

UKFT Response to the IPO designs framework consultation

<https://www.gov.uk/government/consultations/reviewing-the-designs-framework-call-for-views/call-for-views-on-designs>

Registered designs - search and examination

In the UK, you can protect a design that “is new and has individual character”. Following changes to the law in 2006, the IPO does not check whether a design meets these requirements before allowing registration. This was done to harmonise practice with the EUIPO. It means that the onus is on applicants to consider novelty and individual character requirements before they apply. Competitors can apply to have a design invalidated if they believe a registered design does not meet these requirements.

Since then, there have been many changes affecting the designs sector. These include increased use of online platforms, a more global marketplace and improved search technology. Further, as rights granted by the EUIPO no longer apply to the UK, there is no longer a need for harmonisation. With this in mind, we seek views on whether the UK should reintroduce novelty searching, as well as a corresponding examination on novelty and individual character.

A search would likely include available registered designs databases and internet searching. Artificial Intelligence (AI) tools could be used to assist the search examiner. In the future, searches could be conducted largely by AI systems. In this case, there would be a range of technical and legal issues to consider.

A pre-application AI tool could also be introduced and could be similar in function to the recently introduced Trade Mark pre-apply service. This would assist applicants in identifying relevant registered designs before filing. It would also help applicants improve their chances of successfully registering a design.

Alternatively, the search could be limited to exact matches only. In this case, the individual character of a design would not be considered. Here, only designs that are identical to an existing design would be objected to.

A further alternative to carrying out novelty searching on all applications would be introduction of a two-tier registration system. Here applications would be filed and examined in accordance with current legal requirements. Then, if the rights holder wanted to enforce their design, they would need to request a full search for novelty and individual character. Enforcement could include any attempt to stop others selling a product on third party e-commerce websites. We are aware that IP Australia has a similar process for enforcement.

Novelty searching would be especially useful in helping identify and prevent anti-competitive registrations. These are registrations where pre-existing designs are deliberately registered and then used to stop the legitimate business activities of the original designer. However, there are other ways in which such applications could be dealt with, for example by introducing a bad faith provision for designs. This would allow the registrar to object to these kinds of filings on that basis. However, it may be difficult to provide evidence that a third party has acted in bad faith which could reduce the usefulness of this provision. We would like your views on the merits, or otherwise, of a bad faith provision.

The effects of anti-competitive applications could also be mitigated through the introduction of an “opposition period”. Here designs would be published before registration, enabling third parties to oppose or comment on a design. Opposition to registration could occur on the grounds set out in the Registered Designs Act. If no objections were raised in this timeframe, the design would be automatically registered at the end of the opposition period.

However, all these changes would increase the registration time and might involve higher application fees. There could also be unforeseen effects on other areas of the registered designs framework.

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

Design protection is incredibly important across the fashion and textile industry from clothes in catwalk shows through to high street shops, but also in the use of textiles in other industries such as automotive, defence and elite sports.

The apparel industry is a complex global industry with multi component goods, and importantly with regards to intellectual property, is probably the only industry that changes its product line more than once a year. While there may be a limited number of core pieces, most clothing collections change at a minimum seasonally twice a year, however often there are “drops” of additional new items in between. Most designer fashion brands launch a minimum of four collections a year, two main collections (typically showcased on the catwalk at a global fashion week) and then two interim collections.

The fashion & textile industry is dominated by micro SMEs - over 80% of companies in the sector employing less than 9 people, and many are freelancers (with 18% of the workforce self-employed), which creates added issues as many do not have the capacity or resources to protect or enforce their intellectual property.

With this volume of designs that need protected, and often by small businesses, low cost, quick, efficient, speedy protection is the absolute priority. Given the nature of the fashion and textile industry we are strongly of the view that the IPO make it as easy and cheap as

possible to register designs or obtain unregistered design rights and then let enforcement come separately.

Some of the options above adds complexity and cost, which would be undesirable for both small and large businesses:

- We would be opposed to introducing searching and opposition periods for these reasons.
- Adding searching, as is done with patents, does not feel right for the industries that use designs for protection. Design rights are very different to patents and have much shorter timescales of protection. In addition we would be concerned about the implementation of the searches. Setting this is going to be very complex, needs understanding and quality of examiners, in order to feel assured it is being serviced in the right way.
- We would not want a two tier system as it will cause confusion and potentially disincentive companies from filing.

