



Copyright & Designs

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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 It comes into existence automatically and applies to both published and unpublished works.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.

UK UNREGISTERED 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?

For works created during employment, the right to apply for a registered design belongs to the employer. However, for commissioned works created since 01 October 2014, the right belongs initially to the creator of the work and must be specifically assigned in writing if it is to pass to the person who commissioned it.

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).

UK SUPPLEMENTARY UNREGISTERED DESIGN RIGHT

What is the supplementary unregistered design right?

It gives automatic, short-term protection in the UK to designs that would qualify for registration (see below), including two-dimensional designs that are not covered by the normal unregistered design right. However, the protection is granted only if the design was first made available to the public after 01 January 2021 **and in the UK**. (Designs made public before that date were given equivalent protection by the Community unregistered design right and that protection continues in the UK and in the EU until the end of its original term.)

How long does the supplementary unregistered design right last?

The protection lasts for just three years, making this type of right most useful for fashion items with a limited commercial lifespan. However, it also gives temporary protection while you market-test a product, with the option of filing a valid application to register the design in the UK before the end of the first year. (But beware that not all countries offer a similar "grace period".)

What protection does it provide?

The protection is generally similar to the UK registered design, except that the unregistered right will only be infringed by a design that has actually been copied, not created independently. As with all unregistered rights, you need to keep good records of how and when the design was created and first made public.

UK REGISTERED 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 the right?

For works created during employment, the right to apply for a registered design belongs to the employer. However, for commissioned works created since 01 October 2014, the right belongs initially to the creator of the work and must be specifically assigned in writing if it is to pass to the person who commissioned it.

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 single UK registered design is a few hundred pounds. There are significant discounts available for applying for multiple designs or variants at the same time. Once we know more about your product, 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 design is registered for five years initially and can be renewed for further five-year periods up to 25 years in total.

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.

Two international systems are also available. The Community design is a single registration that gives protection in all the member countries of the European Union. The Hague Agreement allows us to file an international design application and you can choose the territories where you want protection from among those that belong to the system, including the USA, Japan, Korea, the EU and most other European countries.

To obtain valid protection in some countries, you need to file your first design application **before** the design becomes known to the public. Then, provided you file the foreign design application no more than six months later, it can claim “priority” from the original filing date and will still be valid despite the design no longer being “new”.

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.

UK COPYRIGHT AND DESIGNS SUMMARY

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

* 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