

WESTMINSTER
BUSINESS
FORUM

The future of UK design rights – priorities for a reformed framework 23rd October 2012

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About this Publication

This publication reflects proceedings at the Westminster Business Forum and Westminster Legal Policy Forum Keynote Seminar: The future of UK design rights – priorities for a reformed framework held on 23rd October 2012. The views expressed in the articles are those of the named authors, not those of the Forum or the sponsors, apart from their own articles.

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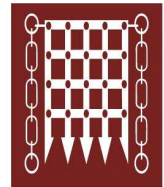
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Westminster Business Forum and Westminster Legal Policy Forum Keynote Seminar The future of UK design rights - priorities for a reformed framework

Timing: Morning, Tuesday, 23rd October 2012

Venue: Princess Alexandra Hall, Royal Over-Seas League, Over-Seas House, Park Place, St James's Street, London SW1A 1LR



**WESTMINSTER
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- 8.30 - 9.00 Registration and coffee
- 9.00 - 9.05 **Session Chair's opening remarks**
Gavin Williamson MP, Co-Chair, Associate Parliamentary Design and Innovation Group
- 9.05 - 9.30 **Design rights and intellectual property law - assessing the current agenda for reform**
What are the key challenges ahead for developing a design rights framework that better supports growth and innovation in the UK economy? To what extent has the Hargreaves Review of Intellectual Property and Growth brought about more focus on this area of intellectual property, and how has the Intellectual Property Office's (IPO) subsequent programme of consultation moved the debate forward?
Michelle Lewiston, Solicitor, Speechly Bircham and Contributor, *The Development of Design Law - Past and Future*
Questions and comments from the floor
- 9.30 - 10.25 **Addressing a "patchwork of protection" - reforming the use of registered, unregistered and community rights**
How have stakeholders responded to the IPO's consultation on reform of the UK designs legal framework, and what are the key challenges ahead for policy? Is the IPO right to highlight the UK unregistered design right as an area for reform, and how would its removal impact on businesses and wider rights-holders? Will recently scheduled changes to the Patents County Court do enough to improve the domestic enforcement framework, and should criminal sanctions be considered for deliberate and repeated infringements? In what ways does the overlap between design right and artistic copyright generate market uncertainty, and what impact will reforms included in the Enterprise and Regulatory Reform Bill have on stakeholders working in the manufacture and distribution of artistic works exploited by an industrial process? What scope is there for the IPO to reshape the services that it provides when registering designs? Has enough consideration been given to the increasing role of open-source and small scale independent design, and how might an evolving framework need to respond to this development?
Dids Macdonald, Chief Executive Officer, Anti Copying in Design (ACID)
Simon Clark, Partner, Berwin Leighton Paisner
Deborah Dawton, Chief Executive Officer, Design Business Association
Hugo Spowers, Founder, Riversimple
Questions and comments from the floor
- 10.25 - 10.30 **Session Chair's closing remarks**
Gavin Williamson MP, Co-Chair, Associate Parliamentary Design and Innovation Group
- 10.30 - 11.00 Coffee
- 11.00 - 11.05 **Session Chair's opening remarks**
Baroness Whitaker, Vice-Chair, Associate Parliamentary Design and Innovation Group
- 11.05 - 11.30 **UK design in a global economy**
Andrew Sissons, Researcher, Big Innovation Centre and Contributor, *UK Design as a global industry*
Questions and comments from the floor
- 11.30 - 12.25 **The economics of design rights - enforcing, exporting and profiting from design**
In what ways is the UK seen as a global centre of excellence in relation to design, and what role does intellectual property reform have in developing this reputation? To what extent do design intensive sectors - such as advanced manufacturing, fashion and architecture - tend to be more export-facing than other parts of the UK economy, and what challenges does this bring about for rights holders? What aspects of the current IP framework do companies find most valuable when seeking to develop design-related products internationally, and how do design rights compare in importance alongside the use of patents, copyright and trademarks? What principal difficulties do UK designers face in maintaining their rights internationally, and what strategies can be used to ensure protection in economies with weaker IP regimes?
Clive Thorne, Partner, Reynolds Porter Chamberlain
Lorrie Humphrey, Head of Commercial - Intellectual Property and Technology Law, BAE Systems
Duncan Fitzsimons, Director, Invention & Ergonomics, Vitamins
Dr Emma Murphy, Lecturer, Design Management, Lancaster University
Questions and comments from the floor
- 12.25 - 12.55 **Next steps for policy**
Howard Ripley, Policy Advisor, Intellectual Property Office
- 12.55 - 13.00 **Session Chair's and Westminster Business Forum and Westminster Legal Policy Forum closing remarks**
Baroness Whitaker, Vice-Chair, Associate Parliamentary Design and Innovation Group
Marc Gammon, Producer, Westminster Business Forum and Westminster Legal Policy Forum

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Westminster Business Forum and Westminster Legal Policy Forum's opening remarks

Marc Gammon, Producer

Welcome. I'm Marc Gammon, Producer of the Westminster Business Forum, and it's a real pleasure to see you all here this morning.

I just have a few business announcements to make before we start.

Firstly we are waiting for some colleagues still to arrive, so if you could allow them through the aisles when they do so, that would be great. Secondly if you could also possibly make sure that your mobile phones are turned to mute, that would be also really appreciated.

Finally, as is the case with all of our seminars, everything which is said in the room today will be recorded and later transcribed. So if you do have a question or comment to make, if you could just wait for one of us to arrive with one of our roaming mics, and if you could also say your name and who you are representing, just for the benefit of the transcribers.

You may have also noticed we've had a slight alteration to our speaker line up today. Andrew Layton from the IPO unfortunately can't be with us today due to unforeseen circumstances. He has very kindly sent along Howard Ripley in his place.

So really that's all from me at this stage, it should be a terrific morning ahead, we are in excellent hands with both our Chairs, so I will hand over now to our first Chair, Gavin Williamson MP.

Session Chair's opening remarks

Gavin Williamson MP, Co-Chair, Associate Parliamentary Design and Innovation Group

Can I start off by welcoming you all here, it's a great pleasure to Chair this first morning session.

My name, as has already been said, is Gavin Williamson, I'm a Member of Parliament for South Staffordshire and one of the things that I do as Member of Parliament for South Staffordshire, I'm Co-Chairman of the All-Party Associate Design Group. I think far too often, both Government and often business, we don't put a high enough emphasis in terms of design and the importance of design and actually making things work, so in our small way, along with Barry Sheerman we try and highlight some of the issues and how good design can make slightly better Government. We probably don't always succeed and probably many times we fail, but God loves a trier, as we always say.

It's a real pleasure to be able to Chair this session and to Chair it with Michelle Lewiston, Solicitor at Speechly Bircham, and I will hand over to yourself.

Design rights and intellectual property law - assessing the current agenda for reform

Michelle Lewiston, Solicitor, Speechly Bircham and Contributor, *The Development of Design Law - Past and Future*

First I would like to say thank you very much for inviting me to give the keynote speech.

Just by way of a little background, Speechly Bircham got involved with the IPO design project about a year ago when we tendered for the utility of design framework project, and to us it seemed pretty much like a no brainer because it gave us a great opportunity to have an impact on Government policy and contribute to that going forward. So I'm just going to touch on a few points here and just highlight some points that we considered in our report.

First, form is more important than function. Visual communication has always played an important role in society, design law has been on-going for about 400 years. You had cave paintings and aboriginal art back in the dawn of time, and we moved forward to the iconic Coca-Cola bottle and the sleek simplicity of the iPad. But the current economic climate means that the value of industrial design today has never been higher or more important to industry, and without wishing to steal Andrew Sissons' thunder from later on, he is speaking later on this morning, design in industry accounts for 7% of the UK's GVA and UK business invests over 35 billion a year on design.

So the exclusive right to reproduce the product of the creative mind is fundamental to economic incentive to create, but over the years design law has struggled to balance the desire to protect creativity against fettering the development of functionality and technical evolution.

With the 20th Century shift towards consumerism, the aesthetics of design have become more and more important players as product differentiators and it's this to which consumers attach emotional and commercial value. So if you don't protect your design, I question if you don't have value? after all it's not the technical function of an iPod that sells it. MP3 players do exactly the same job, technically, but it's the design that makes the sale for the iPod, and this was supported by the results of our survey which indicated that actually 89% of industry relies significantly on the design and appearance of their products to generate sales.

So what are we trying to protect? Legislation has always sought to protect the essence of design and as pointed out by His Honour Judge Birss in Samsung and Apple, the point of design protection must be to reward the skill of the product designers and their creativity and their labour. But today designers in industry face no fewer than five legal rights through which they can protect their designs and the array is somewhat confusing.

As you know we've got the EU Unitary Right for registered and unregistered designs, the UK Registered Right, the UK National Unregistered Right and also Copyright. So when we think about registering a design, industry needs to think carefully about the scope of protection that they want and if technological and aesthetic advances improve the product, they also need to think again about registering further designs. A good example of this is Apple and Samsung. It was submitted that the informed user, noting that the registered design was in 2004 would have expected advances in technology, and it was for this reason that the informed user would expect tablets to become thinner. But the Court held that the scope of protection extends only to that which has been registered, not some future variant, even if it's foreseeable. So industry and designers also need to take this into account when they are filing applications for registered design, thus making some of the protection more complex. Additionally, in this day and age of minimalist design, do we face the risk that minimalist design will attract less protection. It seems a shame to me that the simple elegance of a design or its "cool" rating would leave it with limited or no protection. Equally, on the other side of the coin, complex designs also run the risk of falling foul of the judgement that we had in Dyson and Vax where a number of design touch points enable the product to be differentiated, and therefore not infringe.

But essentially it's not really what I think, it's what industry thinks; it's the perspective of industry and that was why we were very keen to canvas industry's approach and opinions when we did the report.

So what is the overriding objective of industry? It's to remove infringing products from the market, it's to prevent loss of market share and exclusivity, and it's to protect reputation. Interestingly enough recovery of damages was one of the least important reasons for industry enforcing their design rights, but the problem is the perception of the level of costs and the perception that the revenue generated by the design wouldn't justify the costs of enforcement.

In our survey we had 77% indicating that they were satisfied with the outcome of their enforcement action, be that cease and desist letters or actually Court proceedings and injunctions, but in contrast only 25% were satisfied with the cost recovery.

So maybe we need to be thinking what evidence do you need to get a design case home?

Armed with knowledge arguably cases can be dealt with more cost effectively. Design is inspirational as we all know, and drawing from the judgement of Sir Robin Jacob, you can't pick out features from prior art and say those articles have that feature, and these articles have this feature and so it's not novel; because if you did that you would never have an article which would have individual character being made up of a combination, a unique combination of features, that existed previously in the prior art. But the question is when does inspiration give way to plagiarism, how close does the copy have to be?

Design rights are not simply concerned with anti-counterfeiting, if they were we would only have identical or very near identical products that would infringe. The test for different overall impression is much, much wider. And we also have to remember that just because things look the same because they do the same thing, is not an example of infringement.

So what aesthetic standpoint do you take? Is the judicial approach one of segmentation or overall appearance or both, and it seems to be both. The judiciary have said that the informed user does not simply perceive the designs as a whole without analysing details, but equally they don't observe minimal differences which may exist. The judiciary says having gone through various features individually, it is necessary to pull it all together and consider the overall impression on an informed user and address the significance and weight of each feature.

But previously arguments have also been made that this should not be just restricted to a side by side comparison. Thus in *Valor Heating*, His Honour Judge Whitford suggested that actually you should look at the registered design, go away and come back and then decide whether the new article in front of you was the same as the one that you originally saw. Whilst we have seen in recent cases the Judges look to the overall appearance, take for example *Samsung and Apple* and *Dyson and Vax*, their judgement is subject to their own cognitive bias.

So should it actually be the informed user that's makes the decision as to infringement. Judges are there to interpret statute, but does the Judge actually appreciate, or understand, the emotional trigger? And with the greatest respect, I can't see Sir Robin Jacob running around his apartment, or his home, with a Dyson in one hand and a Vax in the other.

So the way forward. Educating industry may be a way forward to foster positive attitudes and motives. It's very easy for lawyers, we all do it, to make very technical and advanced arguments for the benefit of our clients, but actually if industry doesn't understand the law, they can't use it to the best of their advantage. Another option is to have lay assessors, and we think that this may help industry to feel that they are more represented, if they have, perhaps say, one of their own on the bench that's there to assist and guide the Judge when he is donning the spectacles of the informed user.

At the end of the day, industry are looking for a cost effective and speedy remedy to the infringement of their designs, and a solution that they understand, and it's this that we need to try to deliver.

Thank you.

Michelle Lewiston's PowerPoint can be downloaded by the following link:

http://www.westminsterforumprojects.co.uk/forums/slides/MichelleLewiston_DesignRights.pdf

Design rights and intellectual property law - assessing the current agenda for reform

Questions and comments from the floor

Gavin Williamson MP:

Now the best part of any session, the question and answers, this is where you try and get your free legal advice. So if you raise your hands, and as it was said, say who you are and where you come from, a little bit like *Blind Date* used to be, it would be greatly appreciated. And stunned silence I'm sure... excellent, straight to coffee. Do we have any questions? Ah brilliant the lady...

Dids Macdonald:

Chief Executive of ACID.

I just wondered, Michelle, how many did you survey and who were they?

Michelle Lewiston:

Ah we had quite a spread of industries so we had, I suppose there was a predominant amount of SMEs, so small to medium, and individual designers, but we also did have a number of large organisations which come across the demographic. We surveyed as broadly as we could, we didn't restrict to any type of industry, so I think actually we worked with ACID as well to your membership, we posted out on the IPO, we went to our own clients and also to the Design Council and then we also had general publicity, so it was very much as broad a spread as we could get, and I think we had probably about 250, 275 people that responded.

Dids Macdonald:

Thank you, okay.

Gavin Williamson MP:

There was a question, was there a question further at the back there? The gentleman in the striped shirt.

Dr. Julian Potter:

WP Thompson & Co. Patent Attorneys.

I'm just interested in the fact that you mentioned the industrial design has never been more important. I would like your comment on the fact that most registered designs have a 25 year term, renewable every 5 years, but there's no substantive examination on their grant, that's left to the end compared say to patents which is a 20 year term renewal every year with a very thorough examination before grant.

Michelle Lewiston:

Yes, no I completely agree with your perspective on that. I did find it quite surprising when a few years ago I was at a seminar and initially starting out in design to find that unlike things like the trademarks, we don't have an examination point and it also makes it quite difficult to check what is on the register and what... designers are not necessarily knowing when they create their designs what they might be infringing, and you also have to look at the invalidity, it places the onus on somebody invalidating another registered design, whether or not it is actually validly registered. And so I know with Dids, you have the register of designs which I think is actually quite helpful for people to get a good understanding of what out there. Yes, I can only agree with you on that one, I think it would probably be a good idea to have... to invest time to have some sort of a checking system.

- Dr. Julian Potter: Do you think it would help to have a corpus of examiners familiar with the design world, the industrial world, rather than have to have an expert assisting the Judge?
- Michelle Lewiston: Actually that's interesting. One of the recommendations that we included in our report was possibly to have, particularly with registered designs, to have a Forum where you could have an IPO Design Tribunal where you would have officers that were experienced and were very familiar with the design corpus and could actually then deal with cases a lot quicker and a lot more cost effectively and that would be also one of the advantages to registering your design, because you would have that avenue available to you.
- Gavin Williamson MP: Any more questions? Surely this side of the room is not totally silent is it? Oh yes excellent, yes.
- Dani Salvadori: University of the Arts, London.
Our experience with registered design marks is that actually it's just something to protect you in a negotiation when somebody infringes it, it's very rarely worth going to law over it, and we haven't made enough money from any of our design registrations to really go that far, and I was very interested in what you just said about having some sort of panel that could help in those type of disputes, has that, as a policy proposal got anywhere?
- Michelle Lewiston: Well at the moment the IPO, they closed their consultation at the beginning of October, so I believe that they are considering the proposals that we put forward and the industry generally put forward, but we haven't actually had an outcome yet, but it was certainly something that we did recommend and put forward as a good avenue for industry.
- Gavin Williamson MP: The gentleman in the blue shirt.
- Dr. Roman Cholij: Cam Trade Marks & IP Services
Just going back to the point of substantive examinations and one of the key arguments against the substantive examinations is that it would drive up costs and in your own proposals do you actually suggest that be introduced?
- Michelle Lewiston: No, we didn't in our proposals, that wasn't part of the scope of the report that we were looking at, so it wasn't one of the options that we considered, no.
- Gavin Williamson MP: There's a gentleman at the front.
- Clive Thorne: RPC.
There's no mention about registered design right which to my mind is a much more powerful and effective right for the purpose of preventing infringement and piracy in registered rights, would you like to comment?
- Michelle Lewiston: Yes we did cover unregistered design rights in the report, actually the prevailing perspective of industry is that they do... it's almost like a default position for them, and even people, when they have

experienced infringement, still don't move towards registered designs, they still rely back on the automatic rights, and I do think it's a cost issue, particularly when... there's a lot of thought went into our report as to perceptions of industry and you have the perceived costs that when designers are creating their designs they have to factor these costs into the budget and they just don't see them as justifiable, so therefore they rely on their unregistered design rights, copyright also being another thing that... when we were looking at enforcement I think I remember off the top of my head, copyright was the prevailing right that was used, followed by trademark and then unregistered EU and unregistered UK design rights. It was in that order and it was very much, I think it was only 16% of registered rights that were enforced.

