



## DESIGN RIGHT FAQs

### What is a registered design right?

A registered design provides an exclusive right in the appearance of the whole or part of a design. The owner of a registered design enjoys the exclusive right to use the design for an initial period of 5 years, which may be extended over a further 5-year period up to a maximum of 25 years. They can prevent someone else from using the design, making, and offering, selling, importing, or exporting a product featuring the design or stocking a product for those purposes.

### How do I know if my design can be registered?

There are certain instances where a design cannot be registered. These include where the appearance of a product design is dictated by its technical function, where the design has to be reproduced in its exact form and dimensions to enable it to perform its function, or where the design is part of what is described as a complex product that is not visible when the product is being used.

Otherwise a design must fulfil two requirements to be considered for registration. Your design must not be identical to or differ only in immaterial details from another design which has already been made available to the public. The design must also possess "individual character". This means that the overall impression that it creates on an "informed user" must be different to the overall impression created from any other design which has already been made available to the public.

### How do I register my design in the UK?

You can register your designs online with the UK Intellectual Property Office (UKIPO). If your design fulfils the requirements, you will be sent a certificate of registration or otherwise refused registration although you can appeal such a decision. You can either file the application yourself, instruct a solicitor, or patent agent to draft and file the application for you.

### Does a UK registration of my design provide me with protection abroad?

No. A design registered in the UK applies only in the UK. Most countries require a separate registration to be filed in their country.

### What if I want to "test the market" for my design before incurring the expense of applying for a registration?

Under UK law it is possible to test the market in the 12-month period before filing an application. Such a disclosure will not preclude an effective registration, but protection will only begin from the date you file your application. It is worth noting that a delay in filing may allow someone else to file an application before you.

ACID Advice. The information provided is intended to provide general information concerning various aspects of Intellectual Property and should not be used as legal advice

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### **Can I register my design in the European Union?**

Yes. You can also register your designs with the EUIPO but it will only protect you in the EU member states and you will have to register separately in the UK. .

### **Do I have to register my designs?**

No, but it usually is better to register. An unregistered design right is an automatic intellectual property right which protects most aspects of the appearance of a design. Unlike registered design, no application is required, and it arises automatically upon the creation of the design. Unlike a registered design, it does not provide an exclusive right but a right to prevent copying. There may be some overlap in protection between registered design and design right.

### **How do I know if my design qualifies for design right protection?**

UK design right applies to features of shape or configuration of an item. This means that two dimensional designs such as textiles or wallpaper (but not surface decoration) will not qualify for design right protection, although they will benefit from copyright protection and possibly design protection if registered. They are likely to be protected by Unregistered Community Design. The design must not be commonplace.

### **How long does my UK unregistered design right protection last?**

The right to prevent copying provided by the UK design right lasts for 10 years from the end of the year in which an article made to the design was first marketed, up to an overall limit of 15 years from the end of the year in which the design was created. In the last 5 years of the period of protection, it is possible for someone to apply for a licence to use your design which you cannot refuse provided they agree to pay you a reasonable royalty.

### **Are there any exceptions to design right protection?**

Where an aspect of a design for an article allows that article to be fitted or matched to another item so that the article or the other item can fulfil its function, those aspects of the design do not benefit from protection. These exceptions are to ensure that competing designs for spare parts are not excluded from the market. Therefore, competitors may copy features of a design for these purposes.

### **How do I protect my designs should my company get into financial difficulties?**

Provided that the company is controlled by one individual or by a group of directors who agree, one way to protect the designs is for the individual designer to own the rights. The individual can then grant the company an exclusive licence. This means that the company has all the rights required while protecting the designs from falling into the hands of a liquidator should the company become insolvent.

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**A company has asked me to provide them with designs for greeting cards on a consultancy basis. How do I ensure I own the rights in the drawings?**

Provided that your designs are original they will be protected by copyright. Copyright will exist automatically there is no need to register your rights anywhere. However, you do want to make sure that you own the copyright and not the company. You should therefore have a written consultancy agreement with the company which includes a clause which states that you own and will retain the copyright in all your designs, or which states exactly what rights will be transferred or licensed to the company and when.

The position would be different if you were an employee of the company in that case the company would own the copyright.

**If an ACID member company employs a designer and that designer retains IP rights in his/her designs, these cannot be sent into the ACID IP Databank by the company, is this correct? If so, would the designer need separate membership?**

In almost all cases a design created by an employee will be automatically owned by the employer and if a member of ACID, should send in the drawings. If the rights are retained by the designer (e.g. because they are a freelance designer) then:

- If the intention was for the ACID member company to own the rights, they should request a written assignment from the designer and send in the drawings to the ACID IP Databank
- If the intention was for the designer to retain the designs, the ACID member should have been granted a licence to exploit the designs. If the licence is an exclusive licence (e.g. only the ACID member is allowed to deal in that design) then they should still send in their designs to be registered. If the licence is non-exclusive, then
- there is little point in sending in the drawings as the ACID member company would not have any enforceable IP rights in the designs as a non-exclusive licensee.

#### **Have you signed the ACID IP Charter?**

Join a growing number of people who are about IP ethics, respect, and compliance.  
<https://www.acid.uk.com/become-a-charter-signatory/>

