



Copyright & Designs

Patent and Trade Mark Attorneys

Dock, 75 Exploration Drive,
Leicester, LE4 5NU, UK

t +44 (0)116 233 2626

f +44 (0)116 319 2848

mail@serjeants.co.uk

www.serjeants.co.uk

COPYRIGHT

What is copyright?

Copyright is a legal right, owned by the creator of an original work, to prevent that work being copied by others without permission. It comes into existence automatically and applies to both published and unpublished works. Copyright doesn't protect the underlying idea behind the work, only the particular form in which the idea is expressed. Works protected by copyright can include drawings, photographs, written works, computer programs, sculptures, music and films.

Do I have to register copyright?

No, at least not in the UK where there's no copyright registration system. Copyright comes into existence automatically when a suitable work is created. Keeping records is therefore important in case it should ever be necessary to prove ownership of the copyright. It's good practice to preserve the original work (including any early drafts) and to mark it with the copyright symbol ©, the date and the name of the copyright owner – just like this leaflet.

Some countries, most notably the United States, do provide a registration system for copyright which can be useful in some circumstances.

Who owns copyright?

The copyright in a work created by an employee belongs to the employer. However, the copyright in a commissioned work belongs initially to the creator of the work, and must be specifically assigned in writing if it is to pass to the commissioner.

What protection does copyright provide?

As a copyright owner, you can stop other people from, for example, copying your work, making adaptations/translations of it or distributing or selling copies of it. You could however authorise people to do any of these things by offering them a licence of the work – for which you could charge a fee (often an ongoing royalty fee).

How is copyright infringed?

Copyright is infringed by a person who reproduces a "substantial part" of the work - simply making minor changes will not be sufficient to avoid infringement.

Copyright is also infringed by a person who knowingly imports, keeps or sells an infringing copy. However, someone who can prove that he/she has created a similar work independently, without copying, doesn't infringe copyright.

Action can be taken against infringers in the High Court, the Intellectual Property Enterprise Court, or in the County Courts. Remedies include an injunction to prevent further infringement, destruction of infringing copies, compensatory damages and recovery of legal costs. Copyright infringement is also a criminal offence.

How long does copyright last?

Copyright lasts for 70 years from the death of its creator. In the UK, for designs that have been applied industrially, the term of protection used to be limited to 25 years. But on 28 July 2016 the law changed so that the term of protection for these designs is now the same as that afforded to other artistic works. The change has retrospective effect so that industrially applied designs whose copyright protection had previously expired under the 25-year rule now have their protection restored. Transitional provisions ended on 28 January 2017 and allowed businesses to sell off existing stock of items that were previously unprotected but have now had their copyright protection restored.

Does copyright protection extend to foreign countries?

The UK belongs to international treaties that provide automatic protection for UK copyright in most other countries, according to their local laws. The works protected by copyright in those countries are similarly given automatic protection here, according to UK law.

UNREGISTERED UK DESIGN RIGHT

What is UK design right?

Original designs for the shapes of three-dimensional products are protected under UK law not by copyright but by design right. Design right doesn't protect surface decoration, principles of construction, or features necessary for a product to fit to or match another one, for example, some spare parts.

Do I have to register UK design right?

As with copyright, design right comes into existence automatically when a design document or model is created. Make sure you keep records since again there's no registration of design rights in the UK.

Who owns UK design right?

The design right in a work created during employment belongs to the employer. However, the design right in a commissioned work belongs initially to the creator of the work and must be specifically assigned in writing if it is to pass to the commissioner - but see the note on the summary page regarding the situation for works created before 01 October 2014.

What protection does UK design right provide and how is it infringed?

Design right is infringed by a person who reproduces a work either exactly or a substantial part of it.

Design right is also infringed by a person who for commercial purposes imports, possesses, sells, hires (or offers to sell or hire) an infringing copy.

Infringement of design right is similar to infringement of copyright: it's necessary to show that copying has taken place. The procedures and remedies are also similar.

If you believe somebody may be infringing your design right, make sure you seek advice before approaching them because you can be sued if you make unjustified threats of legal proceedings.

How long does UK design right last?

Protection lasts until 15 years from the end of the year in which the design was created or 10 years from the end of the year in which the article was first marketed, whichever is shorter. For the last 5 years of protection, competitors are entitled to a licence on reasonable terms. If the terms cannot be agreed, they may be settled by the UK Intellectual Property Office (IPO).

REGISTERED UK DESIGNS

What is a UK registered design?