Gavin Williamson MP:

Any more questions? The gentleman, yes just there.

Steve Rutherford:

Nottingham Trent University.

In the course of your research, did you pick up on the exact size of the industry out there that is simply not engaging at all with IPR, from a point of choice or ignorance, because in our experience of working with industry, there are lots and lots of success stories that have come about despite a complete lack of IPR involvement.

Michelle Lewiston:

I agree with you. In my day to day job we come across an awful lot of companies that are very successful without having looked to protect, in this instance design rights and so forth. I think it's a little bit difficult to gauge the whole industry, we could only really cope with the people that actually had responded, but interestingly enough it was only 66% weren't infringing claims, even when they had been copied, so there is quite a...

Steve Rutherford:

That picture could be absolutely huge couldn't it, because there is... your group that you approached is a kind of slightly self-selecting group so the true nature of the picture of the people who aren't engaging I think is quite important.

Michelle Lewiston:

Yes, because they won't necessarily have picked up on the survey, yes I agree. I think for this reason... we also talked in our report of recommending to the IPO that they do an informational campaign because we don't think the message is getting out there clear enough to industry and there could be so much more engagement and advantages taken that that was one of the things that we had proposed.

Steve Rutherford:

Thanks.

Michelle Lewiston:

No worries.

Gavin Williamson MP:

Any more questions?

Ben Strutt:

Head of Industrial Design at Design and Technology Consultancy Cambridge Design Partnership.

Sorry, a late surge. Just interesting to reflect on your point about companies seeing design registrations as a sort of extraneous cost at the end, certainly in my experience you will naturally do an IP landscape review, patents and all the sort of normal usual suspects,

if you like, but it's a recommendation that we make that people register designs but very often people won't take us up on that ability. As I say the cost and searching associated with that, and very rarely, if ever, do people do searches. So how do we try and bring design registrations up to the level of priority that things like patents enjoy without obviously the cost and time associated with that.

Michelle Lewiston:

I think, as I've said, it's very much almost like an educational point that we need to get across to industry that there are advantages to registered design, but actually we need to make some of those advantages a little bit more transparent and actually when we are talking about things like the proposals with the UK Design Tribunal proposal that we have put forward, as an advantage to registering your design, so that's a different route, so maybe then that makes it something a little bit more tangible and a bit more... something that they would actually contemplate investing in at that time. The other thing, a lot of the report... we worked with some psychometric behavioural consultants, Mountainview, who looked at things like anchoring and the cost element, so that when you... on the IPO website at the moment, when you register a design you see a very low fee, I think it's something like £60 or something like that, to register a design, but actually when you go through the process, if you are adding additional designs and stuff, the price is going up and up so that the original perceived cost that you have suddenly exacerbates and industry are going to look at that as something they don't want... you know they are going to shy away from it and you also have to compare it to the unregistered, because that's free. So I think there have to be additional advantages to the registered design system to engage people.

Gavin Williamson MP:

Yes, and we have another one at the back.

Lorrie Humphrey:

Just building on from that.

BAE Systems. I am an IP lawyer but I'm actually going to be slightly controversial by saying there seems to be an assumption that there is an advantage of having an RD and I haven't yet heard articulated what that advantage is when you weigh up the costs involved in actually procuring a registration and as a business, and we have business plans and limited resources and we have to spend those wisely, if there is not a perceived advantage of having a registered design then you are not going to spend the money on the registration, and even in big business and my resources are probably much bigger than most people's in this room when it comes to IP protection, but then I've got a wider portfolio of products to protect and at the moment I would put much more value on having a few patents than the equivalent cost in registered designs, and that's what I would advise my businesses, and until the perceived value of a registered design is greater, then I wouldn't necessarily be advising businesses to go all out for RDs.

Michelle Lewiston:

I mean from our perspective, when you are looking at things such as enforcement, obviously the clear advantage to a registered design is you don't actually have to prove copying. I can understand the point and I think also with small designers it makes it a lot more difficult for them to allocate that budget, which is why we are suggesting that actually you need to think or may the IPO needs to

think, and Government needs to think a little bit more towards what other advantages can we give industry to encourage registration.

Gavin Williamson MP:

Thank you, oh and it's a late surge, am I allowed to get... if I take the two questions and then try and answer them both. So the gentleman in the blue shirt.

Dr. Roman Cholij:

Cam Trade Marks & IP Services

Just a comment on the advantage of registered design. Surely a very big plus is that it's so fast. I'm fundamentally a trade mark attorney and it costs far more to get a trademark registered than a registered design and it takes far longer and there's no comparison with the patent which just the drafting costs are thousands of pounds and the point I forgot to mention, one of the key advantages of not having a substantive examination is that you get a piece of IP fully granted within a couple of months, as opposed to, in the case of a trademark, at least 6 months, in the case of a patent, 2 or 3 years and they are, or can be used as an effective deterrent. I mean to what extent you can enforce is another matter, but surely these points can be emphasised in promoting registered designs before the business community.

Gavin Williamson MP:

And we have a question from the back there, we will take both together.

Questioner didn't give name:

I'd just like you to comment on how you see the proposed design tribunal at the IPO fitting in with the small claims procedure at the Patents County Court, which I understand was designed for these kind of activities.

Michelle Lewiston:

Right, okay, just trying to do both of them at the same time. I do agree with what you are saying and when you look at the comparison of the cost between trademarks and patents, completely true, but you also have to balance that, the perception with industry is that they have automatic rights which cost them nothing. So I think that's something else that they...

[Inaudible from the floor]

Michelle Lewiston:

Yes. And in relation to the Patents County Court and the new procedures we, in conjunction with the new PCC procedures that are involved, we also made recommendations for a superfast, almost like an expedited design list that could be run alongside and what we were looking at was having these almost in tandem so that you could choose, or opt to go if you have a registered design for the UK Tribunal, but the decisions made from the UK Tribunal would be enforceable by the Courts.

Gavin Williamson MP:

Great well thank you, I'm afraid we haven't got time for any more questions, otherwise people at the back will start staring at me in an intimidating way, as they want to move on to the next session. So I would like us all to show our appreciation for the presentation and thank you ever so much for coming along. Cheers.

Before I entered Parliament and I had a proper job I used to be a potter and of course all this seminar would be incredible useful

when I had been an actual potter because we were forever complaining about our intellectual designs being stolen by the Chinese. Now I remember once when I was talking to a Chinese potter and was complaining about this, he was explaining to me, well the whole British potter industry was built on the backs of nicking Chinese designs and producing them at a much lower cost of production in the UK, so I didn't really have any room to complain. But it didn't really make me feel any better, so I think the next session, I hope it's going to be incredibly informative for you all.

We are going to start off with Dids Macdonald, Chief Executive Officer of the Anti Copying in Design; followed by Simon Clark, Partner at Berwin Leighton Paisner; Deborah Dawton, Chief Executive Officer, Design Business Association; and Hugo Spowers, Founder of Riversimple. They are going to be doing 5 minute presentations each and after the presentations we are going to have the opportunity for Q&A, so Dids, over to you.

Addressing a “patchwork of protection” - reforming the use of registered, unregistered and community rights

Dids Macdonald, Chief Executive Officer, Anti Copying in Design (ACID)

Britain’s talented, 350,000-strong design sector produces 33.5 billion to the UK’s but comprises mainly lone, micro and small designers who rely on all IP rights, although to a lesser degree on patents. The majority rely on unregistered rights. So is the IPO right to concentrate just on design rights? No, ACID believes the focus should be on design within all IP rights and, the IP framework, in general, needs to be simplified and improved. IP Policy must also reflect the language of “growth” and “innovation” and not just focus on “rights”. It has already been acknowledged by Professor Hargreaves that UK IP design policy has been neglected and ACID welcomes this unique opportunity to raise awareness about design. It’s timely that IP and Design travels from political fringe to mainstream.

256 submissions were made to the Hargreaves Review of IP with only 1% concentrating on design (ACID, supported by the Alliance for IP and Billings Jackson). Professor Hargreaves was true to his word that he, “Wanted to hear from the dog that couldn’t bark” so the ACID case studies and evidence must have been compelling as Design became one of the 10 Government recommendations for IP reform and rightly so.

What were ACID’s priorities in its submission to the Designs Consultation?

- Improve the enforcement regimes and enable people to understand more fully what rights are held by others to help avoid disputes, resolve uncertainties around the scope of protection and simplify the laws surrounding the ownership of and qualification for design right
- Improve access to funding to strengthen the intellectual capital within the creative industries for SMEs
- To provide evidence against the argument of inadvertent or unintentional incidences of copying
- Introduction of Criminal Sanctions for persistent registered and unregistered design right infringement in line with copyright and trademarks
- Government to lend more support for ACID’s “Commission it, Don’t Copy it” campaign – to encourage some of the main offenders to sign the ACID Voluntary Code of Conduct and comply with IP guidelines.

In conjunction with the IPO Consultation, ACID carried out its own survey. Results from respondents were as follows:

67% said that the threat of their products being copied/ IP infringements restricting growth

87% thought criminal sanctions should apply to unregistered rights

98% thought that design infringement should be a criminal offence for persistent infringers

87% thought criminal sanctions for all IP infringements would deter copying

97% were not in favour of UK unregistered design right being reduced from 10 - 3 years in line with the EU

92% thought the majority of IP infringements were blatant and **not** inadvertent or unintentional

800+ have signed the “Commission it, Don’t Copy it” campaign

The main theme running through all our evidence and research is that of the SMEs who face a continuing problem of infringement, it is impossible to seek redress because of time, legal costs and scale of opponents. Whilst ACID welcomes the Designs Consultation on the reform of the UK designs legal framework, we believe this should be the beginning of an ongoing debate to champion other initiatives which will achieve strong, sustainable and balanced economic growth within an already proven, successful sector.

The terminology “Design” and “IP and Design policy” can often be misleading because it covers such a broad spectrum. There is a need to improve awareness and understanding of the potential of design and creativity among policy makers and design customers – both private and public organisations. There is a disturbing tendency to undervalue professional designers, as demonstrated by the practice of “free pitching” in public and corporate procurement but we do see signs of improvement in the Government’s Growth strategy. There is also a poor level of IP awareness among SMEs in the design sectors and IP infringement is on the increase as demonstrated in the comments on our other survey online which has nearly 1000 signatures.

From iconic to every day, UK designers are ranked amongst the world leaders as individuals whose ingenuity and artistry have broken moulds, opened new horizons and made a lasting impact. Es The ability to protect the intellectual capital which underpins their innovation is crucial to maintaining their competitive edge.

ACID's message to Government and policy makers is clear, "Remove the barriers for growth

© ..The future + support the potential of design in the UK economy".

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Did's Macdonald PowerPoint can be downloaded by the following link:

http://www.westminsterforumprojects.co.uk/forums/slides/didsmacdonald_design.pdf

Addressing a “patchwork of protection” - reforming the use of registered, unregistered and community rights

Simon Clark, Partner, Berwin Leighton Paisner

Morning everyone.

I only want to make three points today. First of all I want to say that whilst there is a patchwork of UK design law, I don't think it's broken, I think that there's a good reason why our law has developed in the way it has and I would like to defend it. Secondly I want to touch briefly on the Apple and Samsung case to say that that shouldn't put you off registering your designs, and taking registered design infringement cases. And finally I just wanted to finish by saying that I do think now litigation is a viable option for designers with the new Patents County Court, but there is a dark cloud on the horizon.

So first of all the patchwork. We've heard Michelle saying that there's five different rights that can protect a design, I think there's a good argument for saying that we don't really need a national UK right in addition to a registered community right, the cost difference isn't that different. It only costs couple of hundred pounds to register a design, so I do think it can be put into a designer's expenses when they are producing a new design. So I wouldn't miss the UK registered design, but obviously we need to get the Europeans to allow us to drop that.

I agree with Clive that the UK unregistered design right is a very valuable right in the right instance, but there are enough designs where the overlap between copyright and the UK unregistered design right causes problems so furniture designs, as an example, if you think if the soft toy design it's a mixture of shape and surface decoration, so you are trying to find enough bits of copyright on the surface decoration or enough bits of shape which have been copied, and too many cases fall within the two stools, which then leaves you with the community unregistered design right, which combines both two dimensional and three dimensional aspects very well, the concern there is with the duration, three years is almost always not long enough.

But on top of that we've got trademarks, so you can get a trademark for a shape design, passing off is a valuable right if your design is well known, although much harder to rely on for a design because the Courts are reluctant to give you an unlimited right, which effectively is what passing off is, and obviously patents as well. And if we just look at the iPad as an example. You can apply all of those rights to the iPad and it's protected in lots of different ways, but with this decision people are saying, well there's no point in bringing a case in the UK anymore, you should go off to Germany, while those of you who have read the Court of Appeal's Judgement last week will see that the UK Courts were unimpressed with the approach which the German Courts had taken, and I'm really here to say, registered design is the future and there has been enough indication in previous cases, particularly if you read the Lambretta Judgement which dealt with this complication in the fashion industry between where unregistered design right and copyright overlaps and effectively Jacob was saying, well I know it's a bit of an unfortunate decision for you guys, but you've got the registered design so go off and use it.

There's a good reason why this case was unsuccessful, if I asked anyone to draw an image of an iPad, effectively you would just simply draw two rectangles, so I don't think it's that's surprising that when you compare the two you are looking for differences because your starting point is such a simple design, and the focus has to be on the informed user, and Birss said, well when I first looked at the two side by side they looked almost identical, I thought that they were very similar, but then he was told about the prior art, and we think of Apple as being very innovative, but look there were other designs in existence in 2004, which had very similar front faces, and so the Judge was quite right to say, well actually I'm going to take very little account of what they look like on the front because there are other designs which fell within the same family of designs. Then he looked at the side and saw that the Galaxy design was half as thick, a noticeable difference. What is interesting here is that that actually isn't... the registered design for the iPad design doesn't actually reflect a real iPad design, it's much thicker than the real iPad was when they finally developed it, which brings into question when is a good time to register your design. And obviously the back, again the Judge said you don't

just use these things on the table, you hold them up and so people will be concerned about what it looks like from the rear, and there were differences as well.

So I don't think anyone should think, well just because Apple lost and they look so similar, there's no future in a registered design case, I think there is and there's been a number of cases where designers have successfully protected their designs.

Finally, on the Patents County Court. I would say that this now does provide us with a very real and effective remedy. The big stalling point for designers has always been the cost of litigation, but now having a Court which gives you a cap of £50,000, so you know when you go into a litigation you are never going to be at risk for more than £50,000 at least gives you a limit which you can budget for. The dark cloud on the horizon, unfortunately, is the change in the rules regarding cost recovery and conditional fee arrangements, and from next April we are going to lose the ability to recover from the Defendant if you have successfully sued them for a design infringement the percentage uplift, which you may have agreed with your lawyers, as the success fee under a conditional fee arrangement, and we are also going to lose the ability to recover the insurance premium, which you may have taken out to insure yourself against that £50,000 bracket.

So at the moment, I think, you can take very effective action, we've got a very experienced IP Judge and it's worth remembering as well, it's the only Court where you are guaranteed to get an IP specialist, if you take an action in the High Court you may well not get a Judge who has done an IP case before, so great Court but we do need to be thinking about the cost of recovery.

Thank you.

Simon Clark's PowerPoint can be downloaded by the following link:

http://www.westminsterforumprojects.co.uk/forums/slides/SimonClark_DesignRights.pdf

Addressing a “patchwork of protection” - reforming the use of registered, unregistered and community rights

Deborah Dawton, Chief Executive Officer, Design Business Association

Good morning everybody. My name's Deborah Dawton, I'm CEO of the Design Business Association.

I am definitely your odd ball in the speaker line up this morning. My background isn't similar to yours. I trained as an industrial designer and I now work in a job that is about representing the design industry.

It's interesting for me to listen to the arguments that have been put forward this morning and to some extent I think what we are hearing is indicative of the problem that we have facing us as the design industry. I've got five points, I don't know if I will get through all of them in the time, so I've got my timer on.

So my first point is about simplicity. We have an issue here which actually becomes so complex for people once they scrape the surface of it, that quite often people are put off. We've heard various amounts of money bandied around, various types of processes for protecting rights and if you consider that the average design business turns over less than £100,000, even the idea that there is a cap on what they could find themselves liable for is hardly going to be the incentive they need to move forward on IP protection issues.