Our preference is tools that are user friendly and are written in the language of the fashion and textile industries that would use them. Guidance online and AI tools to allow businesses to better understand design framework and explore validity of the design themselves would be much preferable to setting up a new process.

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

Prior art searching

Two-tier system

Use of AI tools

Bad faith and opposition periods

Other

Please provide more detail below

We would be interested in the use of AI tools, if they are used to reduce cost and improve speed.

Simplifying the designs system

There are currently four different types of overlapping design protection in the UK. They are:

- registered designs,
- supplementary unregistered design,
- continuing unregistered design and,

- UK unregistered design right (“design right”).

A registered design protects the 2D and 3D appearance of the whole or part of a product resulting from a number of features. These include lines, contours, shape, texture and ornamentation. Protection rewards investment in the creative process and allows the owner of the design to control its use for up to 25 years.

The supplementary unregistered design was created when the UK left the EU. This provided the same scope of protection in the UK as had previously been given by the unregistered Community design. It provides shorter term protection without the burden of registration formalities. This benefits sectors which produce large numbers of designs with a short market life. It protects the 2D and 3D appearance of a product for 3 years from when the product is first disclosed in the UK.

The continuing unregistered designs provides UK protection for products protected in the UK as unregistered Community designs before 1 January 2021. They exist in the UK for what remained of their existing three-year term and are provided for in the Withdrawal Agreement. As we are bound by the Withdrawal Agreement, changes are not being considering to continuing unregistered designs as part of this call for views.

The UK unregistered design right protects the design of the internal or external shape or configuration of the whole or part of an article. It does not protect surface decoration. Protection lasts for the shorter of 15 years from when the design was first made or recorded in a design document, or 10 years from when it was first sold.

In addition to design protection, a product may benefit from copyright protection. This would be the case when the product is considered an original artistic work within copyright law. Copyright in original artistic works lasts for the life of the creator, plus 70 years.

Overlapping rights

Protection of designs in their broadest sense is complex. A product may be protected by a number of different overlapping forms of design protection and copyright.

These different IP rights protect different aspects of a product. They also have different qualification requirements, terms of protection, restricted acts, exceptions, and limitations.

The extent to which copyright protects designs – in particular which designs are considered original “works of artistic craftsmanship” – is not completely clear. When copyright applies to a design it will be protected for the lifetime of its designer plus 70 years. The scope of copyright protection is also different to designs, and they are subject to different exceptions.

The application of copyright to designs could allow some designs to gain longer protection than was originally envisaged in legislation. Designers may need to consider case law to determine whether their products are protected by copyright, design rights or both. This may not always be easy, particularly for items which are primarily functional rather than aesthetic. While some products will benefit from being eligible for both copyright and design protection, a clearer distinction between them would simplify the system.

The complexity of the system may cause problems to designers who lack legal representation. The lack of clarity about how a product is protected can impact competitors assessing their freedom to operate. We seek views on where the current system inhibits best use of designs. The government is keen to ensure a balanced system which encourages investment in design in a competitive market. Simplification of the system or a reduction in the different types of unregistered rights available may be one way to achieve this.

Differences between unregistered design rights

The creation of the supplementary unregistered design alongside UK unregistered design right means there are two forms of unregistered design protection available in the UK. However, there are areas of inconsistency between these rights. These include spare parts exceptions and qualification requirements.

While the supplementary unregistered design does not provide for an exception to designs protection for spare parts, both design right and registered designs do. Similarly, the qualification requirements are different for both the unregistered rights:

- for the supplementary unregistered design, the right exists when a product is first disclosed. There is no residency requirement
- for design right, there's a need to meet a residence qualification

Moving to a disclosure requirement or a residency requirement for both these rights would simplify the system. Similarly, extending the spare parts exemption to supplementary unregistered design supports the right to repair agenda and increases the lifespan of products. This contributes to the government's commitment to achieving net zero by 2050.

