



SUMMARY OF INTELLECTUAL PROPERTY RIGHTS

COPYRIGHT (2D Designs)

1. Copyright will exist in 'artistic works', covering works such as paintings, drawings, fabrics, diagrams, and photographs. These are protected irrespective of the artistic quality. Surface decoration on 3D designs will also be covered by copyright. (Note however that you cannot enforce copyright in a design drawing to prevent someone from making an article to the design shown).
2. The work must be ORIGINAL. This doesn't mean that it is a concept that has never been done before; it means the author must use their own skill to create the work, so the design must not have been copied from an existing design.
3. No formalities are required. The right is automatically created once the design is recorded in some permanent form.
4. The ownership of copyright will rest with either the author or employer.
5. Copyright lasts, in general, for the life of the author plus 70 years following the author's death.

ARTISTIC COPYRIGHT (3D Designs)

1. Artistic copyright will exist in sculptures, works of architecture and works of artistic craftsmanship (the definition of which is uncertain, but is probably limited to works of or similar to fine art, *e.g.* hand-blown vases).
2. As before, the work must be original. No formalities are required and the ownership will rest with the author or employer.
3. Artistic copyright lasts, as before, for the life of the author plus 70 years following death.

UK DESIGN RIGHT (3D Designs)

1. Design right will exist in most 3D articles, including furniture, interior accessories, lighting designs etc. However, design right does not subsist in surface decoration (which is covered by copyright).
2. Design right exists in all ORIGINAL designs (the design must not have been copied from an existing design or regarded as 'commonplace' in the design field in question at the time it was designed).
3. No formalities are required. The right is automatically created once the design has been recorded or an article has been made to the design (*e.g.* a prototype).
4. Certain design features are excluded from design right protection, including methods of construction and features which enable the design to be connected to or to match another article.
5. Design right protection lasts for the shorter of either 10 years from the end of the first year the design is made available for sale or 15 years from the end of the year the design is created.
6. In the last 5 years of the period of protection under 5. Above, anyone can copy the design, subject to the payment of a royalty to the designer (the so-called "licence of right" period).
7. Copies do not have to be exactly the same for your rights to be infringed and a copyist will not escape liability by making slight alterations, or by only copying part of a design. A substantial similarity between the whole or part of a design and the copy will be enough for infringement to occur.

UNREGISTERED COMMUNITY DESIGN (2D and 3D Designs)

1. This is a new right which applies automatically throughout the European Union. It will apply to exactly the same type of designs as can be protected by a Registered Design (see 1. above under Registered Design).
2. As with copyright and design right, there is no need to file a registration in order to benefit from the right.
3. The rules for qualification for protection and the test for infringement are also exactly the same as with Registered Design save that copying must be proved (see 2. to 4. above under Registered Design).
4. The right only lasts for three years from the date the design is first marketed.

REGISTERED DESIGN (2D and 3D Designs) UK and EU

1. Registered design protects the appearance of a product - this includes shape, contours, lines, colours, texture of the product or ornamentation. The definition of a 'product' includes parts, get-up, symbols and typefaces.
2. Can be applied for as an EU wide right and/or a UK right.
3. To qualify for registration, a design need not have 'eye appeal' but it must be visible. If you have published your design already you can still apply for registered design protection if it marketed for less than one year before registration is applied for. However, the design must differ from existing designs in the marketplace by more than just immaterial details and must create a different overall impression on someone who is familiar with the relevant design field.
4. Protection does not cover features which are dictated solely by the function which the product has to perform.
5. An infringement will occur where a copy creates the same overall impression as the registered design.
6. Once registered, the owner has a monopoly over the design. No evidence of copying is required to prove an infringement of a registered design, unlike copyright or design right.
7. Registered design protection lasts for up to 25 years, renewable every five years after registration.

TRADE MARKS UK and EU

1. A trade mark provides the owner with an exclusive right to use the mark on the goods and services for which the trade mark has been registered. In limited cases, it can also be used to protect the shape, colour and smell of a product.
2. To qualify for registration, a trade mark must be capable of distinguishing goods or services of one business from that of another.
3. Registration will be refused if a mark is devoid of distinctive character, (i.e. if it is descriptive), customary to the trade or exclusively consists of a sign used in the relevant trade to designate the product's features, *e.g.* size or geographical origin.

PASSING OFF

1. Passing off protects the reputation and goodwill of a business.
2. An established reputation is required.
3. Any copies must confuse the public as to who has made them, so that people believe the copy is the original, or was made by the maker of the original, or that there is some connection between them. Usually, actual evidence of confusion is required.
4. Price differences can have an effect on the likelihood of confusion between original and copy products, as can use of the manufacturer or retailer's name in connection with the products.

PATENTS

1. Patents protect inventions which constitute technical improvements.
2. The invention must be new (i.e. not published or disclosed to the public prior to the application date), involve an inventive step and be capable of industrial application.
3. Once registered, the owner has a monopoly right over the invention.
4. The patent lasts for 20 years from the date of filing, although annual fees from the fourth anniversary of filing are required.

The information provided in this document does not provide a complete statement of the present law and you should always take specialist advice in respect of your particular circumstances. Call the ACID general enquiry line on 0845 644 3617 or if you are an ACID member call the legal help line on 0845 230 5742 for more detailed information on your particular circumstances.