I think **simplicity** is at odds with some of the arguments that we have heard this morning, because we are talking about, if you take the iPad as an example, something that has had a huge impact on the way that we interact with products and run our lives, based on simplicity. It feels as though we are not able to bring that element of design into the area of protection. There's an suggestion back into the design industry that now says, I'm afraid if Apple can't do it, none of us can, so cases like this send out a very bad message to the industry.

I wanted to give you a very quick snapshot of the industry that we are talking about. Businesses of maybe 50 or more people will have people within their organisations, design businesses this is, who have the expertise to be able to take this area seriously. Not surprisingly some 87% of the industry is nowhere near that size, and so they are going to rely on their own expertise or that coming from somewhere else.

The DBA fully supports the points that Dids has made. We also support the All Parliamentary Design and Innovation Group in these areas. But let me paint you a picture of the DBA-it's an organisation that supports 400 design businesses in the UK and has a turnover of about a million pounds. We're small. You've heard about the size of the industry that we have in the UK but their capacity to be represented and to fight these arguments is limited, so I think we have an issue there.

It's not unique to the UK. I've been involved in an expert EU panel called the European Design Leadership Board which is part of the European Design Innovation Initiative. One of the recommendations that has been made to the EU as a means of driving design into the heart of innovation policy is that infringement and the ability to enforce infringements is an EU priority, and I think I would make a point here about the real cost and the perceived cost. We have all been hardwired incorrectly in the design industry when we think about the potential cost of picking up the phone to a lawyer. I'm afraid it carries a number that is at least three digits long, and it's not long before it goes to four, and these are businesses that don't budget for this type of expense. Maybe we are looking at the wrong end of the spectrum, and what we should be looking at are systems that are very much cheaper for designers to take advantage of. If we look at the implication of the cost to business in getting this wrong, so if we look at the loss of sales because of infringements, if we look at the issue of businesses going out of business because of these infringements, the cost should be attached to that end of the argument, so maybe there's a way of simplifying the process and lessening the costs, or even perhaps making it free.

I think there's an issue around knowledge within the industry, and it's quite interesting that in some cases we are seeing design businesses having to pick up the cost for protection. Others will actually impose that on their clients, it will be part of the assignment in the contract, and again when you are working with very large

clients, there is usually an in-house capability and knowledge to deal with that, but we are seeing huge amounts of innovation and growth in work that has been done with SMEs and they simply don't have this knowledge at their fingertips. And so whether the cost sits on the design side of the equation or the client side of the equation, I'm not sure that within the SME landscape we have found the right solution.

Designers and the legislative landscape, it's interesting that one of the things that we are looking at doing through the All Parliamentary Design and Innovation Group is having a discussion around the use of designers, actually in designing policy and this may seem a rather wild idea, but I do wonder whether or not we need to get more designers into the room to talk about the legislative landscape and look at whether they could actually help solve some of these challenges for us.

Thank you.

Addressing a “patchwork of protection” - reforming the use of registered, unregistered and community rights

Hugo Spowers, Founder, Riversimple

Hello. I’m Hugo Spowers from Riversimple; we are developing sustainable vehicles, and I would like to put in a competitive plea for being more odd ball than Deborah here, being an engineer from the motor sport world.

I would like to explain that, although we are seen as being at the cutting edge of automotive technology, our whole model is not based on a patent portfolio, but it is highly dependent on a stable IP environment. In particular I want to use our example to emphasise the value of complementary ways in which to protect or enhance your competitive position.

We are making vehicles available effectively under an open source licence. It’s still a licence but to all intents and purposes it doesn’t involve any money changing hands. We are developing what, as far as we are aware, is the most efficient vehicle platform in the world. This car does the equivalent of about 300 mpg in energy terms in the urban cycle. However our know how is really all at the systems level, systems integration rather than component development, and this car is using technology that, with a bit of a following wind, is commercially available here and now.

I want to make the point that in the automotive world particularly - and I’m sure it’s not alone - you make your money from brand rather than from your IP portfolio and there’s actually no conflict between open source and building a brand. In fact quite the contrary, there’s great benefit in that it can generate a much greater level of goodwill from a variety of stakeholders, and that is really the basis of brand value anyway. This is an example, a cut away of the vehicle. We haven’t developed any of the components in that vehicle, we have designed the whole thing, we’ve pulled the components together in effectively a different pattern of relationships to that which is used in the conventional cars today, but by doing so we are reducing all the stress on all the technologies and that is why we can use available technology here and now. Effectively that approach is what put British motor sport, which is where I come from originally, on the map, in the 1960s with Lotus and Cooper; they never developed their own engine, they just bought the same engines off the shelf as everybody else was using, but they put the car together in a better pattern of relationships.

More importantly to us though, our greatest commercial challenge really, is in standards; we are not pursuing this model of open source in order to get people to work for us for free, but in order to maximise the penetration of our standards in the automotive field. We don’t know of any programmes developing more efficient vehicles than we are but, no matter how much better these standards are, it won’t be enough to win if we get into a standards war. If ubiquity is of greater benefit to us than competition is a threat, our best strategy is to lower the entry barriers for making money from making cars. If we make available the recipe book for making money, we expect entrepreneurs to come out of the woodwork who want to make money - because that’s what they do.

And why are standards so important? We are building cars, as you can see here, in a completely different way to that refined over the last 100 years, based on different structural materials, and therefore different repair networks needed in the field, and different kinds of hydrogen fuel cells - our fuel cell is only 8 kilowatts whereas in the industry prototypes they are between 80 and 100 kilowatts. It’s not just a smaller version of the same thing, it’s a fundamentally different sort of fuel cell and dramatically cheaper. We are also developing much smaller and more efficient electric motors and the market is so vast that we are much more interested in these standards becoming ubiquitous than in suppressing competition; in fact we actively want to promote competition and in reality we regard competitors as a plus, not a minus.

The two biggest entry barriers in the automotive field in the last few decades have been supply chain costs and distribution channels. An open source ecosystem in which there’s a pool of generic, as opposed to marque specific, components is hugely advantageous to us. Not only does it allow us to effectively collaborate with our competitors to build volume in our supply chain and reduce our supply chain costs, but it also means that field support needn’t be done by us on a marque specific basis, we don’t have to build marque specific

distribution channels and independent companies can support all manufacturers using these technology standards.

I would also like to emphasise, though, that this system does recognise patents and there is no threat to patent holders to participate in this OS platform. The IP is at a system level and the choice of component is down to manufacturers, so they can use proprietary or open source components as they choose. We are entirely positive about the role that IP plays in stimulating technology development but we are very keen on appropriate, rather than excessive use of IP and the trouble is it's all too easily seen as the only source of value. There's a zero sum mind-set that if anyone else gains then we must lose, that if anyone abroad gains, then UK plc loses but we fundamentally disagree with that premise.

So we benefit much more from a pool of creativity and we remain much more nimble as technology develops than if we peg our future to a particular path that we have protected. That defines and constrains all our future commercial options. If others copy us, they are by definition behind us, and brand is a much less binary way to protect your commercial position.

Thank you very much.

Addressing a “patchwork of protection” - reforming the use of registered, unregistered and community rights

Questions and comments from the floor

Gavin Williamson MP:

Now what we will do is, obviously we move on to the question time sort of a series now, but if you've got a specific question for a specific panel member would you mind saying so in your question. So open to the floor. And its... oh yes, Jocelyn.

Jocelyn Bailey:

I work with Gavin and Janet Whitaker who is going to be Chairing the session later, and Deborah as well for the Parliamentary Group. I just wanted to echo what Debbie said about sort of taking a bit more focus on the actual needs of the industry. I've been to a few of these discussions and the one thing that you can always say about the design industry, one of its strengths is its ability to be user focused and that's something that I haven't seen very much in relation to a lot of the work that has gone on trying to sort out sort of design rights spaghetti, I suppose, it's more like a series of people looking at it and trying to work out what they can take away without anyone getting annoyed rather than starting from the point of view of actually thinking about what the industry needs. So I was wondering if any of the panellists would like to comment on that.

Gavin Williamson MP:

Okay. Well shall we start over with yourself Dids, and then we will move straight across.

Dids Macdonald:

Well I think first of all Jocelyn, I think you are absolutely right and I think that it is about focusing on needs of the industry. Certainly when we started ACID we started a mediation system, we started a free unregistered rights system so that there could be self-help for designers because looking at the scale of designers in terms of the scale of their companies, there is obviously a resistance by the evidence that we have seen to registering designs. Our focus is on the advice to register designs if one can, but the majority of people can't and they rely on unregistered rights, so we believe there's a huge step forward in listening to industry for a start, which is the first time this century, or in fact last century, you have had a designs consultation, so I think now is the time to broaden the debate, not just with lawyers, not just with academics, but with the users themselves, actually people in business. I lost my business, or nearly lost my business through design theft several times, as a designer, so I feel passionate about it, and I think you are right the focus should be on users' needs, practical self-help tools. Thank you.

Gavin Williamson MP:

Simon.

Simon Clark:

Yes. The difficulty we have is that we've come so far down the line with the different laws that we've got, it's very difficult to start again and being part of Europe it's not just a question of the UK saying okay, well we are just going to do this, so our hands are tied. Also there's a cost involved to new legislation and there has to be a convincing reason for the Government to want to change the law. There are always going to be competing interests, so it's easy to look from the designer's point of view and say, well this is the rights that

we need to protect our designs. That will always have to be balanced with people like manufacturers who shouldn't necessarily be liable just because they have been given something to make which happens to be a copy without them knowing that it's a copy, under some rights already they can be liable. Retailers need realistic solutions if they've got 4,000 product ranges they can't search the design registry for every single product range, so they need some defences. So there's always going to be a balancing act. Unfortunately everything comes down to cost at the end of the day and I don't think, in an ideal solution we would have a very cost effective regime, it's always going to be complicated, I think that you are always going to need to take legal advice in any area of life, and one of our issues I think we have is that the Government is keen to promote registered designs and trademarks as something which anyone can do, but there's so many loopholes and trip ups that I wouldn't recommend anyone to do it themselves. I could do my own conveyancing if I was buying a house but I certainly wouldn't. And so there is always going to be cost involved and I think that's where the focus needs to be on getting the Courts to compensate fully a designer when they have taken action, so that you shouldn't be out of pocket, if you haven't done anything wrong and your design has been copied and you have taken effective action, you should be fully compensated and that's where we are falling down at the moment.

Gavin Williamson MP:

Excellent. Debbie.

Deborah Dawton:

We launched a directory for our clients because one of the issues they had was in actually accessing those designers who best fit the projects that they have, the challenges that they have. But we did it slightly differently, we got the clients to design the directory because it was, after all, them that were going to be using it, and I would use that as an example, I think of what needs to happen here, I think we underestimate the complexity of the challenges that designers undertake on a daily basis, and I don't doubt that a group of them could be enticed to look at this, taking on board the situation that we are in now and they would understand it, to look at how we might move to a situation that would work better for everybody.

Gavin Williamson MP:

Hugo.

Hugo Spowers:

I think probably, as Gavin said, most things have been said, but I would like to echo what Deborah said about simplicity. We certainly feel, and this echoes what you are saying, from the users' point of view that simplicity and streamlining of the whole system is the greatest single benefit that could accrue to us and this does rely, and I think we would like to see more of an emphasis on, principles than ever finer detail. So automatic unregistered design rights and passing off are extremely powerful concepts and certainly the excessive use of any sort of IP, particularly patents, is a major threat to us. Although I've stated our position, we have our name on patents and that's effectively there to protect our freedom to operate on the things that we have come up with, but it's a pretty perverse system where it's forced upon us, because otherwise we will find that despite prior art, we are excluded.

- Gavin Williamson MP: Now, the gentleman at the front here.
- Questioner didn't give name: I have a question for Hugo Spowers. I liked the fact that you really rather put the cat among the pigeons at a seminar like this by saying that IP doesn't matter essentially. Would you... no I unfairly paraphrase what you said, but would you agree that the field of technology in which you are interested and which you described is unusual compared with most that people are involved in, insofar as it is a radically new form of technology that requires a huge amount of infrastructure and is also one that is not, at present at least, being pushed by organisations with massive amounts of capital at their disposal? Otherwise the situation might be different.
- Hugo Spowers: I think that some of the people who are pushing the technology have got quite a lot of capital, I mean GM, Ford, and Daimler Benz. I also think that the vast majority of the sector - maybe with what we are doing it doesn't apply - but the vast majority of the sector is actually a remarkably mature field and as I pointed out, that field doesn't make its money out of IP. There are companies that share a production line for a single vehicle where one vehicle has £1,000 higher sticker price on the windscreen; it's fundamentally the same vehicle and that brand value really is a much more powerful advantage than the IP. We are talking here about examples where the technology is either mature or very immature, and in both instances there are cases where this approach is much more powerful. I'm not suggesting in any way that IP isn't important and actually for this world to work it does require a sound basis and a sound distinction of what is and isn't protected, and the last thing we want is a woolly IP environment.
- Gavin Williamson MP: Simon, are you feeling threatened that Hugo is trying to make you totally redundant?
- Simon Clark: Not at all, I think he's speaking a lot of sense and I think you only have to look at companies like Abercrombie and Fitch who have come up with a number of different brands who, to my mind, are basically selling a polo shirt. So they have clearly made a lot of money from a brand with a product which has no intellectual property protection on it.
- Gavin Williamson MP: There's a gentleman in there....
- Simon Clark: Yes, just the brand yes.
- Gavin Williamson MP: Yes the gentleman in a blue shirt and jacket.
- Ian Colville: Wright Hassall, Solicitors.
A question principally for Simon, but perhaps it would be interesting to hear the others comment too. I was a little surprised at your description of the dark clouds on the Patent County Court's horizon in terms of the cost reforms in April, because doesn't the PCC cost regime effectively prevent the recovery of the CFA success of your ATE premium in any event?
- Simon Clark: My understanding is if you had a CFA which fell within the £50,000 cap then you could recover it. I take the point that it's difficult these

days to get a case to Court for much less than £50,000, so the advantages we did have over CFAs will be lost, the Patents County Court by providing that limit at least gives you a budget, so you know where you stand. You've still got to find the £50,000 but if you have a business which is dependent on perhaps one or two key brands or key designs, then it may be that it's worth £50,000 for you to protect that, but yes, no I accept that maybe the CFA is more designed for the larger case. I think the real issue we've got, and my frustration with the costs regime, is that the reforms were based on the fact that we can move towards the American model of taking a share of the damages so that the lawyers will share with the client the damages they recover, whereas as Michelle's survey backed up, most IP cases are not taken with a view to recovering damages, they are taken with a view to stopping an infringement on-going, so there isn't a big pot of gold to be shared out. So I don't think the new costs regime works for the design industry.

Gavin Williamson MP:

Does anyone else have any further comments they would like to make on that.

Dids Macdonald:

I think the only comment is that Simon just said the minimum is going to cost £50,000 and going back to Deborah's comments and my own, that I echo those, is that because of the scale... the turnover of designers, that's almost out of reach, so it's about choosing battles very, very, very carefully indeed.

Gavin Williamson MP:

Excellent. Over to the floor again. The gentleman in the red shirt.

Vikula Kuruwitage:

Founder of a start-up company, Qinnessette.

Taking into account the jargon of legislation regarding design, from an SME point of view I'm finding it increasingly difficult to understand where to start up, to make an approach on the URDs. So would the panel have any comments as in terms of advice to say this is where you start, this where you go ahead and make your investments or make an approach, but in a manner where, this is going back to some feedback I received from some other people that I've been talking to, about the capacity to enter a registered design but not infringe the ability to patent, because I'm told that if you register too quickly, it's in the public domain and it might not give you the capacity to file a patent in due course. So is there a starting point or an approach for SMEs that you could advise? Thanks.

Gavin Williamson MP:

Would you like to kick off Simon on that?

Simon Clark:

You can protect yourself with a registered design application by asking for the publication of the application to be deferred for up to 30 months. So you can file your application to preserve your filing date, and then subsequently file your patent application, and the fact that you have prevented your design registration from being disclosed to the public means that you haven't jeopardised the subsequent patent application. The other rights... the unregistered rights you will have automatically provided you fall within the criteria. So as an SME I would encourage you to look at the UK IPO site and to be selective on what you register, but then promote as much as possible the fact that you have got registered rights,

because, as Dids was talking about, the deterrent effect, if you can deter people from copying you in the first place, you've solved the problem really.

Gavin Williamson MP:

Simon is quite happy to give you his business card in order to discuss this in much further detail, isn't that right?

Simon Clark:

Absolutely.

Gavin Williamson MP:

That was a free consultation but... Dids did you want to add anything there or...

Dids Macdonald:

Only to say that within unregistered design the most important thing is to create a design audit trail from the seed of an idea all the way to market reality and usually there's several different stages, so if that's recorded, signed and dated, held with people like us or whomever, then you've got evidence on which to rely, it's much more difficult to reverse engineer a design as we found in several of the cases that have been taken on behalf of ACID members, so if you've got that audit trail it's very strong and compelling evidence.

