registered designs in the course of business under section 35(ZA) of the RDA 1949. Since this offence was introduced, some stakeholders have called for the government to reconsider the decision in 2013 not to create a similar offence for unregistered designs. Responses to the 2022 call for views[13] showed there were strong opposing views on creating criminal offences for unregistered designs, and no clear consensus emerged. Recognising the wide-ranging views, the government sought further evidence on this issue to allow consideration of what, if any, new interventions are required.

The government takes the consideration of whether to introduce criminal offences seriously and is committed to ensuring that any new offence is clearly fit for purpose. Strong evidence is required to determine that a new criminal offence for infringement of unregistered designs would be proportionate and necessary.

As part of this consultation, the government sought evidence on registered and unregistered design infringement. This provided information on whether interventions may or may not be necessary, including on introducing criminal offences for unregistered designs. While responses were divided on this issue, of those that provided a view, more consultation respondents opposed their introduction. Evidence was submitted for both sides of this argument.

However, the government does not consider the information provided for introducing criminal offences to have met the criteria set out in existing government guidance[14] to demonstrate that this intervention is necessary and proportionate.

For any proposed new offences, the government needs to consider whether there is evidence to show that the offence would have a deterrent effect. Of those who gave a view, most respondents either said that the existing criminal sanctions for registered designs have shown no deterrent effect or it was difficult to prove. Several respondents suggested that the low number of reported cases brought under section 35(ZA) could indicate the lack of a deterrent effect. Some responses cited a reported prosecution under section 35(ZA) - Iqbal & Anor v City of Wolverhampton Council [2025] EWCA Crim 498 (17 April 2025). Some respondents criticised the judgement, because the specifics of the registered designs concerned were not provided. Some also questioned whether the criminal courts are equipped to determine design infringement. Fewer respondents were of the view that there has been a deterrent effect for copying of registered designs. Some stated that citing the existing criminal offence can be persuasive when engaging with businesses who are copying designs.

The majority of respondents have not experienced any negative impacts linked to the introduction of criminal sanctions for registered design infringement. Some respondents

13 https://www.gov.uk/government/consultations/reviewing-the-designs-framework-call-for-views/outcome/call-for-views-on-designs-government-response

14 https://www.gov.uk/government/publications/making-new-criminal-offences/introducing-or-amending-criminal-offences-or-penalties#annex-a-checklist-of-other-issues-for-departments-to-consider-when-creating-newcriminal-offences-or-amending-existing-offences-or-penalties

thought that the existing criminal sanction for registered designs should be repealed, stating that they are almost never used and there is no evidence that they deter infringement. Of those who gave a view, the majority of respondents said that they have not experienced or made any changes in business practices since the introduction of criminal sanctions for registered design infringement. A couple of respondents did change their business strategy but did not elaborate further on how.

There were mixed responses regarding evidence or experience of the prevalence of unregistered design infringement. Some respondents said they had no evidence or experience of unregistered design infringement. Others said it was hard to determine the prevalence or there was little evidence of prevalence. By contrast some respondents said that unregistered design infringement is prevalent. Examples were given of sectors where infringement appears to be widespread, including fast-moving consumer goods, fashion, furniture and consumer tech.

It was evident from some responses that design infringement has serious impacts on designers and businesses. Some respondents reported experiencing emotional stress associated with the time, cost and effort involved in bringing a claim. Some told us that copying is emotionally draining as well as financially damaging. They talked about stress, frustration and distraction from running their business, particularly when copyists seem to face few consequences. Some respondents felt that extending criminal sanctions to unregistered designs would create fairness and a more even playing field for designers and small and medium sized enterprises (SMEs).

Some respondents felt that existing civil routes to deal with infringement can be too slow and expensive for small businesses. Some respondents address unregistered design disputes though the Intellectual Property Enterprise Court (IPEC) and the High Court Chancery Division. The majority who responded said that typical costs associated with pursuing a registered or unregistered design infringement dispute exceeds £50,000. The most common duration of a dispute was said to be 12-18 months. Cost and duration varied however depending on whether a dispute was resolved through correspondence or progressed to court. Remedies sought included damages, account of profits, delivery up or destruction of infringing items, final injunction to prevent future infringement, interim remedies, costs and publicity orders.

As an alternative to civil court proceedings to deal with unregistered infringement, respondents said that both mediation and negotiation are used, with negotiation being more common. A few respondents told us that online takedowns are common and cost-effective for small businesses. One respondent commented that many design disputes tend to settle out of court.

Respondents who supported extending criminal sanctions suggested how the existing offence for registered designs could be adapted for unregistered designs. It was suggested that any offence for unregistered designs should closely follow the existing offence for registered designs. Thus, they proposed alignment with the registered design model of intentional copying in the course of business, and a focus on commercial-scale exploitation rather than ordinary design disputes. They said the offence should be very narrowly defined to cover only malicious, intentional or exact copying or copying with only immaterial differences. Respondents indicated that there should be an emphasis on the fact that criminal liability should arise only where there is clear evidence of deliberate copying. A high threshold for intent, together with the criminal standard of proof and existing safeguards, were seen as essential to avoid capturing accidental or good faith behaviour.

