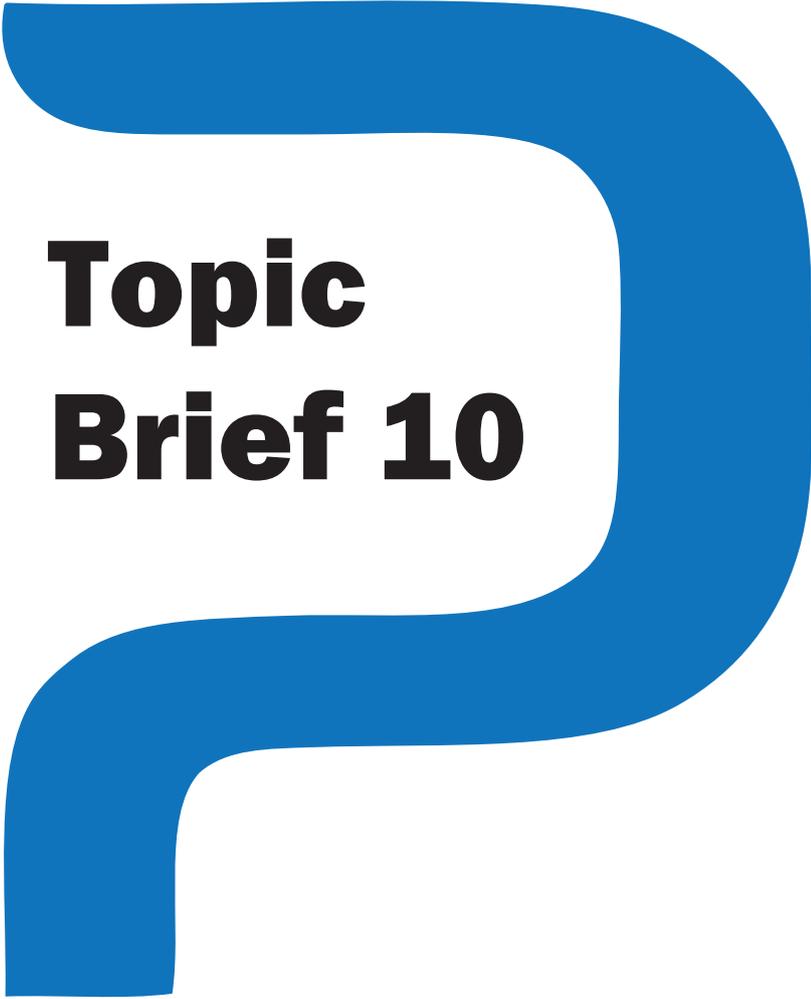




Intellectual Property Awareness Network

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Topic Brief 10

A solid blue square graphic element located to the left of the text 'Design and IP'.

Design and IP

Brief 10



Design is incredibly important to the UK, for every £1 invested in design business can expect over £4 in net operating profit...

Design and IP

Fact and figures – Design underpins the UK’s knowledge-based and manufacturing industries

UK Design punches well above its weight. In 2013, the design economy generated £71.7bn in gross value added (GVA), equivalent to 7.2% of total GVA (Design Council, Design Economy report 2015⁸⁴). In the period 2009-2013, GVA increased by 27.9%, compared to 18.1% across the UK economy as a whole. Approximately 580,000 people are directly employed in the UK’s design industries and a further one million designers work across the economy in non-design industries. This makes the design economy equivalent to the ninth biggest employer in the UK.

Design is incredibly important to the UK, for every £1 invested in design business can expect over £4 in net operating profit and the export of product, graphic and fashion design services increased by 76% since 2009. The UK has worldwide acclaim for its design and innovation excellence and British designers lead in socially responsible and environmentally sustainable innovation. Internationally, the UK Design sector retained its 6th place in world rankings from 2010-2015. As well as some notable household names, Britain’s design sector comprises mainly micro-enterprises or SMEs with fewer than 4 employees, many, highly innovative and world renowned.