Gavin Williamson MP:

Any further questions? Blimey, stunned silence, are you all that desperate for the coffee. Nothing over on this side? Oh I wish when I was having a public meeting in my constituency they were all so well behaved.

Jeremy Drew:

From RPC.

I will try and keep well behaved. I just wanted to comment really on the point that Deborah took which I think hadn't been taken beforehand which was about the potential negative impression of the judicial decisions, and hoping there's no Judges in the audience to collar me afterwards, but I think you shouldn't underestimate the negative impression that has built up about the potential to enforce these rights, even when you get to Court. I did a conference a couple of years ago and the level of commentary from the people who were there, mainly from pretty serious companies, like one of the speakers at the back of the room, was generally that they had the impression that even if you got there you were going to lose and it was pretty much like putting something through the eye of a needle to try and get home on enforcement. And certainly in my practice, most of my clients are pretty savvy about things like statistics in the Court of Appeal, which countries are seen as being patent positive, patent negative, these people do... there's a lot of people out there who do understand the market and sort of broadly how things are going and I guess I'm quite interested in how Simon manages to sell the positive side of taking registered design litigation, because I think that's quite challenging given the sort of run of decisions over the last 5, 6 years.

Simon Clark:

I think what I would say is that the cases which go to Court are not the easy cases and for every one case which goes to Court, I suspect there is 99 which settle very quickly. The vast majority of cases where we have taken for registered design cases have settled after the first letter because there is no defence. If it gives the same overall impression and a lot of cases it's almost exactly the same, that's it. So they may have spent a couple of hundred pounds at the

beginning in registering their design, then they've got one letter to the other side, the other side realises they've got no case to answer, that never hits the press unless it's promoted by someone like ACID. So, yes, the big cases are the ones where it's the 50:50, the dividing line, or I would say that Apple wasn't 50:50. But again, look in the Design Register and you will see a lot of very well protected designs with detail in them, look at the Apple registration and there's no detail in there at all, so it was always going to be a difficult case for them.

Gavin Williamson MP:

Deborah, Hugo and then over to Dids.

Deborah Dawton:

I mean it's always the horror stories, isn't it, that makes it into the press and when I was working on this design initiative in Brussels recently, those people who were more closely involved in the infringement landscape were saying that as part of our recommendation we should put in there that we should be training Judges which I thought was a slight oxymoron until they told me what actually goes on at the point where they become involved in these things. So it is something that has been recognised at a European level and it did go into the recommendation. So we will wait to see how that can be implemented. The idea, and I thought our first speakers... where the Judge would be donning the spectacles of an informed user fills me with horror, but we will see what we can do about it.

Gavin Williamson MP:

Hugo.

Hugo Spowers:

Yes, contrary to the impression I may have given, in some respects we would be very keen on much stronger and clearer design rights. In the open source software world, the copy left has emerged and that effectively means that anything that you purvey you have to purvey under the same licence as any incoming material that you received; that is the copy left. But it's entirely dependent on the copy right, because if you don't hold the copy right, you can't enforce such a term on any user to insist that they use the copy left. Unfortunately we don't feel that we can use such a licence in hardware because the design rights aren't powerful enough for us to be able to defend the insistence on a design left licence term. Consequently our licence actually doesn't mandate that any development work is fed back into the system and that is a consequence of a weakness of design rights.

Gavin Williamson MP:

Finally Dids.

Dids Macdonald:

I would agree with Simon that out of the hundreds of cases on design issues, only a few make the headlines and certainly in our experience that is true. The majority of them do settle with very short correspondence, with a letter before action or subsequent letters. I think it's about looking at intellectual property as a positive force within design, and looking at a communicated IP strategy all the way through the value chain, and also looking to Government to lead on this with declared corporate social responsibility on intellectual property respect, in the same way that we've seen the sort of pioneers who want to save the earth and look at what we eat

etc. we should also be looking to our own titans to have a communicated policy on intellectual property respect.

Gavin Williamson MP:

Great thank you. And do we have a question at the back

Delegate:

Apologies if I keep talking, but it's an interesting discussion and since nobody else was asking a question, I would ask this one.

Did you seem to observe, or you did observe that there were criminal sanctions for copyright infringement but not for registered design. I would be interested in the panel's view on whether they think it's appropriate to send somebody to prison on the basis of the test of what is cool?

Gavin Williamson MP:

Fire away.

Dids Macdonald:

Well I think that's a very sort of emotive sort of words that one doesn't want to use because one is looking at this from several different aspects. One is from the copyright, and counterfeiting aspect. It's really for persistent, wilful and beyond all reasonable doubt, also when the civil route has been fully explored. So I think it's just about parity of rights and I did make the point, which was reinforced by our survey, that the most important thing is that people believe that having those criminal sanctions would have been an absolute deterrent. The majority of copying that our members face and in fact the design sector faces are often micro, loan and small companies against their opponents, so usually larger, much more well respected manufacturers and retailers, it's very much a David and Goliath situation out there, so that's why we've been pushing for that, not to put everybody in jail but to actually put the deterrent aspect there, and again looking at, with the Commission It Don't Copy It campaign, it's saying commission design, pay a royalty, pay a design fee. The retailer or manufacturer can support British design, the consumer at the end of the day gets a good deal because they are not unknowingly buying knock offs.

Gavin Williamson MP:

Simon.

Simon Clark:

Yes, very briefly, I totally support what Dids said, I think that the real value is the deterrent effect, I wouldn't expect many cases to go to Court. The large companies at the moment don't have a deterrent against copying because they know that if they get taken to Court, then all they will be ordered to pay, typically, is the net profit that they made from selling the item in the first place, or alternatively the licence fee that they should have paid, had they asked for permission. So there's no incentive for them to ask for permission if they are only going to be out of pocket in terms of the legal costs when they know that 9 times out of 10 the person can't afford to sue them in the first place. So the criminal sanction is essential, I think, for the deterrent effect, it's there already for trademarks, it's there already for copyright, there's no justifiable reason why it shouldn't be there for designs as well.

Gavin Williamson MP:

Simon thank you. I don't think... there's no comments from this end and I think we've got time for one last question if there is one. Yes the gentleman over there.

Steve Rutherford:

Nottingham Trent University.

It's just a couple of points I would like to make, and the panel might have a reflection on it. One is that I think designers and manufacturers would like the opportunity to get advice on a business case for IPR and it can be, as some people have said, a combination of trademarks or patents or whatever, but I think the feeling at the minute in the industry is that it's difficult to get an unbiased opinion on that because people want to sell them IPR and I think if designers could get an unbiased opinion, which included the suggestion that maybe IPR is not a way to go for their business, then that would be a bit fairer. The fact that a lot of businesses at the minute choose not to go the IPR route is quite valid. So that unbiased advice for the design industry, I think, would be really important. And the other thing is, just an observation that at the minute I think the way IPR is running business, it's a bit like playing poker, you have a hand and you don't always show it and you can choose which cards you pick up, because I know of a couple of companies at the minute who have the letters 'TM' on their websites and on their products and they haven't got trademark protection for that. So they are bluffing big time by saying they've got trademark protection and they actually haven't. So there is a real analogy between this and the way you would play poker, which makes it a bit of a nightmare for small companies. But I think the business case scenario of designers and manufacturers getting an unbiased opinion to the point where that opinion might be, do not go the expensive IPR route, is something that the industry would be very interested in, but I'm not sure that there are a lot of people in this room who would agree. Thanks.

Gavin Williamson MP:

I will hand over to Deborah, of course in politics we never bluff so this is something that I'm learning about here for the first time, but...

Deborah Dawton:

I like the use of the word bluffing instead of lying, but unbiased they can get it, if they are members of the DBA we will give them unbiased advice. So it's there, but it's exclusive obviously to members of the organisation. We set all of those relationships up off the back of the support of the industry to be able to do that, so it is available and I would suggest that ACID are another source of unbiased advice on all of those issues as well. So I think part of this is down to the complacency, certainly within our sector, to find out about these things before it becomes an issue and that's normally the point at which they come knocking on our door, is that the infringement has happened, there's a problem and so I think there needs to be an earlier stage intervention. It might at university level that would suggest that it's a part of being a professional practitioner that you need to know this stuff and then know what to do about it, obviously when it raises its head.

Gavin Williamson MP:

Hugo.

Hugo Spowers:

Yes I think we would have found it very useful to have spoken a few years ago. We've had a great deal of difficulty in working our way through the system and one of our partners is a lawyer, not a patent lawyer, but certainly we do not find it very easy and it actually brings me to a further point in respect to the question from the gentleman

from the front earlier on, in that it's not so much the sector or the maturity of the technology, but there is a whole value network within which we are embedded and at different points in that value network the answer should be different as to what you should and shouldn't do.

Gavin Williamson MP:

Dids and then Simon.

Dids Macdonald:

If you don't want to be copied say so, and there's no better way than on your website or your marketing material. An awful lot that designers, and I include myself in that historically, can do is no cost and low cost. IP isn't rocket science, education and awareness about the rights that protect you, prevention, deterrents and support if things go wrong, and as you quite rightly say, unbiased opinion. But I believe in a practical approach and I don't think we, as designers, necessarily take the practical approach of valuing what we create and I think that we can use an awful lot more platforms to actually create that value and also, as I have said before, think about intellectual property as a positive force, collaborative design and working with designers and manufacturers to get that message over.

Gavin Williamson MP:

And finally Simon.

Simon Clark:

Yes, on behalf of all the solicitors, trademark attorneys and patent attorneys in the room we have a duty to give unbiased advice and I should think I spend more time advising people not to take action than I do taking action. People come and say they want to sue on a principle, you should never sue on a principle, and you cannot underestimate the stress and the time taken away from your business that taking a legal case involves. So unless it's a key part of your business, there are much better things to do with your life than sue people.

Lorrie Humphrey

We can't let that go in the UK, putting TM by a word doesn't mean to say you've got a registered right, R in a circle means you've got a registered trademark, TM doesn't, you could have a common law trademark or an application. So just look at those websites carefully, don't think they are doing something wrong, they weren't necessarily. TM doesn't mean a registered right. So there's some more free legal advice.

Session Chair's closing remarks

Gavin Williamson MP, Co-Chair, Associate Parliamentary Design and Innovation Group

Great, abundance of free legal advice, which is always very nice and helpful.

Can I thank all our panellists for taking some time out of their incredibly busy schedule to come and speak, answer questions, offer all this free legal advice as well and thank you all for the excellent questions that you put forward.

And enjoy your coffee.

Session Chair's opening remarks

Baroness Whitaker, Vice-Chair, Associate Parliamentary Design and Innovation Group

I'm Janet Whitaker and I have no expert qualifications at all, but a lot of enthusiasm and I'm particularly pleased to be Chairing this session this afternoon, because we are here at a very important moment for design rights. People have been campaigning for a long time that they should be stronger, as you will know almost certainly.

Over 2 years ago the Hargreaves Review set out the problems, and my own Parliamentary Design and Innovation Group, of which the eminent secretary, Jocelyn Bailey is here somewhere. They held a very interesting Experts Meeting last year, the Intellectual Property Office has been consulting and now the Government has proposal in its Enterprise and Regulatory Reform Bill. The health and strength of the design industry, as we all know, is crucial to the UK economy and its growth, apart from making a better quality of life.

Innovation needs protection if it is to survive, and then there are all the issues of ordinary justice. So we have some very interesting things to deal with.

I will go straight on to the meat of the morning, Andrew Sissons of the Big Innovation Centre will give the keynote speech for about 15 minutes and he will then take questions. I think you all have biographies of the speakers in your packs, so I'm not going to waste time in rehearsing their distinguished careers. And then about half past 11 or so we shall hear from the panel. Andrew, over to you.

UK design in a global economy

Andrew Sissons, Researcher, Big Innovation Centre and Contributor, *UK Design as a global industry*

Good morning. I'm Andrew Sissons from the Big Innovation Centre and I'm going to talk about the findings of a Report that we did that was commissioned by the Intellectual Property Office and supported by the Design Council, amongst other people. Now it's quite a large report, I think the first draft came in at about 110 pages, so trying to summarise that in 10 or 15 minutes is a challenge. I'm going to try and pick out what I think are the more interesting aspects and the bits that are more relevant and try and keep it to some of the key messages.

Just to reflect on what we are talking about, we are talking about design as a global industry, we're talking about exports, not just exports but how designers support all of the different international aspects of the UK economy.

The key questions we wanted to ask in the research were;

- First of all, to what extent does the UK design industry have an international supply chain? How much do UK design firms export themselves, and how much do they support other people in exporting?
- Secondly we wanted to look at the intellectual property system, whether it's helping companies, whether they are big companies or small companies to operate internationally.
- And thirdly, to look simply at whether the IP system could be improved to support design better.

Now I should stress something that will come through in the presentation is that we are not just talking about design rights here, we are talking about the whole IP system because actually all of it is relevant to designers, that was one of the key messages we found from the businesses we spoke to.

Now I'm going to give you the key messages from the research now on the assumption that more of you will be listening now than a bit later on after you have been bored. There are a few numbers later on.

So the three key things to take away from this:

- First of all is that the design industry is very export facing, it is quite an international industry, much more than we were expecting. That has big implications for IP and how we support companies going overseas.
- Secondly the design industry isn't one thing, you can't pigeon hole it as one type of company or person doing one thing. We found six quite diverse parts of the design industry and actually those different bits need to be taken into account, they don't have the same needs, they don't work in the same way, that diversity is important.
- And thirdly the IP system has to be flexible to respond to that diversity, there's no point trying to design a system for one type of activity and one type of company. It's simply more complicated than that.

And just to touch briefly on why any of this matters, why design and exports and so on matter, from my point of view as an economist.

- First of all Britain has a huge trade problem, we have had a trade gap since 1997 and going beyond, no signs of that being solved, exports are vital.
- Secondly, the economic recovery will depend on innovative industries, it turns out that Britain is really very good at design, so helping to support the design sector, wherever it may lie within the economy is really very important.
- And thirdly, obviously design is an intellectual property based industry, the things that designers produce are, by definition, intellectual property, so the IP system really matters for designers.

First I'm going to run very briefly through what this design industry we are talking about is, and what it looks like. Now this is an inexact art because trying to tell a design company from a non-design company is difficult, the truth is there is no hard line between designers and non-designers, but this was our attempt to try and do this in numbers.

We start with occupations, the assumption that basically design is something that people do as their job, and figure out some occupations are largely concerned with design. So these are the occupations that are most relevant to design, when work has been done in the past. It's: design development engineers; architects; graphic designers; and product, clothing and other types of designers. They are the really core designers, their job is about design and there's about 315,000 of those in the UK economy, that's about just over 1% of the workforce. Then there's a broader set of slightly fuzzier design related occupations, things like: engineers; technicians who are involved in, say architecture technicians; trades and crafts professionals who make a whole range of things. They're occupations who, some of them will do quite a lot of design, some will do less. We've talked about the design related occupations, it's important not to ignore them, but you can't assume that every single one of those 600,000 people is a designer and goes to work every day thinking what shall I design? So there's a total of just under a million workers who are heavily involved in design, and that's a very large number of people.

How does that map into different industries? Well what we've done is pulled out six, I mentioned the six sectors that have a higher than average concentration of designers. Now this is the list down the left hand side, I haven't got time to go through each of them in detail, but I will touch on them. You've got things like design services and architectural services, which are very much services, they are consultancies, people who do things as a service. At the other end of the spectrum you've got crafts people who make things, they design and make things. Advanced manufacturing as well, there is a lot of in-house design expertise within advanced manufacturing.

Rather than go through each of those in detail, I just wanted to highlight a couple of those sub bits of the design industry and to try and give a flavour of the diversity.

The first one, and this is probably the most important of the design service sectors is specialised design services. It's a fairly small group of workers but they actually have a huge impact on UK exports on innovation. This group of workers, 74% of them, of these designers, are self-employed, 64% of them work in micro businesses, what you are looking at are people who work in tiny companies providing a service, providing a contract service to somebody else. On the other hand, advanced manufacturing is slightly less design intensive than design services, you are looking here at very few self-employed people, mostly people working in large and medium sized companies. Now that diversity is important, you need to be able to reflect that type of thing, because working with a large business and working with a small business, when it comes to design and intellectual property, is very, very different.

So then on to the meat of our report, which was an awful lot of numbers and I will spare you most of the numbers, I won't dwell on them too much, just try and pull out what they mean.

First of all exports, how much does this design industry export? Well it turns out really quite a lot, those design services I talked about 35% of all their output, it seems, is sent overseas, that's an incredibly high margin, especially for a service industry. Advanced manufacturing is also very export intensive although it's a bit less design intensive. So the message there is that by and large design is a pretty export facing industry, it works internationally. That 35% was the key figure to take away.