However, there may be benefits in retaining differences between these rights. We are keen to hear from users what the pros and cons of harmonising these aspects, or retaining the status quo are. We are also interested in understanding if there are other differences between unregistered designs which need addressing, or provide particular benefits to you.

Definitions

Another area we would like your views on is in relation to certain definitions contained within the Registered Designs Act. For example, the law sets out that "get-up" is considered a product which can be protected as a design. However, there is no definition of what this

term means. This can cause difficulties when examiners consider the validity of an application for the “get-up” of a product. We are seeking your views on what you understand “get-up” to mean and whether it would be helpful for the government to produce guidance in this area.

We are also interested in your views on whether other terms in the Registered Designs Act are unclear and would benefit from clarification or guidance.

Disclosure of supplementary unregistered designs

The UK’s departure from the EU has resulted in changes to the designs landscape. One consequence of this is that a product is now only protected in the territory in which it is first disclosed:

- as a supplementary unregistered design in the UK, or;
- as an unregistered community design in the EU,

The lack of an agreement with the EU to recognise disclosure reciprocally is a cause of concern to some businesses. Businesses which rely on unregistered designs need to choose where to disclose and protect a product.

The government understands that designers would like to be able to obtain unregistered protection in both territories, but the solution is not straightforward. Making the EU - or indeed any country or territory - a qualifying territory for the supplementary unregistered design may not be straightforward. A full assessment of all impacts, both positive and negative, would need to be carried out to determine whether this is a viable option.

It has been suggested that simultaneous disclosure may provide a solution. This could be achieved by live-streaming in the territories concerned or disclosure on a digital platform. However, this approach is untested in the courts. There are also unresolved questions about whether any delay in transmission could destroy the novelty of a design. It is also untested as to whether a disclosure in a digital environment constitutes a valid disclosure under supplementary unregistered design legislation. We would need to consider the consequences of allowing a live-streamed disclosure from anywhere in the world giving rise to UK design protection.

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

Protection of Intellectual Property is a key issue for the fashion and textiles industry, which relies on creativity, particularly in relation to its design. Businesses in the fashion and textile industry tend to rely on unregistered systems due to the nature of the industry as described above. Whilst complicated they give a wide variety of rights for different circumstances. Registered design rights tend only to be used on more long-term products, such as core products or accessories/perfume. It should be noted however that it can often be impossible to predict which products will do well and become “core” pieces, in most

circumstances it is impossible to tell within a large collection which pieces to register. Whilst the cost of registered designs isn't high, the costs in terms of time (preparing images for filings) and volume of applications that would be needed can quickly become significant. As registered design protection must be sought within 12 months of a design being presented to the public, many businesses either miss this deadline or do not have enough information to make a decision at that stage. Many businesses do not consider design protection until infringement occurs, so it is very helpful that automatic protections are available..

The nature of the fashion industry is such that products are “displayed” at fashion and trade shows and sales presentations/meetings 6 months before they go into store, which can give ample time for copying, and so it is imperative to have rights in place to protect during this period.

In 2019 the fashion industry accounted for 890,000 jobs across the supply chain and £34bn to the UK economy (Oxford Economics). The UK manufacturing industry (textiles, apparel and leather) is valued at more than £9bn per year. As a significant industry for the UK it is essential that systems and processes in the UK are here to enable the industry to thrive and grow. The fashion & textiles industry is expected to experience significant changes over the next decade, addressing the issues that the sector is having on the planet and people. These challenges bring opportunities, which will be driven by both innovation and the creativity that the sector is renowned for. Changes in the IP system can help the industry meet our sustainability goals - on a very simple level expanding the protection offered by design rights from 3 to 5 years could encourage the industry to design product with an extended lifecycle.

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

Members rely on a variety of rights to protect their designs. But it could be streamlined e.g. one set of design laws alongside copyright and other unregistered rights such as passing off.

We urge IPO to continue efforts for international harmonisation. IP is different in different territories. The UK designing a very bespoke system is unhelpful and adds to complexity when our businesses are needing rights that work across territories.

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

Yes.

The fashion & textile industry is dominated by micro SMEs - over 80% of companies in the sector employing less than 9 people, and many are freelancers (with 18% of the workforce

self-employed), which creates added issues as many do not have the capacity or resources to protect or enforce their intellectual property. Many IP registrations and enforcement are being carried out themselves, without legal counsel, so detailed, industry specific examples, using the language of the industry on the IPO website would be appreciated.

