



DESIGN OUT IP CRIME

Intellectual Property Tips & Guidelines for SME's in co-operation with A©ID's official partners the **Police Intellectual Property Crime Unit (PIPCU)**



Designs ...without permission – copyright, design right and trade mark infringement are crimes and are liable to up to 10 years in prison

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The recent **IP Act** which will strengthen the rights of designers was given Royal Assent and became law on October 1st 2014, so make sure you know what the law states. For example, intentionally infringing a registered UK or EU design now has criminal provisions and individual company directors are also liable.

How do I know the rules about what I can and can't access?

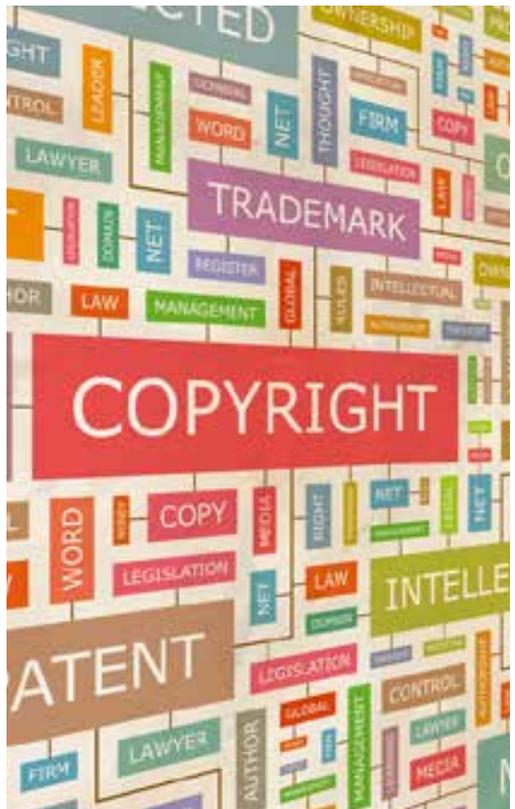
It is easy to be confused about intellectual property ownership but it is unlawful to copy someone's work without permission. So, if you are not sure where to find an e-book or film to download, a music album or video game to stream, catch-up on TV, or where to watch popular sporting events, **The Content Map** : www.thecontentmap.com helps you access legal content online. The Content Map provides a comprehensive list of legitimate websites and, in most instances, by clicking on the website's icon and it can link you directly to the site or service.

As a designer, what can I do to protect my designs?

1.Cross all your t's and dot every i - If costs permit, make sure you register your designs as comprehensively as possible. The downside is that UK and EU registration authorities do not examine your registrations so what you submit is what you have to rely on. So, the more detail you include, the better! Alternatively, if you can't afford registration ACID membership will give you access to a Design Databank through ACID Marketplace which holds over 300,000 designs. This doesn't add to your design rights but gives independent evidence of the date they are received by us. **ACID Design Databank supports protection. ACID Marketplace promotes and tracks.**

2.If you don't want to be copied, say so! Communicate a powerful message on your website/marketing material. Something along the lines of, "All the intellectual property in our designs belongs to (your name). Any infringements will be pursued vigorously."

3.Sign and date all your work! - Simple, but when it comes to proving your design ownership, an audit trail of the detailed journey from idea to marketplace is compelling! The majority of ACID cases have settled based on strong evidence to support unregistered designs.



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ESSENTIALS OF AN IP STRATEGY

RULE NO. 1 - CREATE ONE!

POSITIVE COMMUNICATION – of your IP strategy! This is essential - internally and externally and throughout the whole supply chain. Basically, if you don't want to be copied say so! There is no better place than on a website, within terms & conditions, marketing material and product labelling. IP communication sends a clear message that original design and design integrity = value, not only for the purchaser but for the originator!

CREATE A PRO-ACTIVE IP STRATEGY - not reactive, only dealing with IP issues when it becomes fire fighting. Identify IP issues and put a plan in place. Ask what are the risk factors? What is our plan of action if we discover copies?

EDUCATION - Become "IP Savvy" - create an informed understanding within your team. IP knowledge is important to all organisations, regard less of size

CHOOSE BATTLES CAREFULLY – never sue on principal, only if there is a quantifiable loss and a clear IP case to pursue. Publicise any settlements in the trade press to communicate a zero tolerance of IP infringement. The trade press is a small world and word soon gets out.