Just here, I've just compared design services with the rest of the service sector, the design intensive parts of manufacturing with the rest of the manufacturing sector, and what you will see is that 28% of the design intensive manufacturing is more likely to be exporting than the rest of the manufacturing sector, the same goes for design intensive services. So there is a link between design and exporting. There's another piece of evidence we found, I will come to later, but there is a clear link, design companies seem to be more likely to export.

Just in terms of... I mean this exercise, I was trying to get a figure for how much design contributes to exports, this is a very, very rough exercise because trying to figure out designers that design other things which get exported, you can't really attribute things directly, but based on our best estimate, basically what you get is around £18 billion worth of UK exports can be loosely attributed to designers. Now that's 4.5% of the total British exports on 1.6% of the workforce, if you saw it this way, so it clearly is a design intensive industry. Actually the vast majority of that does come from advanced manufacturing and fashion and craft from the manufacturing sector. The fact is though, the manufacturing sector dominates UK exports anyway, and so those two service bits, design services and architecture are also really very important to think about.

Very quickly on where the UK exports these design goods to, because this also matters. Mostly, still, to Europe, to the Americas, to the established markets; a growing amount to the emerging world, but nowhere near as much, the big markets are still very much the ones that are like us, the advanced economies. The same picture with services, very much the case that design services are mostly exported to the advanced world rather than the emerging world. And why is that important? Well because what I've plotted here is growth and exports over the last 10 years or so, and the strength of IP, it's a rather... these IP indices are rather difficult to interpret, but basically the point is the advanced economies, which aren't the growing markets, the markets we aren't trying to get into, have pretty strong intellectual property regimes, the markets which are small at the moment, which we are really putting a big emphasis on trying to export more to are the countries with quite weak IP regimes. So that needs to be thought about. If you are a small design company trying to export to China, to India, to Brazil, to South Africa, to Russia, there's a bigger challenge in terms of IP, it's a lot more complicated than say exporting within the EU. So that matters as well.

So just very quickly summarise those conclusions. The design industry isn't one thing, it cuts across the whole economy, it's highly export facing, it appears to be something Britain is very good at, our trade balance in a lot of design services especially is very positive. Design plays a leading rather than a supporting role. That's something I didn't provide you the stats on but basically designers seem to be doing the exporting themselves rather than selling things to other companies that export, for the most part. That's quite an interesting finding and one of the things which we think, which maybe isn't so relevant to today, is that perhaps designers could get, or companies within the UK could get better at buying stuff from UK designers rather seeing them sell it straight overseas. And fifthly, our exports are currently sold to advanced economies but the growth markets are emerging countries where there's different sorts of IP regimes.

Now the second part of our project was to ask the question, well what does intellectual property do for these design industries trying to export, and how could it work better?

In terms of the sorts of issues that come up, you will be familiar with all of these, the UK has pretty low rates of design registration compared to France and Germany particularly, there's a lot of evidence on that. Why? Was the first thing we wanted to ask. Secondly, are there other parts of the IP system besides design rights that we need to look at? Thirdly is there anything that we can do to make the IP system more export friendly?

Now just a few more numbers before I dive into that, to say that there is a link, this is all quite hard to follow, but basically companies which hold design rights or intellectual property rights are more likely to export, so there is a link between companies having design rights and exporting, but very few companies hold design rights in the first place. There is a suggestion that actually holding... we did that on a couple of different [transcript gap], there's a suggestion that holding design rights, being interested in your design intellectual property is important for exporting, but it's a bit more complicated than that, as we found out from the case studies we did with a range of different companies.

First of all we wanted to know why do so few firms use registered designs? Well part of the reason is that these companies are in very fast moving sectors where actually their products are out of date within six months or six weeks because of the speed of innovation, companies that are service companies actually they are not trying to codify any intellectual property, what they are trying to do is sign a contract, they are trying to get a working relationship with somebody in Saudi Arabia, Brazil or elsewhere. That sort of speed of innovation applies more to some sectors than others, so, for instance, the clothing industry, very fast paced innovation, very hard for IP to keep up with it, so an awful lot of the companies we talked to said well we don't really bother with IP because it's just by the time it's come through, we are on to something else. This is one

of our designers who made that point. And this point that actually for an awful lot of these service companies it isn't about design rights at all, there is a certain amount of value in some of the intellectual things in that it helps you frame a contract, but what they are worried about is really nothing to do with trying to have some right that they can licence to the rest of the world. But as I said it varies from company to company.

The other thing which came through, which is very, very interesting, and I'm sure one or two of the panellists will be able to talk about, is the fact that most of these companies weren't actually interested in design rights, they were interested in other bits of the intellectual property system, they were using copyright, patents, anything else they could find to protect their designs, partly because they were more effective, and partly because it was just more appropriate to what they were selling. So that's another point that really is very important to come out of this.

What I wanted to do rather than sort of dwell on all of these case studies is to highlight very briefly how design companies, these companies that generate so much intellectual property, what mechanisms they go about selling design, because this is quite important for the IP system, and we reckon there's three... this is pretty much stating the obvious, but it's important to bear in mind. Some design companies will sell products, the IP is embedded in a product and they will sell it wherever it goes. Now for those companies, if they are moving very quickly in terms of innovation, they are probably not going to be too worried. Some companies said actually, it's a real problem trying to export products to China or something because they will be copied. Sometimes the copies are bad, the real problem for a couple of companies we talked to, was when their designs were manufactured in China, but then imported back into Europe or into advanced markets, and that's the only situation we found where people found design rights at the European level, OHIM design right particularly useful, the idea that you might not be able to stop copying and selling in China, but at least you can stop it being imported back into your core market.

The second good for companies, and this is actually not that common a practice as far as we can tell, is licensing designs, buying up designs, design aggregators if you like who were either developing the designs themselves or buying the designs and trying to licence them out. Now there isn't a huge amount of evidence to suggest that companies are doing that en masse, but it probably is something that given that the UK is good at design and we want to export more of it, we ought to be thinking about how we can make it easy for companies to adopt that type of business model.

And thirdly, this point I've kept talking about, design as a service, the companies that are not in any way developing a piece of intellectual property, they are selling their expertise, they are selling a contract, frankly, to companies and they are developing things in conjunction with their partner. Those companies are mostly SMEs and those companies are the people that have particular problems trying to use the various bits of the intellectual property system to help them just get a decent contract that they can trust that they can start working on.

And just to build on that, we think roughly there are four types of design businesses, and this is a massive simplification, but you can think about design businesses in four different ways.

- There's these design service companies I've talked about where the contract is all important.
- There are designer makers, mostly in the craft and fashion sector who are making things and selling them, they are small, they are making things and selling them.
- There are a few design aggregators, companies who are buying up designs and trying to licence them overseas. We probably think there could be more of those and they could benefit from a stronger international design right system.
- And there are sort of global manufacturing, manureservices companies who are pretty good at managing IP but still face a range of challenges in trying to export internationally.

Now just to briefly conclude on the recommendations from the paper.

First we thought there is some value in pushing for international harmonisation. We have the OHIM the EU wrote which seems to actually be quite useful to the companies to whom it is relevant, the question is can you

extend that, can you try and get countries like Saudi Arabia, China perhaps is a stretch on board? That's difficult but there's value in it if you can push for greater international harmonisation, don't hold back from it.

Secondly guidance to SMEs. SMEs find... I've talked about the different types of intellectual property, I've presented a confusing picture, for an SME they don't have a clue how that works, they haven't got the time or the expertise to wade through that; alright for a big company with a legal department, very difficult for an SME with no time, no money and no access to lawyers. So providing that guidance on how you can make money from designs, how you can protect them, all important.

Thirdly making enforcement easy for SMEs, easy to say within the EU and within the UK, is there a way we can support SMEs enforcing things, enforcing these types of issues overseas.

And fourthly, actually let's encourage more companies, particularly small companies to use the design registration systems where they are going to be useful, but make sure we are clear on why it's useful, not just because it's a good thing to have.

So they were our four recommendations, there's an awful lot more detail in the report, but I will leave it at that I think.

Thank you.

Andrew Sissons's Powerpoint presentation can be downloaded from the following link:

http://www.westminsterforumprojects.co.uk/forums/slides/AndrewSissons_design.pdf

UK design in a global economy

Questions and comments from the floor

- Baroness Whitaker: Well thank you very much Andrew. We are very short of time, but I think you will all agree that was extremely worth listening to. We've time for a very few questions, please would you give your name and organisation. First off, anybody? Well there's something that interests me, if I could abuse my position. Andrew said that 74% of designers were self-employed, I was just wondering if better guidance was enough, isn't there something more which could be done to strengthen their positions, the owners of intellectual property?
- Andrew Sissons: This is a difficult question, the challenge in general, and this doesn't just apply to design rights, it applies to any type of public policy issue, is that working with SMEs, trying to persuade them that certain ways of doing things are better is remarkably difficult. SMEs are small, there's a lot of them, they are small and they don't have a lot of time for engagement with these things. It's very easy for people to sit in Westminster and say, oh we need to make SMEs do this or make SMEs do that, doing it in practice is incredibly difficult. I think there is a role for support and the sort of support where SMEs can come forward to access it for SMEs, I think there's building up, understanding intellectual property and just how you derive value from intellectual property is something that's incredibly valuable, and I don't know whether it's for the IPO, for BIS, for UKTI to look at running that, I think that type of guidance would be incredibly valuable, particularly relevant to the design sector.
- Baroness Whitaker: Yes, over there.
- Robert Stevenson: Just an observation on the small SMEs in this. It really only relates to designers who are parts of professions.
- Baroness Whitaker: Could you say who you are please.
- Robert Stevenson: I'm a Solicitor at Berryman's Lace Mawer. If you've got SMEs and I'm thinking of architects who are part of a profession which requires CPD, then CPD is the natural avenue for education in their intellectual property rights.
- Baroness Whitaker: Yes very interesting. Right, do I see others? Well if there are really are no more questions. Yes Jocelyn.
- Jocelyn Bailey: Secretariat to the Parliamentary Group. I just wanted to reflect something that we were discussing during the break which was that perhaps the link between businesses registering their designs or using IP and exporting is to do with... they just happen to be those businesses that are just a bit more business savvy. That's probably the link.
- Baroness Whitaker: Do want to....?
- Andrew Sissons: I think there is something in that, there is, in general we found a lot of connections between companies involved in design, companies

thinking about intellectual property in relation to designer companies exporting and doing well. So in general yes, if you're a business that invests in design, you are likely to be a better performing business. So probably the conclusion you could draw from that is if you encourage more businesses to be, as you say, more business savvy, more interested in these types of issues, then great. The challenge of doing that though, you know, it's not really for Government to tell business owners how to run their business, it's for them to provide support where it's there and it's about honing in on those issues and I think the intellectual property question certainly is one of them.

Baroness Whitaker:

Yes.

Dids Macdonald:

Chief Executive of ACID.

You make the point in one of your recommendations to encourage enforcement. Given that the terminology, SME is sometimes misinterpreted, and I think that needs to be put into context. 99% of UK businesses are SMEs, so I think we need to start talking in the language of lone, micro and small. Given that 87% of the design industry have less than 10 employees and 60% have less than 4 employees, when you talk about a recommendation of encouraging enforcement, you also talk in context of £15.50 per hour as the average income for a designer, pitted against the normal cost, well certainly for our organisation, it's initial free advice, and for a lot of lawyers it's also initial free advice. But then when you were talking about enforcement to spend £200+ per hour, the two things don't really go together, so somehow there's got to be a framework in between that, which involves maybe a mediation approach, maybe involves, as I mentioned before, corporate social responsibility. So those are the points I really wanted to make, and interested to hear your views.

Andrew Sissons:

I think that's right, we've talked before about the term SME is actually a bit of lazy shorthand that we tend to use as economists, because through everyone from companies from one employee to 250 employees. The issue with design, as you say, is mostly about micro businesses. Micro businesses have no chance of having any kind of legal department, a medium sized business with say 200 employees will have a bit more access to legal support and so on. I think in terms of that, of course, I think you are absolutely right. I would add to it as well, that it isn't just about winning the case, it's also about the speed with which it's dealt with. For an awful lot of small companies, the real issue for them is the 3 months, 6 months the process with take that might potentially put them out of business. That time is equally important as money, so I think, yes, making that... you are not going to find a legal system that can deal with these things instantly unless you go down a very, almost summary justice approach. I think some sort of mediation or consensual solution to these types of things would be more favourable, particularly where small businesses are concern, the micro businesses.

Baroness Whitaker:

Right, well I think we shall now move on to the panel and I invite them up to the stage please. Clive Thorne, Partner at Reynolds Porter Chamberlain; Lorrie Humphrey, Head of Intellectual Property

Law at BAE Systems; Duncan Fitzsimons, Director, Invention & Ergonomics at Vitamins; and Dr Emma Murphy who lectures in Design Management at Lancaster University. So I will invite Clive for the first 5 minutes please

The economics of design rights - enforcing, exporting and profiting from design

Clive Thorne, Partner, Reynolds Porter Chamberlain

Good morning ladies and gentlemen.

I'm going to talk about the economic background of design rights within the context of the framework that we have in the United Kingdom at the moment.

Just a small point which I would like to just comment upon, Andrew Layton a moment ago talked about the ability to protect designs, could I just put a plug in for overseas corporations, many of whom have subsidiaries in the United Kingdom, all of whom are entitled to design protection in the United Kingdom, it's not just domestic United Kingdom companies which would be entitled to protection. Similarly overseas, United Kingdom companies should have the ability to have their designs protected in, say, the United States, India, China, anywhere in the world.

Now there's always a balance in protecting intellectual property rights, the balance between protectionism and the free trade. So the freedom to trade without intellectual property restriction is a very important one. In 1988 the law changed fundamentally with the Copyright, Designs and Patents Act, and I think before we jump on to perhaps too restrictive a method of protecting intellectual property rights for the future, we should be aware of the situation that existed before 1988, which was largely untenable. At that time the law was based primarily upon copyright protection, and if you had what was very often an unmeritorious design, a functional design with no aestheticism attached to it, there was an extremely long period of protection. An example given was perhaps somebody who designed a car at the age of 30 in 1930, that person died in, shall we say 1980, the period of copyright protection for the design of the car would then extend for another 50 years at that time, after his death, which took one to 2030. So for the design of a purely functional article, such as a car, with a limited design life you had a ridiculous period of protection of a century.

There are examples, considerable examples, I won't say abuse, of a number of large companies making use of that regime and restricting the ability of competitors to compete. There was the British Leyland saga, when British Leyland used its design rights to try and prevent the market in spare parts. That ended up in the House of Lords and a case involving exhaust pipes, and the House of Lords struggled to reach the solution and came up with what was known as the Spare Parts Exception, a very dubious legal concept, but they struggled to enable the consumer to have the freedom to purchase spare parts at a sensible price.

There was the example of Lego. What Lego did was to try and extend the duration of copyright of its design drawings by making small emendations to the design drawings, thereby attracting another period of copyright protection when the initial period of copyright protection had expired.

There were horrible things called conversion damages which could be obtained against Defendants in cases.

Now it's true that in those days, registered designs became something of a Cinderella, that was partly because they had a limited period of protection of 15 years, now of course registered designs have a period of protection of 25 years, which is consistent with the period of protection for copyright works exploited industrially.

But the key change that came about in 1988 was the introduction of UK unregistered design right. We've heard a lot this morning about registered designs, but I would submit that unregistered design right is in many ways a much more important right, which is available for designers in this country. It has its faults, some of which I've outlined, it has its benefits as well. The first of those is obviously cost, there's no issue of registration; it has a term generally of 10 years, although it can be 15 years; there's the ability to grant a licence of right so that a Defendant can apply for a licence of right for the last 5 years of the term, thereby encouraging exploitation of the design. Spare parts, you know the battles about spare parts, the British

Leyland battles in the 80s have gone. I'm not saying it's perfect but the concept of must fit, must match, is a way of avoiding the draconian Spare Parts Exception has worked generally fairly well.

There are problems. There's the problem of qualification, essentially a United Kingdom resident and EU designers qualify for protection, the only significant jurisdiction in which a designer also qualifies for protection is, curiously enough, New Zealand, and if there is going to be a change in the law, I would advocate very strongly that the qualifications for unregistered design right protection are extended significantly.

It's been interpreted harshly, particularly by a man called Robin Jacob and a case called *Totes and Fulton* who were relying upon a rather ill thought out decision of the late Mr. Justice Laddie in a case called *Ocular Sciences* has enabled parts of designs to be protected, I think in a rather too draconian way. So you can take the example of a teapot, unregistered design right doesn't just protect the teapot, it will protect the spout, it will protect the handle, it will protect the lid, the overall body of things, and that has given rise to a lot of problems, in my view that cropping concept should go.

It can be inconsistent with registered designs, I've been involved in cases in which a registered design has been successfully defended whereas the unregistered design claim has succeeded. It's a difficult area, the interaction between unregistered design right and registered designs, but it is something that I think needs looking at.