The government asked if stakeholders had concerns about the possible introduction of criminal sanctions for unregistered designs. Concerns were raised about proportionality and the pressure that criminal investigations place on already stretched bodies such as Trading Standards and the police. Some cautioned that the criminal courts were not equipped to deal with the uncertainty of unregistered designs. It was said that it can be difficult to determine the subsistence of the design, who the owner is, the duration and scope of protection. Some felt that criminal sanctions for unregistered designs risks unfairness and could have a chilling impact on legitimate design activity. More felt that civil, not criminal law is the right route for dealing with unregistered design infringement. Respondents generally viewed civil remedies as quicker, cheaper and more appropriate.

Respondents did emphasise that specific improvements could be made to existing civil enforcement routes to deal with infringement of registered and unregistered designs. These included encouraging design registration uptake and the IPO launching a low-cost designs opinion service. They also include changes to allow registered design cases to be heard in the SCT of IPEC. Some respondents highlighted the need to increase support for small businesses to navigate how they can enforce their rights. They also noted that online marketplaces need to work more closely with rights holders to tackle infringement.

Conclusion

The government has not received sufficiently robust evidence to demonstrate that introducing criminal offences for unregistered designs would be a balanced and proportionate remedy. This means that the government will not be introducing these offences. Nevertheless, the government recognises that respondents have highlighted improvements they would like to see made to help designers and businesses impacted by the infringement of unregistered designs. The government will explore addressing these, working closely with its partners in industry, design rights holders, and consumers.

Section I: Call for evidence on inclusion of claims made under the Registered Designs Act 1949 within the Intellectual Property Enterprise Court's small claims track

The call for evidence considered whether claims under the RDA 1949 should be included in the Intellectual Property Enterprise Court (IPEC) Small Claims Track (SCT). The government was particularly interested in learning whether stakeholders support registered designs claims being heard in the SCT. The government also wanted to know whether any measures could be taken to ensure these cases are heard effectively.

In response to the review of the IP enforcement framework[15] in 2020, some respondents raised concerns about the complexity of registered designs cases. The reason given was that a detailed investigation of validity is often required. Within the scope of this consultation, the government was interested in hearing users' recent experiences of using IPEC. Several respondents said that they had been involved in, or had considered bringing, a registered design dispute they believed would have been suitable for the IPEC's SCT if it heard those cases. Some respondents cited examples of cases that could have been heard in the SCT, if it heard registered design disputes. One example given was Simon Barber v Steven Francis Wakefield & Ors[16].

A few respondents said they had been involved in an IPEC dispute concerning an unregistered design where the validity of the design right was challenged. Such cases were said to be infrequent and one respondent noted that design litigation is rare. A few respondents said that their unregistered design dispute at IPEC could not be heard in the SCT but did not elaborate further. One respondent clarified that a dispute concerning validity is not in itself part of the criteria which determines IPEC track allocation. Track allocation depends on the value of the claim, the likely complexity and the declarations of the parties.

Most respondents supported the inclusion of registered designs cases within the IPEC SCT, to improve access to justice. Several respondents considered that the cost of pursuing a claim in the IPEC multi-track is prohibitive, especially for designers and small and medium sized enterprises (SMEs). Respondents typically considered that hearing registered design cases in the IPEC SCT would bring benefits to SMEs and individual designers in terms of lower costs and time savings. Some respondents also commented that the inclusion of registered design cases would align proceedings with the other IP rights that are already heard in the SCT. These include:

- registered trade marks
- copyright
- passing off
- UK unregistered designs

15 https://www.gov.uk/government/calls-for-evidence/review-of-the-ip-enforcement-framework-call-for-evidence

16 https://caselaw.nationalarchives.gov.uk/ewhc/ipec/2024/3058

Some responses highlighted that registered designs can be legally and technically complex. Some noted that designs are unexamined rights on the grounds of novelty and individual character, and infringement claims can often involve counterclaims for invalidity. There were some concerns that defendants might be unable to properly defend themselves in the SCT without incurring unrecoverable legal costs. Some respondents also stressed that designs law is a specialist area and questioned whether there would be sufficient judicial expertise and capacity within the SCT. Despite these concerns, generally respondents felt that most registered design cases are suitable and could be resolved proportionately in the SCT.

If there is a risk that registered designs cases could be moved from the IPEC SCT to the multi-track, there were mixed views on whether this would deter some respondents from launching proceedings at the SCT. Some respondents acknowledged the potential risks of transfer to the multi-track such as uncertainty and cost. However, it was considered that the overall advantages of inclusion in the SCT outweighed this.