The design of a product (or part of a product) can be registered in the UK if the design is new and it gives a different overall impression from known designs. It's not necessary for a registered design to have any aesthetic quality, so even functional products can be registered, provided the design isn't dictated entirely by the function of the product. However, the product must be visible in normal use. Examples of registrable designs are the patterns of fabrics and the shapes of garments, toys, household or industrial articles.

Who owns UK design right?

The right to apply for a registered design for a work created during employment belongs to the employer. However, the right in a commissioned work belongs initially to the creator of the work and must be specifically assigned in writing if it is to pass to the commissioner - but see the note on the summary page regarding the situation for works created before 01 October 2014.

What's the benefit of registering a design and how is it infringed?

Unlike copyright or design right, a registered design is a true monopoly: anyone who makes, imports, sells or uses a product with a similar design infringes the registered design, whether they've copied the design or created it independently.

A UK registered design is infringed by a person who uses either an identical design or one which does not produce a different overall impression.

The action and remedies for infringement are similar to those for copyright and UK design right. Again, you should seek advice before issuing threats against infringers.

How do I file a UK registered design application?

An application for a UK registered design must be filed at the IPO with a corresponding fee. It's possible to include multiple designs in a single application. We can prepare the application and file it for you at the IPO. If we file the application before the design's been made public, we can choose to defer the official publication of the details for up to a year. Alternatively, a valid application may still be filed within a one year "grace period" after the design's been made public. Many countries outside Europe don't allow such a grace period so if you are contemplating foreign design protection, we strongly advise you to consult us while the design remains confidential.

What happens to my UK registered design application once it's been filed?

The IPO doesn't carry out a search for similar earlier designs so the registration procedure may take as little as two weeks.

How much does a UK registered design cost?

The cost of applying for a UK registered design depends on how many designs are included in the application - there are discounts available for multiple designs. Once we know more about your business, we can tell you how many designs you should consider covering and provide more information about the costs involved.

How long does a UK design registration last?

The registered design can be renewed at five year intervals for up to 25 years in total.

REGISTERED COMMUNITY DESIGNS

What is a Registered Community Design?

A registered Community (or EU) design is effective throughout all member states of the EU. The laws regarding qualification for protection, the grace period, how long a registration lasts and infringement are essentially the same as for UK registered designs.

How do I file a Registered Community Design application?

Your application for a registered Community design must be filed at the European Union Intellectual Property Office (EU IPO) in Alicante, Spain which also handles EU trade mark applications. A single application can include more than one design, provided that the products to which the designs are applied are of the same general type (determined by whether they fall in the same one of the 32 classes in the Locarno Classification). There are quite considerable savings if several products are to be protected at the same time.

UNREGISTERED COMMUNITY DESIGN RIGHT

Even without registration, the EU gives automatic, short-term protection to designs that would qualify for registration. The protection lasts for three years from the date on which the design is first made available to the public. This makes unregistered Community design right particularly suitable for fashion items with a limited commercial lifespan.

Unlike a registered Community design, in order to take action against an infringer, it's necessary to show that actual copying has taken place. As there's no registration procedure for unregistered Community design right, you are again advised to maintain good records of when a design was created and when it was first made available to the public.

HOW CAN I PROTECT MY DESIGN IN OTHER COUNTRIES?

Designs can be registered in most countries but the application systems may differ so check with us about current requirements and costs.

IF IN DOUBT, PLEASE TALK TO US...

If it sounds complex, don't be put off. We're experts in our field and can put your mind at rest about all the processes involved with protecting your product or work.

COPYRIGHT AND DESIGNS SUMMARY

	Copyright	UK Design Right	UK Registered Design	Registered Community Design	Unregistered Community Design
2D or 3D works	Mostly 2D	3D	Both	Both	Both
Registration required?	No	No	Yes	Yes	No
Grace period?	N/A	N/A	Yes (12 months)	Yes (12 months)	N/A
Duration	70 years from death of author	15 years from creation or 10 years from first marketing (whichever shorter)	25 years (with renewal fees every 5 years)	25 years (with renewal fees every 5 years)	3 years from first publication
Works by employee belong to	Employer	Employer	Employer	Employer	Employer
Commissioned works belong to	Author	Author*	Author*	Author	Author
Necessary to prove that infringer has copied?	Yes	Yes	No	No	Yes

* The law changed on 01 October 2014. If the work was created before that date the UK registered design or unregistered design right belongs to the commissioner