Residual copyright protection, there's a 25 year term which is supposed to be extended to 70 years. I think that would be a terrible mistake, I think 25 years is quite sufficient, it's one generation.

Design rights, they're a good and cheap substitute for patents. There's a lot wrong with the patent system, not least in this country where the Courts have a bias in finding invalidity of patents. Designs are very often an alternative way of obtaining intellectual property protection.

We've talked about the new Patents County Court costs regime, some good things have come out of it, the 50,000 limit, which I'm now actually converted to. However, within that 50,000 figure there are limitations on the recoverability of costs. There's a very detailed breakdown as to each element of costs incurred within the litigation which can be recovered, and I don't think that's commensurate with the ability to settle cases halfway through a dispute in the patents County Court. I don't know who drafted the rules, but they certainly need urgent attention.

I'm going to put in a plug for arbitration. My red card has come up. I was at a meeting of the World Intellectual Property Organisation yesterday and we were talking about the success that WIPO has had in domain name disputes and providing a cheap method of resolving those. I would like to see a very similar method available for small scale design disputes. Forget about the Patent County Court and Small Claims Procedure, in my view expert determination and short form arbitration for bodies such as the Chartered Institute of Arbitrators or WIPO provides the way forward.

Time is up. Thank you very much ladies and gentlemen.

Clive Thorne's PowerPoint can be downloaded by the following link:

http://www.westminsterforumprojects.co.uk/forums/slides/CliveThorne_DesignRights.pdf

The economics of design rights - enforcing, exporting and profiting from design

Lorrie Humphrey, Head of Commercial - Intellectual Property and Technology Law, BAE Systems

Good morning.

I haven't got any slides and I think I get invited to these things to represent industry. I work for BAE Systems, which I think, unless you have been living under a stone for the past month or so, most of you will have a fairly good idea of what my company actually does. But I think Andrew put me into his advanced manufacturer group of companies, and that's who I maybe represent, but I would like to say that we probably span a lot more than that, from real design services, and we do a lot of design services with some of the BRIC countries, to software is an incredibly important part of my business, to actual designs, and we actually employ an awful lot of human factors engineers to look at how screen displays work for pilots or tank commanders or a number of other ranges of people you can think of who have to absolutely integrate with the technology and use it efficiently.

I think, as was said earlier this morning, the main things for me in any IP system are cohesion and simplicity. Simplicity with a caveat that yes, the different kinds of technologies or brands etc. you need to have different systems, but the differences in the systems should be logical. I should be able to explain to who I consider my client, which is either a managing director of a business or an engineer, why these rights exist and how they support each other, because IP rights stack, there's always a complex system there and you need to look at the IP system as a whole and use IP rights as a whole to the best ability of your business, but it should be logical so that my MD can understand what I'm talking about, and an SME can understand, know, broad brush what we are all talking about.

We were looking at export, and for me export is incredibly important. When I go to India I'm basically an SME. We have under 100 employees in India trying to sell our designs and products to a vast nation, and we end up as suppliers to companies such as Tata, Mahindra & Mahindra and BAEHAL, companies that are actually bigger than BAE Systems globally. So you know we are down the food chain somewhat, and we bring our expertise and our technology skills and our designs to those people for a piece of the cake in India, which is a vast nation, and as said, one of the emerging countries. And so we need there to be global IP systems where the same kind of protections I expect in the UK are available in those territories too, or at least I understand what is available to me, and in India, one of the best forms of protection is registered design. It is valued in India, the culture of India really respects the registered design. Patents, on the other hand, in India, I've still got to get my head round because there's a vast number of patent offices and you have to understand the technology you are dealing with and decide which is the best one to actually register your patent at, and go through the process at. So there's complexities there that, as a UK lawyer, I'm having to begin to understand, so that I can explain to my business.

Value is the whole important message here, and any IP protection or any use of IP has to have a business case, so it doesn't matter on the size of your company, if you are looking to use the system, go for some kind of registration, enforce some kind of registered or unregistered right, there's a cost involved and you have to weigh up the business risks, be they purely on a financial basis, be they to your reputation, you know, from a BAE Systems perspective, to go after a one man band in the UK, probably reputationally isn't particularly good for us.

Bringing myself back to the UK, to end my 5 minutes, is the fact that we live and die by our supply chain and I rely on my supply chain to bring innovation to the market place and I need that supply chain to be there for the long-term, so I want that supply chain to be healthy. Our supply chain goes from the one man band, the micro businesses through more what people think about SMEs to 150 people companies, up to the likes of Rolls Royce and Thales. We deal with everybody, and one of the worst things for me when I'm negotiating a deal is to be looking at somebody thinking, I wish I could take you outside this room and just tell you a few key things, you know, I wish I could give you some advice because it would make negotiating so much easier.

So to have an expert supply chain who understands some of those key principles for me is one of the major things that I hope Government, the IPO, things like Andrew's organisation can actually help us with, because in the end it all comes back to business and what's more important than anything else is contracts, and everybody knowing what they should be doing.

Baroness Whitaker:

Duncan.

The economics of design rights - enforcing, exporting and profiting from design

Duncan Fitzsimons, Director, Invention & Ergonomics, Vitamins

Hello.

So my name's Duncan and I'm a Director at Vitamins and we are a design and invention studio and we are very much at this micro end of the design industry and what forms the cornerstone of our business is we come up with ideas, we create ideas, we create IP, that's what we use to make money.

This is our studio, we are in Spitalfields in East London. We formed the business just over 3 years ago with three designers who are now the three directors of the company and now, 3 years later, we have five people. Now we work within a network of designers and other small firms, so at any given time over the last 18 months or so, that company, that business has had between 4 and 12 people in it working on various projects.

Now what I want to do is try and put you in the shoes of what we have done over the last 3 years to become a successful design business and where the risks have cropped up in that process for us.

So just as an introduction, this is a project that we did that we were very proud last summer to get exhibited in the Museum of Modern Art in New York, it was also winner of Best Concept Award with the IxDA Interaction Design Awards, and it started off with Samsung coming to us and saying we would like you to design a better mobile phone for the elderly market. And there was a bit of preconception there that, oh we need to design a slightly dumbed down phone almost, a phone with bigger buttons and a bigger screen and less features. Now through our design research what we found was that it was the opposite that was true, the elderly market wanted the empowerment offered by the technology of these smart phones just as much as everyone else, and we realised that the barrier to opening up a bigger market for these phones was the method of learning to use the technology. So we redesigned the user manual, we created a manual which housed the phone in a cut out inside, the first page would reveal a cut out saying this is the SIM card, the second page would reveal another hole saying this is where you put the SIM card, third page the battery and so on, then when you are using the phone, the phone goes in the middle of the page and it says press here to do this, press here to do that. Very simple, everyone knows how to use a book if you don't want to go through the instructions you skip to the last chapter, very simple. And that's the sort of ideas that we relish in creating and coming up with, and we think, we're not entirely sure, but think it's probably the first mobile phone user manual that's got exhibited in the MOMA in New York.

Just to run through some of our other projects, this was the world's first foldable wheel and it's a project... it's a home grown project which was patented as a foldable wheelchair wheel, with very good support from Innovation RCA, which is the innovation incubator attached to the Royal College of Art, which we always maintain a link with. The three of us met whilst studying there and formed our company three years after graduating. That is now licensed and a company in the US are manufacturing it and it should launch in September next year.

Another home grown invention is the magic light, we call it, and it's a system we've developed which enables you to move a beam of light as if it's solid, you can actually interact with it physically, and this is patented which is quite an achievement and we're looking to commercialise this now.

Now, actually what we've needed to do to create a very stable and successful business is not so much those things that I have just shown you, but projects more like this. So this was a piece of consultancy work we did with Olympus, so [transcript gap] Japanese client, a medial workstation which is now for sale in hospitals... it's in hospitals all around the world and we looked at the design of this from a functional point of view, from a usability point of view, from a visual appeal point of view, and also looking at streamlining manufacturing time and manufacturing costs, and also this produced IP in the form of patents again, here though we are just as named inventors, we didn't actually manage to maintain any sort of hold on ownership of any of that IP.

And similarly this is a project we did for Research in Motion, the makers of the Blackberry, and this is much more of a sort of speculative end of design, we do a lot of design research and this was a fascinating piece of research into the problems around digital interruption. So when a phone goes off in your pocket, do you know if it's a spam email, or the most important message you have ever received? How do you subtly check what that message is without interrupting the flow of whatever it is you're involved in at the time?

And this was a system which... one of the more out there ideas we've ever come up with which was a three dimensional display on the back of the phone which, if you press your finger against it in your pocket, then you pull your finger out and you can actually read a message momentarily on your finger. Rub your fingers and it goes away. Now we were blown away when pretty much the next day Blackberry patented this idea and again we didn't really sort of maintain any hold on the IP for that.

Now this approach has been absolutely essential for us in creating a really successful business and it's been wonderful to work with companies from all around the world, very, very large companies from all around the world and establish ourselves as a go to place for ideas and one of our largest clients said to us, we work with agencies and companies all around the world and we go to them when we know, right if you want this we will go to that company, if you want this we will go to that company, and they said they come to us when they don't know what they want, or when they want to be surprised, and we see that as a big success for what we wanted to achieve.

However, we also don't see a business that relies entirely on that as very sustainable and as we try to grow the value of our business, we are now really looking at trying to bring in royalty as part of our contracts when working with our clients and also trying to develop our own IP so that can have a huge back burner of ideas which we basically don't dare tell anyone at the moment because, and this is something I want to impress, is that on top of protection there is also a huge number of other risks and so in order to dive into developing your own idea and making a success of it, we know that we have to take a risk financial or time on protecting that idea, but we also need to put in a lot of work to establish who we are going to sell it to, what the business plan is for it and all of those other things need to be in place, and so that side of our business, yes, protection definitely comes in as an important part, but it needs to be a very easy part alongside all the other things we want to solve to make a success of that one.

Thank you.

Duncan Fitzsimons's PowerPoint can be downloaded by the following link:

http://www.westminsterforumprojects.co.uk/forums/slides/DuncanFitzsimons_design.pdf

The economics of design rights - enforcing, exporting and profiting from design

Dr Emma Murphy, Lecturer, Design Management, Lancaster University

Hi there everyone.

There's just a few things I want to say just as a preamble to my talk based on what's been highlighted already this morning.

I think I'm a bit of an odd ball too, we all claim to be odd balls I think this morning, but I'm not an IP expert but in the new domains of design which I'm experiencing and seeing happening, I feel that IP needs to change to reflect those new domains of design and I will talk a bit about that this morning.

So design is changing, it is diverse and I think the new frameworks which we look at, which encounter and cover IP, need to change too and reflect this diversity.

Secondly, collaboration and the new models of design, which I will talk about, sometimes mean that it's not clear what you are protecting, what or whose intellectual property you are protecting. When you talk and you collaborate there are sometimes shared and intangible outcomes, so it's a challenge in terms of how to protect the shared and the intangible. We also need to serve the grey areas a bit better. Earlier on Deborah made the point that this 50k cap we are seeing isn't terribly useful when you look at micro businesses and companies with turnovers of less than 100k. The other thing is that Will Hutton made the point that the UK has an enviable reputation in design and therefore we need to ensure that any IP frameworks enable and not constrain that creativity and lastly I would say that designers have a role in imagining those future IP frameworks. It's all very well to pick holes and say, what's wrong with the existing system, how can we imagine how it can be taken forward.

So, my talk will focus on three areas, research education and industry. So firstly, what does research tell us about how design operates? There are emerging trends in design today which mean collaboration and sharing information is key. These are just some of them, so co-creation, creating outcomes with communities, participatory design where the users are placed at the centre of the design process. Even co-design where design is non-hierarchical and non-designers are very much involved in driving the design process forward. All these trends that we are seeing in research and in practice mean that the ways in which we handle intellectual property and design rights has to evolve as well.

So creativity and innovation come from collaboration a lot of the time and designers can't work in isolation any more, so there is always a kind of experience where you are required to kind of share your ideas. So who owns what? Can you actually ever own the outcome of collaboration in this kind of context? Sometimes when you develop products it's very easy to see what the outcome is, but when you are actually thinking through something or you're sharing ideas, how do you protect the intangible?

I will attempt to answer that by the way, I'm not just going to ask a lot of questions at you today.

So what does this mean for somebody like me who works in design education, and I should make the point that I only make the transition to design education about a year ago, prior to that I had worked in the industry for just under a decade. In design education, because we are seeing these emerging trends and open design, open innovation, co-design, we are encouraging our students and our graduates to work collaboratively. We encourage them to engage in different ways to work across disciplines to work on live projects, to work with communities.

So that's a bit about research and a bit about education, but what about industry? So the role of the designer is starting to shift and it's shifting from the tactical sort of felt tip fairy kind of idea that we make things look pretty, to a more strategic role in different organisations, and sadly there are some people that share the former view, but we are moving towards a more strategic view of design.

The second sort of shift is that design problems are more complex now, so these are just some of the people you might interact with in any kind of design project, so we cannot work in isolation anymore and in working through the complex problems we face now, you could find yourselves having to work things out and share the intangible in working through a problem.

One of the projects we are working on just now is called the Creative Exchange and we are actually facilitating clusters and partnerships between SMEs, micro businesses, large organisations and academics and in doing that we are observing a few things.

Firstly, SMEs and micro businesses like to network, they are willing to share. Designers like to collaborate and brainstorm ideas as well. No one is too concerned with intellectual property at the early stages, and sometimes when you mention it the room sort of goes silent and everyone stops talking and is very protective. I'm not saying that it shouldn't be raised but it's a question of timing, so when should it be raised? Sometimes in the process ideas are more important than imposing IP frameworks, so the issue of timing is something that is quite important. Sometimes IP is raised when we think of value, so as soon as we talk about design having a value, that tends to be when intellectual property is raised.

Some other things that have come out of these Creative Exchange workshops that we have been looking at. An IP concerned environment does not foster early idea generation, so again it's about thinking when you bring that up. SMEs don't have the capacity to deal with large IP contracts, so again it's thinking about how to bring it up without it being a threatening situation.

So lastly what are the challenges?

Three challenges before I finish. IP frameworks should be flexible, so they should be bespoke rather than one size fits all. Design can help imagine those future frameworks and I think there's an interesting sort of conversation to be had around that. The point was made earlier this morning that designers could help design policy, so maybe IP is one of those areas in which design can help.

The next challenge, intellectual property frameworks and agreements should enable trust. It takes time to build trust and so it's about working out when the right time is to talk about intellectual property.

And finally, I think it's important to think about how we make intellectual property part of the development process in a project, so how you can actually factor it in and create some agreements. Now we did some recent research with the Work Foundation and the Intellectual Property Office and quite a lot of times these micro businesses developed their own frameworks and agreements, in the absence of being able to consult lawyers and all the rest of it. So I think it's something that we are touching on this morning, that there needs to be a kind of, some kind of service for those kind of small micro businesses.

So I just want to end with something which I heard an academic talk about, a gentleman called Peter Troxler who has written a book about open innovation and he says IP is a bit like a bicycle and that's a picture of Bradley Wiggins there who we all know likes a bicycle. If you think about your first bicycle and how proud you were to ride it, and if you were to think about being very protective over this bicycle and you were to lock it up all the time, eventually you become so obsessed with protecting your bicycle and locking it up that even you can't enjoy it any more, even you can't use it. So I think that's a useful way of thinking about intellectual property.

Thank you.

Dr Emma Murphy's PowerPoint can be downloaded by the following link:

http://www.westminsterforumprojects.co.uk/forums/slides/EmmaMurphy_design.pdf

The economics of design rights - enforcing, exporting and profiting from design

Questions and comments from the floor

- Baroness Whitaker: Thank you very much. Well now the floor is yours, we have nearly half an hour, please give your name and organisation, questions, observations, who would like begin. Everybody is struck dumb at the minute, I'm surprised, well I always have something I want to ask, so I'm not quite sure who in the panel would be interested in this, but I've always thought that emerging markets, which at the very beginning Andrew Sissons said was a small but growing area, actually must have huge scope because they can't always manage our ordinary infrastructure, the electricity grid, the landlines, that kind of thing, which gives huge scope for something like the mobile phone network. I just wondered whether the panel had any thoughts about how our industry could make more of all that? Who would like to begin?
- Clive Thorne: Can I say something?
- Baroness Whitaker: Please do.
- Clive Thorne: Could I just say, well it depends what you mean by emerging markets and I'm assuming from that that one's not talking about say India or China, they're not emerging markets there's something rather different...
- Baroness Whitaker: Sub Saharan Africa.
- Clive Thorne: Yes, exactly. As far as intellectual property protection is concerned, many of those jurisdictions have very effective and in some ways better intellectual property protection than we do here. If you will forgive a personal anecdote, I was heavily involved in redrafting Guernsey's intellectual property laws, I'm not suggesting Guernsey is an emerging market, but there were some very interesting precedents that we looked at, particularly in the Caribbean where a small jurisdiction such as Anguilla had a model form of intellectual property law and it's created it using the best of United States law and the best of United Kingdom law. So merely because they're an emerging market, and emerging country that isn't terribly sophisticated economically, it doesn't mean that they don't have an effective intellectual property regime. Of course some do, but that's really what I wanted to say.
- Baroness Whitaker: Does anyone else want to chip in with that?
- Dr. Emma Murphy: I think it's something we might actually see more of as being an issue because there is a trend sometimes among user interface design to actually test products in extreme communities, so people who have had no experience with the mobile phone, for example, in developing countries, so what kind of insights they can bring to it. So one of my students actually in studying his PhD wanted to look at this and we were confronted with the issue of how do you allow these people to participate in this research, but how do you

recompense them for it. So I think in terms of emerging markets and emerging countries, I think it's a very interesting issue.