If registered design cases are included within the IPEC SCT, some respondents suggested how it could be ensured that cases are handled effectively. Some proposed that a targeted expansion limited to straightforward cases supported by clear guidance and strong case management, could deliver cost savings and streamlined proceedings. Some respondents suggested that validity should be dealt with via invalidity proceedings first at the UK IPO, so that only infringement is dealt with in the SCT. This would be similar to procedures in Germany for example where validity and infringement are dealt with in different courts.

It was suggested that with appropriate safeguards, the SCT could offer an effective forum for resolving simpler registered design disputes. One respondent highlighted some of the existing civil procedure rules which have several safeguards to ensure that cases are allocated to the appropriate track. Some respondents suggested that the SCT should have a higher damages limit of £25,000, cost caps, and that more guidance is needed on damages.

Respondents noted that inclusion of registered designs cases in the SCT should not be considered in isolation to improve access to justice. Other remedies and mechanisms suggested were alternative dispute resolution (ADR) and mediation. Some responses highlighted the Danish ADR model which was said to offer quick and affordable resolution of registered and unregistered design disputes. Several responses called for the UK IPO to launch the designs opinion service provided for in the IP Act 2014. Most expressed that the opinion service should cover validity and infringement. Some also suggested that the UK IPO's tribunal offer a fast-track invalidity service and offer infringement proceedings. Higher SCT damages limits were also suggested.

Conclusion and next steps

The government recognises the potential benefits and the concerns raised. There is a case that a carefully targeted and managed expansion of the IPEC SCT to include straightforward, lower value registered design cases could improve access to justice for SMEs and individuals. The government will explore these measures further and work with stakeholders in the coming months. This will assess how inclusion of registered designs in the IPEC SCT could be taken forward in a proportionate and effective way.

Assessment of Impacts

Most respondents who commented on the Options Assessments considered them to be broadly fit for purpose. Where respondents critiqued Options Assessments, it was to highlight impacts that had not been fully considered. Consultation responses provided mostly qualitative economic and modelling evidence, supplemented by a small number of indicative cost and duration figures.

Respondents highlighted potential cost increases linked to search and examination. These included dealing with novelty objections raised on legitimate filings and use of video or CAD file formats. Extra due diligence costs may also be incurred where information is deferred. Inconsistency in searches could also cause uncertainty. One respondent stated that the options assessment needed to better recognise the uncertainty deferment causes for third parties. They reasoned that in fast-moving sectors, it is difficult to assess infringement risks when deferred filings are not known.

One respondent suggested that removing protection for computer-generated designs may hinder the use of AI for designers. This concern was particularly noted in the fast-fashion sector where businesses may rely on AI tools to generate designs quickly. Another respondent considered that removing existing provisions could add complexity to the design system. This was said to be due to the difficulty in distinguishing between wholly computer-generated designs and other designs.

One respondent agreed that behavioural impacts of the options on disclosure of unregistered designs are difficult to quantify (such as limited switching between registered and unregistered protection).

Where quantification was offered in responses, it focused on enforcement. Reported actions to deal with anti-competitive disputes, such as takedowns, invalidation actions had typical business costs commonly cited at £10,000–£25,000. Baseline infringement disputes often reported at £50,000+ and 12–18 months in duration. This provides parameters that can be used to calibrate assumptions in any subsequent modelling of case volumes, burdens and net impacts. These broadly aligned with figures used in the Options Assessments.

These suggestions have been noted and attempts will be made to include a wider set of impacts in any final Impact Assessments.

Annex A: List of respondents

The following is a list of respondents where responses were expressly made on behalf of an organisation. Organisations are not listed where it was unclear whether the response was made in a personal capacity or on behalf of an organisation.

Abel and Imray LLP

Alliance Manchester Business School, University of Manchester

American Intellectual Property Law Association

Anti Copying in Design

AIPPI UK

Alliance for Intellectual Property

Appleyard Lees

BBC

British Brands Group

Bently Motors Limited

British Copyright Council

British Toy and Hobby Association

Carpmaels and Ransford

Chartered Institute of Architectural Technologists

Chartered Society of Designers

Chartered Institute of Patent Attorneys

Chartered Institute of Trade Mark Attorneys

CMS

Creative UK

Crofts & Assinder

Cyberpan Support Services Ltd

Design Council

Ebay

Federation of Small Businesses

FICPI-UK

Freeths LLP

Gowling WLG

Handsome IP Ltd

Institute of Brand and Innovation Law, UCL

International Trademark Association

IP Federation

Italian Industrial Property Consultants Institute

Jaguar Land Rover

Law Society IP Committee and IP Lawyers Association

Lewis Silkin LLP

Marques

Murgitroyd

Oh Polly Limited

Panasonic Intellectual Property Management Co., Ltd.

Pinsent Masons LLP

Procter & Gamble

QWork

Robert Welch

Royal Institute of British Architects

Stevens Hewlett & Perkins

Stobbs

Stone King LLP

Swindell & Pearson

The City of London Law Society

UK Jewellery, Silverware and Allied Crafts

Wiggin LLP

Wilson Gunn

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Published: November 2026
CP2603050

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E03636089
ISBN 978-1-5286-6672-5