The UK increasingly earns more from designing successful products than from manufacturing them. The design sector employs over 1.6 million people. Design is a diverse profession with over 50 separate design disciplines impacting many areas of the economy. Communications design, followed by digital and multimedia design, remains the dominant design disciplines in the UK. As well as the more obvious areas, such as advertising, architecture, art markets, audio-visual, crafts, fashion, screen, music, performing arts and publishing, design is a key element in computer and video games, engineering, software and products of all types.

The ability to protect the intellectual capital underpinning their innovation is crucial to maintaining their competitive edge. In the UK, designers rely on all intellectual property (IP) rights, but less on patents, with the majority relying on unregistered rights such as design right and copyright.

84 <http://www.ipa.gov.uk/types/hargreaves.htm>

Legislative changes 2011-2015

In May 2011, the independent review of IP and Growth by Professor Ian Hargreaves⁸⁵ (commissioned by the Prime Minister in November 2010) reported as one of its findings that design had a “very important contribution to make to growth” and that the design sector’s IP needs “had been neglected”. Following an Intellectual Property Office (IPO) evidence based assessment of the relationship between design rights and innovation, and subsequent Calls for Evidence, an IP Bill, was announced in May 2013 including reforms to both design and patent law. In October 2014 the IP Act became law and the most significant feature was the introduction of criminal provisions for the intentional infringement of a UK registered design. Individual company directors may become liable. For designers, an Opinions Service will be created and there is clarification on design ownership of commissioned work which now remains with the designer. The UK will accede to the Hague Convention, practically this will mean that when the UK joins, designers can make one single design application for the registration of up to 100 designs which will be recognised in 64 countries. A current design consultation includes recommendations to simplify UK design registration and make it more cost effective. It is now possible to register a design online. Despite improvements, design registration has remained fairly static for over a decade at between 4000 and 5000 per year.

The IP Act: Summary

- The intentional copying of a registered design is now a criminal offence and individual directors may be liable
- Design ownership: the owner of a commissioned design is now the designer and not the commissioner
- The definition of unregistered design right has been narrowed slightly
- Where someone uses a design in good faith that is subsequently registered by another person, there will be some protection from an infringement claim on prior use of a design
- There is simplification of the qualifying rules for an unregistered design right in the UK and restricting the ability to base a claim for copying on a cropped area of an unregistered design i.e., a ‘part of a part’)
- The meaning of ‘originality’ within the definition of unregistered design has been refined
- Eligibility requirements defining who may claim UK unregistered design rights have been streamlined

85 <http://www.designcouncil.org.uk/what-we-do/design-economy>

As a part of the Enterprise and Regulatory Reform Act 2013⁸⁶, the UK Government announced the repeal of section 52 of the Copyright, Designs and Patents Act (CDPA). The repeal of section 52 means the period of copyright protection for an artistic work, which has been industrially manufactured, will be extended from 25 years to the life of the artist plus 70 years. Transitional arrangements were originally recommended for a five year period but, following a legal challenge and further consultation the transitional period has been revised to 6 months from April 28 2015. Businesses which sell replica furniture could become liable to a potential fine of up to £50,000 and a custodial sentence of up to 10 years. Other EU countries had adopted this law for many years and, until recently Estonia, Romania and the UK were the only countries which did not adhere to EU law.

The difficulty in defining the design sector has itself contributed to the failure to understand the correct relevancy and focus on IP rights for design within policy making thus far. This difficulty has been compounded by the absence of any Standard Industrial Code that realistically captures 21st century design industry sectors of the 21st century.

Research on Design

Independent research⁸⁷ commissioned by the IPO examined where design activity takes place in the UK, how it is purchased and how registered rights are used. There is an analysis of the impact of registered design rights on business performance and further research has looked at the reasons for the behaviour of firms when interacting within the current IP framework for design.

A constant theme running through current evidence and research is that SMEs face a continuing problem of infringement. It is almost impossible to seek redress because of time, legal costs and scale of opponents⁸⁸. Research has identified the continuing challenge of lack of funding to deliver innovation through design – the average hourly rate for designers is between £15 and £19.

Current IP research includes work on the relationship between unregistered design rights and innovation.