Duncan Fitzsimons:

I think from the perspective of our own experiences and also those of a large number of similar size design businesses that we know, it seems... I think with the emerging markets it seems from... and again perhaps from more of a sort of business opportunity standpoint rather than an IP standpoint, to be a more attractive route if you are taking the entrepreneurial approach, so if you have a new idea and you want to create the company and create some new landmark product within a new market and try and capture that niche, that's a wonderful opportunity, and almost the opposite is true if you are doing what we have been doing for the last few years which is the consulting angle because then what you want to do is essentially slot in and provide what our overseas clients have told us is what London is known for around the world which is really insightful new ideas and design and really high quality IP, but you want to slot into a machine that's ready to make use of it straight away, and in that respect it becomes quite difficult to work with, perhaps, European companies or companies which are, especially in emerging markets, compared with, for example, going and working with a company in the USA where they can literally flick a switch and they've got manufacturing and an enormous market on their doorstep ready to go, and that makes a huge difference when you are doing it from a consulting angle.

Baroness Whitaker:

Thank you.

Clive Thorne:

I must say there's a lot of variation in practice in terms of enforcing IP rights, quite a number of emerging countries have very effective criminal remedies for intellectual property infringement and I'm thinking of somewhere like Thailand or Malaysia where it's very good. Others are just incredibly difficult, such as Indonesia or Nigeria where there is, I'm afraid, widespread corruption. I remember being involved in a patent dispute in, of all things, in the Indonesian Courts and I was acting for a Japanese company and they lost against an Indonesian company and we had a post mortem as why they had done so with Indonesian lawyers present and they were told quite openly, quite frankly by the Indonesian lawyers that they didn't match the bribe which had been paid by the other party. That's the sort of problem you do get in some unsophisticated markets when you are trying to enforce rights.

Lorrie Humphrey:

I think the point is as has already been said, it's about the business case again, it's the business opportunity and the background you have to understand in any market, be it an emerging market or somewhere like the US which has its own particular peculiarities when it comes to IP, is what the IP background is, so what you are going to have to do. So if you are going to a territory where actually as soon as you have given the idea away, that's it, you know, the IP regime isn't going to allow you any protection in reality, that's just got to be part of the business case, and if it still makes sense to go there and do the business and you are going to rely on being two years ahead of the curve or using it as a springboard because the market is so wide, or such a great opportunity, then great, go for it, but understand the IP position before you do and a lot of what I do

in my business is talk about control and the control is with your IP is you being in control of what happens, be it you give it away, you go for an open source approach, you want to use the patent system, whatever it may be, but it is you being in control and not finding actually that you are running behind the wagon trying to keep up, or think on your feet because something has happened that's completely thrown you off track and that's very important in some of these new markets.

Baroness Whitaker:

Very interesting, I mustn't hog all this, so yes, yes.

Dani Salvadori:

University of the Arts London.

I really recognise both the issues that Emma was dealing with to do with collaboration, how it comes out in education and in research and education, and the issues that Duncan was talking about in terms of how do you actually start to make money out of your ideas because we too are trying to do that and it's damn tough. But I would like to hear the reaction of Lorrie and Clive to the issues around collaboration. So how does collaboration manifest itself when you are dealing with contracts in BAE or you are dealing with the type of contracts that Reynolds Porter Chamberlain is dealing with in the large law firm, because that's the challenge, when you've got a group of students in the room, you can get them to collaborate and make an agreement between them, but when you take that to the outside world, that always seems to me to be where it falls down.

Baroness Whitaker:

If you start with the outside world.

Lorrie Humphrey:

Okay. Actually this is the one point I actually disagreed with Emma on because the best thing you can do is get IP on the table really at the beginning and set some rules, it can be incredibly simple but just have some rules, you know, what I say belongs to me and what you say belongs to you, or we are all going to put it in a pot and you can go and use it in the aviation business and you can go and use it in defensive security, whatever it might be. Get some real basic stuff so that people aren't sitting in a room going I'm not going to say that because I'm not quite sure where that's going to lead me in the future. We collaborate with a wide variety of people, from SMEs, lots and lots of university partnerships, lots of collaborations with people like Schlumberger, Lancaster University, a number of other universities, a number of big players, medium sized players etc. we will have BIS TSB type funding, we may be using grants. The best thing you can do to get things off the ground is to have some rules. It's easier just to get going, but I can tell you, 2 years down the line it will all go horribly wrong because the issues then come up and you all grind to a halt or it all becomes very acrimonious. It doesn't have to be particularly complicated, don't talk in IP speak, talk in real language, you know, I can do this and you can do that and neither of us can do the other. Get that on the table, agree and then the lawyers and everybody else can back away and leave you to go and fly, and that's really what you want to do. Just have the ground rules set up in the first place.

Dr. Emma Murphy:

I think that's really good advice. Great to have some advice here actually, thanks everybody. I think the point I was trying to make

was basically that it's about timing. But as the project starts to develop it will be interesting to see how that is handled. But then at other workshops when we've brought it up and put it on the table, I've literally seen people kind of shirking and reacting in such a way. So I think it's a really good point Lorrie made in terms of getting it on the start of the table, but actually doing that when you have different cultures, different viewpoints, you know, SMEs, micro businesses, academics, you know it is a challenge so timing is definitely an issue.

Duncan Fitzsimons:

Andrew said earlier about the wider support within the IP system for design companies, especially SMEs and the very sort of micro end to get started and I think... I mean just to explain a little bit about how we sort of ended up where we are now, where we essentially feel like a business as opposed to making it up as we go along which is how you feel when you first start, and we did that through all sorts of... a mixture of different bits of support, but they were from our peers essentially, so our first ever contract was... you know we had terms and conditions copied and pasted from someone we knew who had been in business for five years or so, and we tweaked the terms a bit and that got the ball rolling, and we were in business for two years before we actually were able to afford any form of proper legal advice or be able to afford to seek out official advice of any sort with our business, and everything that we did before that was based on a few key things. Something that really, really helped us was a wonderful huge book published by the Design Council about running a small creative business and that was a wonderful one stop shop for us of looking up, oh if we are in this sort of situation let's go to that chapter and actually there was a great chapter of case studies and do this and don't do that and sort of approaches like that which really helped, but I think some sort of place where you could go that fulfils that dual role of offering all the basics of the dos and don't dos, but also offers a place for peer to peer advice because all of us in this small business area are very happy to share advice with each other, we found, and we are constantly giving advice to people who are a year or two behind us and accepting advice from people who are a year or two ahead of us, and that's really good.

Clive Thorne:

Could I just say at the outset that it seems to me that joint ventures and collaboration are very much the motive force, the power behind the exploitation of intellectual property, whether it's design rights, whether it's copyright, whether it's patents, it doesn't really matter, but I agree entirely with Lorrie that the crucial thing is from day 1 that you have a clearly drafted agreement, and the clearly drafted agreement, or if you can't have an agreement at least have some memorandum of understanding setting out the basic principles as to who owns what, arrangements for registration of the rights if necessary, enforcement of the rights, which is the governing jurisdiction for that particular agreement, exploitation outside that jurisdiction, all these factors need to be taken into account in the agreement, and the more clearly it's drafted the better.

Lorrie Humphrey:

I would really like just to say you need to get some... you stop the fun, I'm always told at work I stop the fun, everybody has got this fantastic idea and they want to go and protect it, but the point is, is

that you watch the wheels come off otherwise slightly further down the line, and it doesn't have to be in legalese, in fact I hate people talking in legalese, just say what you want to do and what the other side wants to do, and if you both agree that, 9 times out of 10 you will be fine.

Duncan Fitzsimons:

Quick question for Lorrie actually. You said earlier when you were talking that sometimes you wish you could take people out of the room and just tell them a couple of things. Do you think there's actually any merit to doing that or having a framework to do that? Because obviously I would imagine a lot of people who come and negotiate with someone like BAE Systems could learn a lot through the process.

Lorrie Humphrey:

Yes, and we do have systems where with our supply network, especially at the SME level, they get giving a chit list, a pick list of various topics they can come and have general advice on because, of course, we then get into professional negligence etc. so I can't give specific advice, but they can come and sit in a room and I will take them through IP, and I will say things like, well why don't you go and see the IP about that, they do free sessions on that? Or do you know what the PCT is? Or have you have you heard of a registered design? Or what you should really be looking at is database right, because that's something nobody has mentioned, but database right is one of the key IP rights in business today. And just give them that general advice, but the thing is sometimes, and when my children are grown up and aren't expensive any more, maybe I will do this, I would love to set up some kind of consultancy where you can come and say, this is my business, this is what I'm doing and you get the A, B, C for your business, and I've done that with a few small companies, start-ups with 5 or so employees who are working on various technologies with BAE systems and just taking them through the things they should remember in any kind of negotiation, and when I can, I will try and hint at things for the other side because I don't want to sign a one sided contract because it doesn't do me any good long-term, but at the same time I can't advise them and that's a really difficult time, you just want to say, please just think about this, you know, and then it will be great.

Clive Thorne:

Could I ask Lorrie a question?

Baroness Whitaker:

Well has anybody got anything? Let us give the audience a chance first. Yes, someone there.

Philip Green:

Meggitt plc which is in the BAE supply chain along with a number of others, and I really just wanted to make the comment Lorrie and Clive. Whilst I agree entirely in principle with what you say about setting the rules right out at the start, in the real world of aerospace and defence, there is, particularly on the commercial side, an IP grab by the airframe manufacturers, by the air engine manufacturers and it is really, really difficult for companies in their supply chains to come to sensible collaboration on the sharing of intellectual property when one party really does want to grab all the intellectual property for itself. So I utterly agree with the principle, in practice, in part of our business it's impossible, because there are a small

number of companies who want to own everything, which makes the commercial negotiations extraordinarily difficult.

Duncan Fitzsimons:

Yes I think, and certainly from our point of view there are... unless we want to enter into a long painful negotiation, there are two clear options ahead of us, one is, if we have an idea sit on it, develop it, invest our own time and money in getting it patented or protected as water-tightly as possible, and that's a huge risk in investment for us, and then go and pitch it to the company that want to grab everything or to simply work as a consultancy and accept that we will be paid for our service, but we won't retain any of the IP, and that is, at the moment, the stark reality of it with most of our large clients is that the reality of a very large manufacturing supply company of any sort is that they do want to own all of the IP that they work on and in that case you need to either create it for them as a service or create it for yourself and then have them buy it off of you. So that seems to be the way it's done and it's very different from, you know, if we were furniture designers, for example, we would design and create furniture, and the way that that industry works is you then go and you try and licence it to this company, or that company, or that company and you work on a mostly royalty based contract, but all of the... most of the other design industries that we work in don't really work in that respect, especially when there's a lot of technology or science or engineering at the heart of the company you are working for. So, again that comes back to... that we feel very strongly that we want to develop our business in such a way that we can put a certain amount of our resource to one side to develop those ideas because we certainly want a certain part of our business to be creating IP that we do own or have a share in, but it's risky, and you certainly can't start a business based on that premise, unless you are very, very lucky.

Dr. Emma Murphy:

Definitely, I understand a lot of those issues that you've mentioned there, and just something else that I probably wanted to raise which I am sure a lot of you identify with, is the fact that when you actually think about developing intellectual property, it can become a large issue when you are pitching for jobs and it was touched upon this morning, this whole argument about free pitching and it would be nice to think that nobody did free pitching anymore, but I know that it's still around and you are still asked to do that and I think that's something which again IP frameworks need to take into account when you are actually pitching for a job and your service is not being paid for, it's not a paid pitch, how is the intellectual property managed? So I've been in situations where you've pitched for a project, you have handed over your presentation, you've not got the job but you've seen bits of your ideas that might have kind of implemented itself in other ways. So I think that's a really important issue in the design community in terms of free pitching for jobs and... yes.

Duncan Fitzsimons:

Actually as a twist on that, we've never actually done free pitching for jobs, but we've done a twist on it which is similar in that most of those projects that I have shown you, I've been able to show you and there's a huge amount of work that we've done that I can't show you because of the nature of the IP and so there are a couple there that have been commercialised so I can now talk about them,

but the others are projects that we have done, actually with the viewpoint of doing the projects so that we can talk about it, and so part of our business plan with setting our business up has actually been to get involved with projects which are part of work that we know will become published as part of a body of research, or projects that we know we will be able to talk about to use, to show what we do and that's also been another stumbling block is that when you can't talk about your best work then traditional routes of promotion are just closed to you, so you have to be able to demonstrate what you do and filter out through recommendation in that respect, so not quite free pitching, but close to it.

Baroness Whitaker:

The master of the supply chain, perhaps also an inhabitant.

Lorrie Humphrey:

I experience this as well, and I think I know what my Meggitt colleague means that some of our American cousins, shall we say, can be slightly rough in the way they will deal with you on a supply chain basis. On the other hand, on the tender issue we have that too and Government is actually one of the worst for that in terms of actually, you pitch and then you find they re-tender, but the new tender bears a striking resemblance to what you pitched in the first place. So it is an issue that I think all levels of the supply chain face and you can try and deal with it by agreement again, but at the same time it's one of those facts of life, and this is one of the things I mean about control. Understand the realities of your marketplace and deal with it and decide what's worth doing and what's not and if a pitch isn't worth making because you feel you are going to lose crown jewels IP don't make it. If you know the upside of actually gaining the contract, as a percentage, is much lower than the downside of what you may actually lose in the process. It's a difficult one, I know, and it's one that my business struggles with all the time, I have commercial managers coming to me saying, we've got to do this, we need to win this contract, and I'm going, no, because in the value chain it's just not worth it. Hopefully we, as a supplier, would never actually do what our Meggitt colleagues have come up with. I do know that I have a few rogue managers out there who I have to go and beat over the head occasionally, but on the other hand we are also contracted and sometimes one of our biggest problems in a Government contracting is actually flowing down the terms that have been placed on us.

Baroness Whitaker:

Thank you. Clive, and you also had a question too.

Clive Thorne:

Just to recap on the last point. I don't think I'm going to add anything really beyond saying there is the commercial reality of bargaining power, you know, if you are going to be supplying a company such as BAE or Boeing, to some extent they are always going to be able to dictate the terms on which your rights are going to be exploited, and that's how it is. The question I was going to ask Lorrie is actually coupled to that, and that is I suspect that a lot of your intellectual property rights are created internally within the company by employees?

Lorrie Humphrey:

Not as much as used to be now, I would say, we work incredibly closely with the design community at large, be it universities, small companies, Government bodies etc.

Clive Thorne:

So my question may be otiose but what I was going to ask was, do you have any special incentive schemes within BAE aimed at your employees, so that if an employee provides some intellectual property, either a design or a patent, they are remunerated by BAE?

Lorrie Humphrey:

Not to any great extent they don't get remunerated at anything that they would call a pension type level, patents wise there are various schemes within the business which incentivise people to actually help us apply for the patent because most of my design community have a day job, which is called designing and then when I come along, or one of my patent attorneys comes along and says, by the way can you just tell me all about what you've just done so that I can write this very boring legal document and then can you check it and make sure it's okay, and then in a year's time when I've got a search report, can you read the search report and see whether or not we've still got something that's worth patenting, they are not that interested because they've got another job to do, you know, they've moved on, they are working on the next project, so we do incentivise people to help with the process more than the actual innovation, and then we have awards dinners and try and celebrate the innovation of our company, be it technology, business, wherever, so we work more on a celebration of innovation as a key point of the company and it's one of our cultural values to talk in corporate speak.

Baroness Whitaker:

Thank you. Further questions? You are all very, very quiet. Yes.

Simon Clark:

Berwin Leighton Paisner.

Just to finish on that topic I would urge design businesses to have a belief in their designs and confidence in their negotiations because irrespective of how large the company is that you are dealing with, they all have competitors and if you believe in your idea, and you may have an original idea, they will want that over and above their competitors getting it, so if you go in there confident in your belief that you have a product that someone will want to buy, I would encourage you to not always assume that you will have to give up your IP rights, but to fight for your royalty, and if they are in a competing pitch with a competitor and if you can get that message across to them, you may find a company who will be prepared to share a bit more than their starting point.