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

The UK's departure from the EU has resulted in challenges for members in terms of added administration when trading internationally but has also introduced barriers and complexity for businesses seeking to trade in the UK. We need to ensure that the UK is seen as having:

1. A very international approach and fit for purpose IP system, reciprocity is key.
2. A territory that is a safe harbour for brand owners (from emerging designers to large corporates, based in the UK or selling into the UK) with the availability of unregistered designs and controls over matters such as exhaustion of rights. Without this many businesses may prefer to focus on expansion in other markets.
3. The EU is undertaking its own consultation of design rights, and given that these issues impact both businesses established in the UK and the EU we are asking that the UK and EU's positions are aligned.

The cost and complexity of IP protection in the UK has increased when the UK left the EU wide systems for the protection of trademarks and designs. Prior to Brexit businesses regularly relied on Unregistered Community Design Rights (UCDRs), which provided unregistered design rights throughout the EU (including the UK). This was a cost effective mechanism to protect designs across the EU, including the UK, given the aforementioned issue of the number of products and seasonal ranges produced).

The EU withdrawal agreement did not allow for designers first showing designs in the UK to rely on UCDRs in the EU in relation to new designs created post Brexit. This means that a designer first showing designs in the UK may not have unregistered design rights in the EU. The Supplementary Unregistered Design right that was created in the UK in anticipation of Brexit that mirrors UCDRs only provides rights in the UK and may exist only if designs are first shown in the UK. This means that a designer first showing designs in the EU may not have unregistered design rights in the UK, and vice versa. This could result in businesses choosing to disclose in EU. We have cases of businesses that have moved their sales/showcasing to the EU, which is a threat to events such as London Fashion Week and other trade shows. It is also an issue that for many UK businesses their collections are first shown ("disclosed") at trade shows in Europe.

Many have now implemented simultaneous disclosure, via live streaming, however are unsure if this will work as a solution, and so are implementing these measures at risk that they may not work. See answer 15. It is unreasonable to ask businesses to wait for a legal decision to determine the issue, this would take a number of years.

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

Many in the industry have implemented simultaneous disclosure as a possible mechanism to secure unregistered design protection in both territories, by disclosing a design simultaneously in both the UK and the EU (for example live streaming via a website, or social media). However this is currently untested, and won't be resolved until a case is taken through the legal system. It is unreasonable to expect a legal decision to give an outcome that will be so important for our sector. One of our members quoted £850k as the cost of protecting their designs through the courts - it is completely unreasonable for someone to incur that level of cost to give clarity to the issue.

For designers to have certainty of obtaining design protection in the UK and EU they need to register designs in both territories. Whilst design filing is cheaper than filing trade marks, this is still a cost that many emerging and established businesses cannot afford. Equally, many designers only seek to rely on design rights when an infringement occurs, and at that point it may be too late for the designer to seek registered protection which is only available for 12 months after public disclosure

The UK should work to harmonising systems to those internationally. UK IPO have indicated that simultaneous disclosure can't be formalised because the EU won't give reciprocity, however we could take the lead and grant it in the UK. It will benefit EU businesses, but setting this standard will make the UK an attractive place for rights owners and encourage EU brands to come here.

We are asking for as many automatic protections as possible to support the volume and speed needed by the industry. The reality is many designers do not understand the concept of disclosure, for example they may have a sales/press meeting the day before the show without taking the necessary non-disclosure measures. We ask the IPO to provide ongoing support and education to the sector, noting that these are talented businesses, so communication needs to be sophisticated, using the language of the sector and talking in impact terms and implications to business.

Future technologies

The government is also keen to future proof the designs framework, ensuring the UK remains a world leading IP environment. Emerging and future technologies might affect how designs are created and used, particularly in digital environments. A future designs system must be flexible in the face of these technological developments and not exclude specific

technologies. We seek views on areas where the current system could better meet the needs of a digital environment and future technologies.