86 http://www.legislation.gov.uk/ukpga/2013/24/pdfs/ukpga_20130024_en.pdf

87 Design Economics – Chapter 3 Sep 2011: <http://www.ipo.gov.uk/ipresearch-designsreport3-201109.pdf>

88 See page 3 of the Anti-Copying in Design response to the design consultation in 2012: <http://www.ipo.gov.uk/response-2012-designs-acid.pdf>

Leading Business by Design⁸⁹ is a Design Council qualitative research project that investigates the strategic use of design at senior levels in a sample of UK and global businesses. The report highlights our three key findings on how businesses can benefit from design:

1. Design is customer-centred – Benefit is greatest when design is intimately related to solving problems, especially customers’ problems
2. Design is most powerful when culturally embedded – It works best when it has strong support in the organisation, especially from senior management
3. Design can add value to any organisation – Design can benefit manufacturing and service-based organisations, small, medium or large

Awareness of “Design”

The terminology “Design” and “IP and Design policy” can often be misleading because it covers such a broad spectrum. According to the Cox Review of creativity in business⁹⁰:

“Design” is what links creativity and innovation. It shapes ideas to become practical and attractive propositions for users or customers. Design may be described as creativity deployed to a specific end.

The UK Government has recognised a need to improve awareness and understanding of the potential of design and creativity among policy makers and design customers – both private and public organisations⁹¹. There remains a disturbing tendency to undervalue professional designers, as demonstrated by the practice of “free pitching” in public and corporate procurement⁹².

Relevant legislation

In the UK the designers may rely on IP rights that arise automatically (copyright, UK and EU unregistered design right and goodwill in a trade name or get-up) or registered rights (a registered design, trade mark or perhaps a patent). UK and EU unregistered design right are relatively new and provide protection from copying for the whole of the appearance of a product rather than just the 3D elements. Colours, materials, surface patterns as well as shape can all not be protected. UK unregistered rights protect the shape and configuration of 3D objects.

89 <http://www.designcouncil.org.uk/resources/report/leading-business-design>

90 In the Cox review of creativity in business, prepared for HM Treasury, November 2005: http://webarchive.nationalarchives.gov.uk/+http://www.hm-treasury.gov.uk/coxreview_index.htm

91 For example, see Chapter 4 of the Cox review above and the IP Awareness Survey for the IPO in 2006 Dr Robert Pitkethly: <http://www.ipo.gov.uk/ipsurvey.pdf>

92 See <http://www.dba.org.uk/guides/client.asp>

Broader applications of Design

Recent research⁹³ carried out by the Design Council and Warwick Business School has found that Design is now firmly on the business agenda:

- Design is customer-centred – benefit is greatest when design is intimately related to solving problems, especially customers’ problems and most powerful when culturally embedded and confirmed that it adds value to any organisation
- Design is most powerful when carefully embedded – it works best when it has strong support in the organisation, especially from senior management
- Design Can add value to any organisation – Design can benefit manufacturing and service-based organisations, small, medium or large

The Design Council has also shown how “Design” can be more broadly applied to convert national and global challenges into opportunities for innovation. Their approach partners, designers with business decision-makers, policy-makers, educators and architects to engage with the latest thinking and insight into design and innovation and apply it to tackle big challenges and improve everyday life. This has stimulated different ways of tackling challenges such as those within the Health Service by bringing together a range of experts such as technology and materials specialists and manufacturers – examples include:

Design Bugs Out project⁹⁴ which designed new furniture and equipment to help combat the spread of MRSA and *C. difficile* and

Design for Patient Dignity project⁹⁵, which developed innovative new designs showing how different privacy and dignity issues could be solved

Further reading:

Government Guidelines on the Changes to Design Law have been produced by the Intellectual Property Office https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/323145/changes-to-designs-law.pdf

93 <http://www.designcouncil.org.uk/knowledge-resources/leading-business-design>

94 <http://www.designcouncil.org.uk/our-work/challenges/Health/Design-Bugs-Out/>

95 <http://www.designcouncil.org.uk/our-work/challenges/Health/Design-for-Patient-Dignity/>