TERRITORIES – identify where are you trading, what are the risk factors? If your designs are infringed in another country where is your IP support? Have you registered your designs in that country? For example, to take legal action in China you need to have registered your designs.



REGISTRATIONS – Create an IP Portfolio of your design and trade mark registrations also including any patents you may have. This is also essential for raising funding/investment or exit strategies

TRADE SECRETS/EMPLOYEES – ensure there are restrictions in contracts of employment. There is nothing worse than finding out that an ex employee has run off with all your valuable trade secrets to arm a competitor with a fast track to your know-how. A company's individual "trade secrets" refers to confidential business information to which only a limited amount of people within a business have access to such as your customer list, the methods you use to make your product specific to design, manufacturing or industrial processes. In short, anything that gives you a competitive advantage.

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CONFIDENTIALITY – guard your trade secrets carefully. Ensure that there is a confidentiality protocol in place to ensure that the confidentiality of your business is not compromised. Create confidentiality agreements for sensitive information between you and employees privy to this information.

AGREEMENTS – clarity of IP ownership is essential. Agreement underpin most commercial relationships, it's good to know you have the small print to rely on if things go wrong. ACID has various generic industry standard agreements which can be drafted with bespoke clauses

INSURANCE – expensive but worth considering if continuing infringement is a significant issue

ADR/MEDIATION? - It's good to talk! Consider Alternative Dispute Resolution/Mediation as an alternative to litigations

INTELLECTUAL PROPERTY ENTERPRISE COURT (Formerly PATENTS COUNTY COURT) - In the last two years there has been a significant improvement in the process and costs element of enforcing your rights at Court. There is also a Small Claims Track for low value IP claims under £10,000.



REGISTER FOR PROTECTION – Register new designs wherever possible and budget for enforcement. ACID has a Design Data Bank for unregistered designs and it's FREE to members. This does not add to IPRs but nevertheless serves as compelling evidence of third party confirmation of when new designs are received by ACID. www.ipo.gov.uk www.oami.europa.eu

GOT A GOOD IDEA? – keep it safe! Never underestimate the risks of sharing a good idea unless you know there are safeguards. If the safeguards are in place then the idea can turn into positive design collaboration for mutual advantage and joint success.

ARM YOURSELF WITH IP KNOWLEDGE - Be IP aware! Watch competitors closely, watch the marketplace

RESPECT THE RIGHTS OF OTHERS – essential within your own CSR.

KNOW THE RISK FACTORS – who is copying you? Keep watch!

A DEDICATED IP MEMBER OF STAFF – in a small company this can be added to one particular person's role as a key result area of expertise and management. In larger companies, investment in an IP Officer to learn how to manage brand protection, document/registration protocols and the management of licensing and royalties. Or, as many are, if you are a lone or micro company you will have to add this to your many tasks of a SME!

INVEST IN THE RIGHT IP ADVICE – with IP professionals and business advisors who know and understand your business and your marketplace. Those with demonstrable experience within your own sector will serve you well.



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As a Design Buyer, what can I do to avoid copying someone else's designs?

It is unlawful to use someone else's design without permission. Any original product will be protected against copying by at least one legal right in the UK (known as IP rights). For example, copyright will protect any original two-dimensional design, including photographs, illustrations, textile designs etc. and works of artistic craftsmanship. Design right will protect any original three-dimensional design, provided that it was not commonplace in the relevant design field at the time it was created. There is also a new European-wide unregistered Community design which protects most two-dimensional and three-dimensional designs against copying.

If a design is registered at the **UK Intellectual Property Office** or at **OHIM (The Office for Harmonization in the Internal Market)**, then the owner of the Registered Design owns a monopoly in the design and can prevent anyone from using or selling that design or any design which gives the same overall impression. The key difference between Registered and Unregistered rights is that there is no need to prove copying in order to enforce a Registered Design.