Artificial intelligence, digital and dynamic designs

Advancement in technology is increasingly driving innovation in the designs sector. There are a number of areas where new technology is having an impact, including:

- the increasing use of AI tools to create designs;
- the development of dynamic designs;
- use of designs in a digital environment, including avatar content in online gaming and graphical user interfaces for mobile devices

We want to ensure that the designs framework encourages the development and use of AI tools for designers. We are also keen to ensure we have the correct balance of protection between human created designs and computer generated designs. There are specific legal provisions on who is considered the creator of a design generated by a computer. This is the case for both registered designs and UK unregistered design rights. However, the supplementary unregistered design does not have such a provision. We want to hear from users of the system about whether there are benefits in continuing to protect computer generated designs. Alternatively, should the supplementary unregistered design be extended to protect computer generated designs. We also seek views on whether the current framework is considered fit for purpose.

A recent application of 3D printing is to make 4D printed products. This involves printing a three-dimensional object, which can then transform into different shapes. The transformation is in response to environmental stimuli. Such a time-dependent shape change after printing is referred to as the 4th dimension. The IPO has published guidance on the [protection of transformable designs](#). In most cases, 4D printed products could be protectable as a transformable design. We are interested in whether you consider some 4D printed products would be excluded from protection.

Another area where legislation may not meet the needs of an increasing digital environment is that of designs representations. This is because the IPO only accepts 2D representations of a design as part of the application process. This can cause issues for dynamic or animated digital content and graphical user interfaces (GUIs). For these kinds of designs, applicants need to provide a series of snapshots representing the animated sequence for which protection is sought. We are seeking views on whether applicants should be able to submit digital files enabling designs to be seen in virtual 3D and dynamically.

We would also like your views whether, in an era of increasing digital content, the ability to file a physical specimen is still relevant. Would there be any problems if we ended the ability to file physical specimens?

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

The future of the fashion and textile industry is being defined by advances in technology, many also driven by environmental considerations and the impact the industry is having on the planet. The pandemic took this direction even further, with a huge increase in use of digital tools both to design and showcase fashion. The growth in virtual clothing and “skins” is expected to be huge and a significant market opportunity for the industry. For example Epic Games, the developer of Fortnite, revealed it made \$50 Million from one set of ‘Fortnite’ Skins, and they have upwards of 1080 available. DM Market, which has a platform for trading skins, estimates that the skin market is worth \$40 billion a year. And so when thinking about metaverse and digital, having the ability to file designs in 3D and 4D will be a necessity for the UK to have a world-leading, technologically advanced IP system.

As mentioned previously the fashion & textiles industry is expected to experience significant changes over the next decade, addressing the issues that the sector is having on the planet and people. These challenges bring opportunities, which will be driven by both innovation and the creativity that the sector is renowned for. Changes in the IP system can help the industry meet our sustainability goals - on a very simple level expanding the protection offered by design rights from 3 to 5 years could encourage the industry to design product with an extended lifecycle.

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

This area needs to have further definition. Trade Marks currently have a more holistic filing approach. Design needs to be the same and more dynamic, e.g. the ability to submit moving images. For the fashion and textiles industry an important part of the sales process is also the visual merchandising: the way a product is presented and the experience of that – the packaging, the shop fittings, the e-commerce site, the fashion show production - all are significant to the whole experience of the product and are significant in the sales process. Get up is a wide concept - shop interiors could be protected by design, but it’s hard to give the look and feel in 2D submissions. Fundamentally fabrics are not static objects - it is important to capture the movement and look and feel as this is as important to the design as other aspects to the product, for example, the shape.

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

As mentioned above, yes. Also if the IPO were to cease accepting physical specimens then the technology needs to be there to support this so that all aspects of designs are part of the submission.

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

Computer generated designs created by Artificial Intelligence should be protected. However importantly the designer and brand owner should own the rights to these designs, and not the software owner.

Better regulation

There are number of areas where changes could improve the designs framework for users. We seek views on whether there are any other areas that would benefit from improvement.

Deferment provision for designs

Deferment of designs was introduced in 2006 to give applicants flexibility in respect of publication and reduce the risk of a design being copied before it is marketed. Currently an applicant may defer publication of their design for up to 12 months. If it is not published within the set timescale it is deemed to be abandoned. This provision is used to allow applicants to defer their application. This gives them the earliest possible filing date whilst maintaining the confidentiality of the design. We are seeking views on whether we should introduce a specific deferment provision, and whether this would improve legal clarity.

