



"Diktat Disentangling Designs"

There are currently four species of design right operating in the UK. Two of these are EU-derived rights. The Registered Design is governed by the Registered Designs Act 1949 (version depends on date applied for). The "Supplementary Unregistered Design" is an intentional post-Brexit hangover: a short-term domestic right which mirrors the European unregistered right in existence prior to IP completion day (the last of which expired at the end of 2023), which is governed by a newly-modified UK version of Design Regulation (EC) 6/2022.

The SUD is distinct from the UK unregistered "Design Right" (UKUDR) which arises under the Copyright, Designs and Patents Act 1988 (ss.213ff), a (less) short-term domestic right developed under English as opposed to European law. Further, our domestic system affords copyright protection to design documents for an artistic work or typeface (CDPA s.51)...

Confused yet?

If ever there was a legal framework begging for simplification, this was it. And maybe, just maybe, our friends on the Continent have happened to give British lawmakers a nudge.

Last month, the EU Council adopted a newly recast Design Regulation (together with Directive), which will come into force in early December. Regulation (EU) 2024/2882 and Directive (EU) 2024/2823 will update Design Law for the digital age by *inter alia* (a) including products in non-physical form, (b) clarifying that the protectable design can include movement and/or animation (Reg Art.3) and, (c) providing protection against 3D-printing (Art.19(2)(d)). The registration process has also been simplified.

Interestingly, the revised legislation introduces a new "repair clause" (Art.20a), which adopts a near-identical "must-match" exclusion as that already provided under the

UKUDR regime (CDPA s.213(3)(b)(ii)). Simply put, a garage owner won't get in trouble for using a lookalike wingmirror to spruce up a sportscar (provided they inform the customer it's not the real deal).

Whilst the recast Directive precludes member states from providing their own domestic unregistered design rights (Art.3(1)), this will not affect post-Brexit Britain. Instead, parallel regimes will continue to apply and it will be up to the UK to decide whether to update the SUD in line with its European sibling. If it does not, the web already woven will appear even more tangled. If it does, then the gap between the two systems will narrow. There would still be notable differences between the SUD and UKUDR (duration, protection for surface decoration etc), but whether these are enough to justify continuation of the current patchwork is another question.

The significant reforms coming into force on the Continent provide a welcome opportunity to reflect, rethink and re-formulate the law in England and Wales. Maybe it's time to replace the mysterious maze with something more ... user-friendly?