If someone knows or has reason to believe that what they are selling is a copy, then the designer can obtain an order from the Court requiring them to deliver up all their remaining stock of the offending items. The retailer can also be liable to pay damages to the designer to compensate them for any sales made by the retailer, together with the designer's legal costs. The retailer can also be required to disclose information relating to the name of its supplier, the number of items which it bought and sold and the profit it made on those sales. In respect of a Registered Design, the retailer can still be liable even if they did not know that what they were selling was an infringement. If a retailer proves they did not know they were infringing an unregistered right, then generally the owner will not be entitled to damages against them but can still pursue other remedies.



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What happens if you instruct someone else to copy designs?

A design buyer or a purchasing or procurement staff member may also be liable if they authorise someone else to make a copy of a design. There have been a number of cases for ACID members where design buyers have sent copies of their designs to manufacturers in the Far East to source cheap copies of those designs. Very often, the design buyer has been selling the designer's original designs for a number of years and has appreciated how successful the designs have been. They have then decided to cut out the designer and source the product direct.

It is advisable to use reputable suppliers and ask for indemnities and check the design's audit trail. It is in a design buyers' best interests to use only reputable suppliers who do not produce copies of designs. Since a design buyer can be liable for selling an infringing design, it is sensible to seek an indemnity from your suppliers, including a statement that they have not copied the design from someone else. They should give an indemnity to the effect that they will reimburse you for any sums which you may have to pay in damages and legal costs as a result of selling an infringing design.

Don't try to skirt around existing laws. There are some design buyers who have been known to sell designs which come as close as possible to infringing existing design laws, whilst leaving no guarantee of success if a designer took action against them. However, UK design laws have been strengthened considerably so that there are now very few loopholes remaining for retailers to exploit.

Do employ designers to produce original designs, and educate your buyers on the existing laws. All too often we hear of stories that design buyers invite companies to tender for product placement, the samples are then taken apart and examined closely with a view to producing a new version of that design. Very rarely is feedback given to those that respond to Tender with the reasons for being unsuccessful.

A company is liable for the acts of each of its employees. Very often, it only takes one buyer in a large organisation to cause considerable damage to the reputation and business of that organisation.

Don't defend legal cases just for the sake of it. If you do become the subject of a legal action for selling a copy of an infringing design, resist the temptation to instruct lawyers to try to defend the action on technical points. The longer a legal action goes on, the higher the legal costs will be and, unless you succeed in your Defence, you will not only have to pay your own legal costs, but also the other side's legal costs together with any compensation awarded by the Court.

Don't argue that designers can't afford to sue you. ACID was originally formed because companies were complaining that whenever they challenged design buyers who were selling copies of their designs, they were told that the designer couldn't afford to sue them, and so these design companies were doing nothing to enforce their rights. ACID was therefore created to enable design companies to take effective action to protect and enforce the rights in their designs.



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ACID IP Insurance

"ACID Insurance" will offer IP Insurance for Registered and unregistered designs (as long as they are lodged with the ACID Design Databank). This is underwritten by COBRA, adding even more deterrence against those who seek the fast track to market through copying without permission. Seeing the IP Insured logo together with the ACID logo supports and strengthens designers' protection.



Don't be fooled into buying a fake - read Harpers Bazaars top tips for spotting fake handbags! Fakes fund organised crime and are known to encourage child labour. Start being a responsible shopper!

Check the quality of the material the bag is made from, this can be the first give away of a counterfeit product. If the item is supposed to be leather it should feel and smell like leather. Take a close look at the hardware, it should feel solid rather than hollow and shouldn't chip.

The stitch work is another area to pay careful attention to - bad craftsmanship here is often a key giveaway. Uneven, slanted or back-and-forth stitching is a sign of a poorly made item. A cheap lining is another clue to look out for - feel the quality and carefully inspect the colour. Counterfeiters often work from photos which can distort the colour tone of the lining, leading to them using the wrong shade.

The logo is another easy slip up area for counterfeiters. It's really all about the detail here, so make sure you're aware of the particularities of the brand logo. Check the pockets; does the bag you're looking at have the correct number of pockets in the right placement for that particular model?



Finally check the inner label for any discrepancies, is the logo centred, should there be a hologram or a serial number? If there's a serial number is it in the correct sequence? If in doubt, check it against one that you know to be the real deal.