The deferment period is currently capped at 12 months, and we seek your views on whether this is adequate or whether it should be altered. For example, an 18 month deferment would align publication for businesses seeking to obtain both design and patent protection for a product. Alternatively, a 30 month deferment period would align the UK with Hague design systems and other international offices. However, it may be that the deferment period should be reduced. We may also need to consider if specific provisions for prior use rights or to deal with co-pending applications might need to be introduced. This would be particularly important if a longer deferment period and novelty searching was introduced.

The UK currently defers both publication and registration of a design application, and no information is published until the deferment period ends. This differs from some other international design systems, where basic information is made available at filing. Parties operating in the same field are then aware that they should monitor future design publications.

The government is seeking views on how well deferment of designs works in the UK.

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

Yes.

It should be 30 months, as this is consistent with the EU.

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

The only thing that should be published is the name of the applicant, as if the details of the design are published then you destroy novelty for other territories, which is vital for the fashion and textile industry given the global nature of our trade.

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

Please refer to comments in the questions above regarding the nature of the fashion and industry. Of utmost importance is the quick, efficient and cost effective systems to protect designs, rather than adding to cost and complexity of the application stage. The industry relies on unregistered designs for this reason, adding an additional barrier to registering designs will result in less people filing.

This can be dealt with at the enforcement stage. The search will make it more expensive and difficult to get on register.

Enforcement

The UK has one of the best intellectual property regimes in the world. Nonetheless, we are aware that the cost of enforcing rights could be a barrier to enforcement, especially for individuals and SMEs. This is because they lack the resources to take a case of alleged infringement to court. This barrier may also be a factor for designers wanting to defend an allegation of infringement.

We are therefore seeking your views on the issues and barriers designers face when enforcing their rights and how enforcement can be made easier. We are interested in receiving evidence of the experiences small businesses and individual designers have had when enforcing their rights.

The Intellectual Property Act 2014 introduced criminal sanctions for the intentional infringement of a registered design. The impact assessment prepared for this measure considered whether copying of unregistered designs should be criminalised. It concluded that to do so would be too complex due to the difficulty in determining which unregistered rights exist and who owns them. To encourage the registration of designs, criminal provisions were only introduced for those which were registered. The IPO also reduced filing fees for multiple applications to further incentivise registration.

In 2020 the government reviewed the impact of the availability of criminal sanctions for registered designs. The evidence showed that only a small number of criminal cases had been brought since 2014. Current government policy is that there is insufficient evidence to

support the introduction of criminal penalties for unregistered design infringement. However, we are aware there a range of views on this issue, and we are open to hearing those views as part of this exercise. Introduction of any new criminal offences in future would need to be carefully considered, and based on detailed and robust evidence.

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

Whilst we appreciate the efforts that have been made to improve the IP enforcement regime in recent years via the introduction of IPEC, the UK enforcement regime remains very costly. One of our members quoted £850k to enforce their IP for one collection. In an industry of mainly SMEs this just wouldn't be an option. A streamlined procedure would significantly assist.

Members are telling us that they rely on take-down schemes such as Amazon, something that goes through courts in a similar approach would be appreciated. Other "informal" approaches are relied on - for example following the Instagram account Diet Prada, which was started in 2014 as a lighthearted way to reference similarities in designs, but is now campaigning formally for integrity and accountability in copied designs.

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

Criminal sanctions are quite difficult to implement for a number of reasons.

The reality is that it is extremely difficult for small businesses and individuals to enforce their rights. We have mentioned previously the cost. Trading Standards are under-resourced and just too busy to support brand owners on this matter. There have in fact been very few criminal prosecutions in the UK.

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

No views to add

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

We are concerned about the introduction of criminal sanctions for unregistered designs. Businesses in our sector would find it difficult to know if there was a design they were infringing. It would be very difficult for there to be criminal sanctions on those instances and it could in fact stifle creativity. We recognise that copyright has criminal sanctions and is an unregistered right, but that is (we understand) created for the scenario of organised crime exploiting known copyright works, which is very different to this situation.