



Design Right

Design right (sometimes called unregistered design right) was introduced by the Copyright, Designs and Patents Act 1988 and took effect on 1 August 1989.

Definition

Design right is a property right, akin to copyright, which applies to “original” designs in respect of any aspect of shape or configuration, whether internal or external, of the whole or part of an article. “Original” can be taken to mean new (in the sense it has not been copied), not merely a variation on an established article and not commonplace in its field of design.

Exceptions

Design right does not subsist in any method or principle of construction nor in the surface decoration of an article. Further, there is no design right in features which:

1. Enable the article to connect in some way with another article so that one or other article may perform its function (for example, the shape and layout of the three pins of an electrical plug are predetermined by the design of the wall socket); or
2. Ensure that the article matches the appearance of another article (for example no design right subsists in car door which is designed to match the rest of the bodywork).

Duration

Design right only subsists once the design has been recorded in a document (which may be held on computer) or when an article is first made to the design. If articles to the design are (legitimately) marketed anywhere in the world within the first five years of the design being recorded or an article made, then the design right lasts for ten years from when that activity was first started. Where the design is not exploited, the right subsists for a period of 15 years from the end of the year in which the design was recorded or an article first made.

Ownership

Generally the owner of the design right is the creator unless the design is created in the course of the creator's employment (in which case it belongs to the employer) or if made under paid commission (in which case it belongs to the commissioner). Design right may be assigned by agreement in writing and may be passed to heirs under a will or intestacy.

Rights

The owner of the design right has the exclusive right to reproduce (by copying) the design for commercial purposes by making articles to the design or by making a design document recording the design for the purpose of enabling such articles to be made. The emphasis here is on reproduction by copying and the protection given to owner of design rights therefore falls short of the monopoly protection given to the owner of registered designs.

An article may be protected by more than one type of right simultaneously. For example, an article could be protected by design right, registered design right and be the subject of a patent, provided that it met the appropriate criteria for each right. The Act has sought to minimise the overlap between design right and copyright to the extent that they may co-exist in certain works.

In recognition of the fact that both copyright and design right may subsist in design drawings, the 1988 Act provides that there will be no infringement of any copyright in a design document or model recording the design (other than a design for an artistic work or typeface) to make up an article to that design. This will therefore be the province of design law. However, making a two-dimensional copy of the design drawing would continue to be an infringement of copyright in that drawing. The 1988 Act deals with any residual overlap of rights by providing that where an act would be both an infringement of copyright and design right, the copyright infringement will prevail specialist advice.

DACS

33 Great Sutton St
London EC1V 0DX

T +44 (0)20 7336 8811

F +44 (0)20 7336 8822

E info@dacs.org.uk

www.dacs.org.uk