

EIP

Have your say: design right protection - effective or not?

In May 2011, a review, entitled “Digital Opportunity: A Review of Intellectual Property and Growth” (commonly known as “The Hargreaves Review”), was commissioned by the Government to assess whether the IP framework in the UK was sufficient to promote innovation and growth in the UK economy. Among other things, the Review concluded that there was insufficient knowledge of the relationship between design protection, innovation and growth.

As a result, the UK Intellectual Property Office has recently released a [Call for Evidence](#) that poses various questions for those in the design community so that it can better understand industry’s perspective on design and design protection. The questions cover topics such as whether respondents registered their designs in the EU or UK and, if not, why not; whether the legal system is too complex; and the enforcement of design rights. The information gathered from the Call for Evidence would be beneficial for the Government in shaping future policy.

The Call for Evidence includes a review of four pieces of research on design rights and design activity that it has carried out with the [Design Council](#). The research estimates that, in 2008, design contributed £33.5 billion to the UK economy, which is 2.4% of GDP. However, only a small fraction of such design is formally protected via design registrations. The research suggests that one of the reasons for the relatively low number of formal registrations may be that the UK design industry is unaware of registered design rights or may typically rely on automatic, unregistered rights to protect designs. In particular, as soon as a design is created (even if only in a drawing), the design may automatically be protected by copyright and/or unregistered design right. However, a limitation of this automatic protection is that it is necessary to prove that any

similar third party designs were actually copied from an unregistered design for infringement to occur. On the other hand, one of the advantages of a registered, monopoly right is that it is not necessary to prove copying for the purposes of infringement (see the EIP Newsflash on Albert Packaging v Nampak Cartons).

Indeed, despite the stronger protection provided by registered designs, the research suggests that only 15% of UK firms that purchased design services or developed designs in-house formally register their designs. Somewhat surprisingly, only 11% of technology-based firms own a registered design. Nevertheless, it is reassuring that the firms participating in the research had a strong feeling that design registrations might be important for commercial success, which will hopefully lead to higher numbers of design registrations.

It is encouraging that efforts are being made to understand why relatively few designers formally register their designs, especially given that the UK has a world-leading design industry. If you would like to share your views on the use of design-related IP in the UK, you can respond to the Call for Evidence by making a formal submission to the UK IPO or by completing a short online survey, which is available [here](#). The deadline for filing submissions is 11 November 2011.