Baroness Whitaker:

Who wants to go on that.

Duncan Fitzsimons:

I would just very quickly say that yes, I agree, and that's been one of the things we have really learned through the process of setting our business up is that I think when you are a lone designer, it's very, very easy to feel very undervalued because the rates of pay, the difficulty in finding work, because it's a very... it's quite a very competitive workplace when you first graduate and you are a young person in that area, you don't realise the value of a good idea, essentially, and as you start to work more and more on a business level, I totally agree, you start to realise, wait a minute, this person is looking at this idea in business terms and it's suddenly a much bigger thing than I thought it was written on my notepad, and so yes I agree with that.

Baroness Whitaker:

Who else, yes.

Lorrie Humphrey:

The only thing I would say is know your enemy, now that works in two ways, one is know what value you are bringing, but also understand what value they are bringing, and one of the things I find sometimes is that small companies can be incredibly naïve; they will turn up with this idea which needs productisation, it needs an assembly plant set up for it, it needs a huge marketing campaign and nobody actually knows yet they need that product, and who is going to bear all the costs and the risks associated with that. If the big companies are going to bear all the costs and the risks associated with that, then they are going to expect their piece of pie. So understand the deal on the table and understand what the other side needs to get out of it, otherwise you could have, you know, expectations that aren't going to be met. On the other hand if you have got that killer piece of IP, go for it, but understand the deal that you are trying to do, because there is a lot that big business does bring to the party, be it their marketing routes, their ability to get things manufactured etc. and make sure you understand the value of that.

Duncan Fitzsimons:

I think it's a common misconception with design is how much work is involved. Once you've got the design to then actually get it sold and that folding wheel is a good example, it took four months to design and then it took a year and a half to sell and then it's taken 2 years to develop for manufacture, and so there's all this time and investment that goes in and again that sort of ties in with what I was saying earlier about, when you want... if we own our own IP, we have to know that there is someone willing to take that risk and sell it, and so the ideal person for us to sell to is someone who already has access to that market, access to the required manufacturing, already has the marketing information that tells them that people will buy this thing that we've designed and so on.

Clive Thorne:

I would just say the importance of obtaining proper specialist advice, it's much easier to negotiate from something approaching a level of equality if both sides are represented by sensible specialist lawyers or patent attorneys. It levels the playing field to a much greater extent than if you go cap in hand as an individual to a major corporation.

Baroness Whitaker:

Thank you. Last question I think. Yes.

Dids Macdonald:

I think Duncan and Emma have highlighted one of the most vulnerable points in really trying to sell designs or sell ideas and that's at the pitch situation, but there are an awful lot of creative tools of self-help out there for deterrents and prevention and also raising awareness amongst those that are putting the tender out or inviting pitches such as creative barcodes, such as ACID's IP Tracker and that's an independent means by which you can impart this information, knowing that a third party has got a copy of that. That, when it's communicated to the person who is making the pitch or tender is a way of actually raising awareness about the value of your intellectual property, and as you rightly say, the investment that you have made before you come to that point is normally enormous, so

you've got to actually put all the safeguards in place to make sure that you can monetise that if possible.

Baroness Whitaker:

Who wants to go on that?

Duncan Fitzsimons:

I think that is, yes that's brilliant and certainly from our sort of current standpoint it's where we... like I say, we have ideas on the back burner and these are the ones we are thinking of pitching. It's always such a difficult job to know which of those ideas really do need protecting and again, know your enemy, it depends who we are trying to pitch to and also knowing what sort of protection is needed for those different ideas because the things we may want to pitch may range from anything from a certain way of interacting with a website through to a mechanical mechanism of some sort and so we... it's really good that things like ACID provide these means for offering that first, get the ball rolling means of protection. And also it's certainly, I think, something that has prevented us from doing those pitches earlier on is that when... I think a lot of the stuff that we design is more in the sort of patent area and that becomes very difficult and certainly with the wheel as an example, the development work that's gone into making that into something that's manufacturable and also manufacture at a cost that makes it commercially viable has actually meant that it's hardly recognisable when compared to the original design and in that respect, the patent has been wonderful because the patent has protected the core idea whilst enabling the client company to make the required changes to make it into a commercially viable product. But it's horses for courses and so that was suitable in that situation, but for others yes... it would be very good to have a one stop shop where you can see all of the different options available, depending on what it is you are trying to sell.

Baroness Whitaker:

Any comments.

Lorrie Humphrey:

Yes, as Dids says, don't forget the basics, put copyright statements on any presentation, yes, say it's mine, tell them if it's confidential, make sure that's on any presentation materials and materials you leave behind, and don't say too much. Engineers in my company, if I could send them all out with a sheepdog or a minder, you know, don't explain how it works, just explain here's my great idea, this is what it does, this is why you need it, don't give them all the detail, that's not part of the pitch, so that hopefully you are protecting yourselves in those ways as well.

Clive Thorne:

I think the problem is always to avoid the risk of disclosure, whether it's a patent or a registered design in a way which is going to invalidate that intellectual property right. I know lawyers and patent attorneys are paranoid about it, but it is fundamental when you are dealing with invalidity of rights.

Baroness Whitaker:

On that note we shall now invite Howard Ripley to come and give the final address, Howard is nobly standing in for Andrew Layton and he's the Policy Advisor at the Intellectual Property Office.

Next steps for policy

Howard Ripley, Policy Advisor, Intellectual Property Office

As you know, design was not explicitly mentioned in the Hargreaves Review Team's Terms of Reference. Professor Hargreaves expressed his surprise at this, given the economic importance of UK design and the strength with which a number of issues relating to this area of IP protection were raised in evidence to the Review. So he included it anyway.

The Professor coined the phrase, "Patchwork of Protection", which has been mentioned already today, and also pointed out the lack of understanding of the relationship between design rights, and innovation and growth. To some extent the latter gap has been "plugged" and is continuing to be addressed, by research published by the IPO and others.

The patchwork of protection issue is more problematic.

Much of design law is set EU legislation. And there is not the will, or the prospect, of reform of the latter in the near future.

Our current consultation on the reform of design law in the UK was undertaken with this in mind and was thus already constrained in what it could realistically achieve in the short term, given the window of legislative opportunity we have. And this was not the only constraint.

It has been pointed out that designs are regulated in the UK by a number of overlapping, even cumulative rights. I list the following.

- Copyright;
- Registered Community Design;
- International Design designating the EU;
- Unregistered Community Design;
- Semiconductor Topography Right;
- UK registered Design; and
- UK Unregistered Design Right.

Of these, copyright is being dealt with in other consultations; the EU registered right, international design designating the EU and the EU unregistered right are outside our competence to change. As for the Semiconductor Topography Right, it's clearly rather esoteric and no-one that I know of is calling for its amendment or repeal and besides – even if they were – it is based on an EU directive.

Which is also the case with the UK registered right – core substantive provisions are outside our competence to change – and there is no hint that change to EU design law is on the commission agenda.

So, you can see what we are left with is the UK unregistered right and those parts of the UK law governing registered designs that do not emanate from the EU directive. As a consequence, the issue raised by Hargreaves – that of a potentially confusing patchwork of protection – is not going to be addressed in a seismic way any time soon.

One of our respondents commented that the Consultation on the Reform of the UK Designs Legal Framework simply represented more piecemeal tinkering and stated that what is urgently required is a thorough re-appraisal of UK design law as a whole in its international and European legal context followed by fresh legislation. There is weight to this statement, but the tone of the consultation and the responses to it are, in general, one of evolution in the main, as opposed to revolution; largely for the reasons already given.

But this not to say that there aren't controversial and important changes that may fall out of the process. In this context, I am not going to go through the consultation document in detail here – it requests answers to

some 75 specific questions and I have only a 15 minute time slot – but I want to highlight the following key issues in the consultation document.

1. Repeal or retention of the UK unregistered design right;
2. If the UK unregistered design right is retained, a change to its definition to limit its width of application. Section 213(2), the Copyright, Designs and Patents Act 1988 states that “design” means “*the design of any aspect of the shape or configuration (whether internal or external) of the whole or part of an article*”. It is argued that the effect of this wide definition of the scope of protection is to load the dice too heavily in favour of existing design owners. They can easily establish that a new and competing design infringes theirs by basing that claim on a very small and ‘cropped’ part of their design. In this way they can say that another design article infringes theirs even when the overall appearance of that article is not very similar at all.
3. A change to the “Qualification” requirements under the UK unregistered design right. These requirements are not easy to understand, are very complicated and partly based on nationality. They have also been criticised in case law.
4. Introduce a definition of “commonplace” in respect of the UK unregistered design right. It is suggested that the latter could be made by amending Section 213(4) of the CDPA so that it is clear that ‘commonplace’ includes the European Economic Area.
5. Extension of certain defences against infringement for the UK registered design.
6. Introduction of criminal sanctions for blatant, intentional and repeated copying of designs.
7. Introduce an IPO design “opinions service” analogous to that for patents on, among other things, infringement of designs.
8. Introduce the Appointed Person as an appeal route for Registry design decisions.

This is not an exhaustive list, but covers the main points.

The designs consultation is now complete. We received responses from some 36 respondents, a good number of which were extremely detailed.

We are still in the process of analysing the responses and it would be misleading for me to comment on the detail at this stage.

However, I would like to say the following.

I don’t think this will come as a surprise to anyone here that there has been overwhelming support for the retention of the UK unregistered design right from respondents.

Otherwise, many of the other mooted changes have raised different approaches which we are currently discussing with lawyers, as well as considering the policy implications. For example, the suggested changes to the qualification requirement under the UK unregistered design right raised issues amongst respondents as to “reciprocity”. That is, if we removed the qualification requirements, businesses in certain countries will, going forward, have rights in the UK with no equivalent right established for businesses in this country.

And a change to the definition of design under the unregistered right will have to be carefully considered so as to not restrict the right to such an extent that its usefulness is gelded into uselessness.

Perhaps the most controversial of the proposed changes is that of the proposed harmonisation of design law with copyright and trade mark law in criminalising certain behaviours. We have seen nothing in the consultation responses that is fatal to the proposal, but clearly this is a potentially contentious change that will require agreement across government, and not just in the IPO’s home department, BIS. Such agreement is by no means certain, but we are considering whether it would actually be practical – and possible – to apply such sanctions only to those cases where the copying was intentional, persistent and repeated. This was what was suggested in the consultation document, but responses also mean we have some more thinking to do before we proceed.

In passing, however, I think I can say at this stage that there was support for a designs opinion service and for the Appointed Person as an appeal route for design decisions undertaken at the registry.

So, what next?

Well, we obviously need to continue our analysis of the responses, and from there, decide which issues we want to, and indeed, can pursue.

The timetable – which is very tight – requires us to publish a response to the consultation, explaining what we are intending to do, early next year. And, if this includes legislative measures we would hope to take this forward at the earliest opportunity. The problem for all of us is identifying when that opportunity is likely to arise. These things are played very close to the chest by those in the know!

I hope this has given something of a flavour of what people have said to us, and where we go next. I'd just like to close by saying a big thank you to those of you who were able to respond to the consultation – your involvement is much appreciated.

Baroness Whitaker:

Thank you very much for that update Howard.

Session Chair's closing remarks

Baroness Whitaker, Vice-Chair, Associate Parliamentary Design and Innovation Group

If you have any questions of Howard, I think you will have to nobble him afterwards because I'm now going to thank you for all your questions and indeed to thank the panel very much for their answers. I'm sure we should also thank the Westminster Business Forum and Legal Policy Forum too, it has been a very interesting discussion, and I will take it back to Parliament's Design Commission which, as I hope you know, exists to promote understanding of why design matters and which is particularly relevant to you all here, what more should be done.

Our first report on design education said that the UK has one of the best reputations for design in the world and the New York Times, no less, said that London is the design capital of the world, I think Duncan said something rather similar. So we really do need to look after design.

I'm now going to invite Marc Gammon of the Westminster Business Forum who will close this interesting session.

Thank you.

Westminster Business Forum and Westminster Legal Policy Forum closing remarks

Marc Gammon, Producer, Westminster Business Forum and Westminster Legal Policy Forum

Thank you very much Baroness Whitaker.

I would just like to take a few moments, and I promise you it's just a few moments, to make a few business announcements and also to make some thanks for today.

Just as a reminder, if there is a question or comment that you haven't been able to make today, please do feel free to take up the opportunity to make a contribution to today's publication, which will be circulated to all of you in about a week's time. Details on how to do this are included in your delegate packs and we would suggest an article of around 600 words.

You will also find in your delegate packs, feedback forms, please do feel free to fill these out and return them to the front desk.

And now on to thanks and this comes from all of us at the Westminster Business Forum, I would firstly like to thank our event sponsor for today, Speechly Bircham. We do organise our impartial seminars whether we have a sponsor or not but thank you very much to Speechly Bircham for supporting us today.

I am sure you will also agree that our speakers, from first until last have been excellent today, but I would just like to thank especially our keynote speakers, Michelle Lewiston of Speechly Bircham, Andrew Sissons of the Big Innovation Centre, and of course Howard from the IPO who joined us at quite late notice.

As mentioned Howard will be sticking around in the room for any questions that you might like to pose to him, or alternatively if you would like to email any questions across, we would be happy to liaise and pass them on to the IPO for you.

And lastly, thank you to our Chairs, we were delighted to have Gavin Williamson MP as our Chair for the first half, and thank you also Baroness Whitaker for guiding us so well through the second half. So please join me in thanking speakers and Chairs and all in the time honoured and traditional way.

Thank you.

Comment

Keith Arrowsmith
Partner
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Design and the online experience

Since the development of the current regime for design rights, much has happened in the digital world. In discussing the future of UK design rights, I suggest that the importance of the new technologies available to those wishing to protect and enforce designs should not be overlooked.

Historically, it has been difficult to interrogate the prior art, especially if any debate about the novelty of any new design arises. The database made available by the UK's Intellectual Property Office fulfils its purpose, but the understanding of "big data", and how to manage and interrogate disparate sources of information is developing at a fast pace. I suggest that investment by government in better search tools for examiners, applicants and advisors will bring down the real costs of design right protection, and increase the value of the resulting databases. A higher level of certainty that a search of the database has resulted in a comprehensive report will allow better business decisions and less wasted costs.

Attention has rightly been focussed on the changes to our court systems, and the increased role of the Patents County Court. Others have noted that the costs of enforcement action, even at the PCC with its capped cost regime, are still beyond the resources of a large proportion of this sector (which is highly populated by micro businesses who are not able to bear the risk of failed litigation). In many other areas of business, residual risk can be transferred to insurance providers. It is telling that the number of brokers providing IP insurance remains low. I suggest that research may be required to fully understand the barriers to entry to this sector of the insurance market place.

Alternative dispute resolution procedures have been suggested, and some arbitration and mediation schemes exist. It is my experience that designers are as nervous of submitting to the costs of ADR as those that arise from court proceedings. I suggest that a more streamlined, online system of objection could be a useful forum for lower value complaints. Whether planned or not, many design businesses are already accepting my suggested route for dispute resolution when they decide to sell their wares using the online platforms offered by the likes of ebay and etsty. Both of these website providers include in their terms of business a contractual right to take down a sales listing if, in the platform provider's sole opinion, infringing goods are on sale.

I suggest that interested parties consider whether a UK based, government backed online arbitration scheme could be offered to designers who offer their goods for sale online, on the contractual condition that any infringement action would be subject to a simplified central online system. Online retailers could subscribe to the same system, so that sellers on their online platforms become contractually obliged to also submit to this simple form of online justice. With more retail sales taking place online, such a simple mechanism may be a cost effective method for Trading Standards Officers to resolve complaints.

Lastly, the internet is able to give a powerful voice to small design companies. With online social media tools at the designer's disposal, it is now possible to access and influence public opinion in a way that was not possible before. I suggest that this power is harnessed by representatives of the sector, so that the true value of the work of designers becomes recognised by the public at large.

Biography:

Keith Arrowsmith is the Head of IP/IT at JMW Solicitors in Manchester. He specialises in intellectual property law for commercial and charitable clients. He has previously worked in London and Sheffield, building a reputation in the digital, arts, design, entertainment and creative sectors. He also works closely with other umbrella organisations, service industry contacts and hi-tech clients on a regional, national and international basis. He lectures widely and writes for Methuen, The Stage, and other publications.

Dr Roman Cholij
Trade Mark & Design Attorney
Cam Trade Marks & IP Services

The Hague route to international design protection for UK businesses

Since January 1, 2008 some UK businesses could have been saving themselves thousands of pounds in design protection abroad, including protection in the EU through the Community Design Registration.

A little publicised route to secure highly cost effective industrial design protection in sixty jurisdictions world-wide, is through the 'Hague Agreement Concerning the International Registration of Industrial Designs' administered by the World Intellectual Property Organization (WIPO) in Geneva.

The ability to use a highly cost-efficient mechanism of the global IP regime to the benefit of the UK economy in this area of design protection is courtesy of the UK being a member of the EU – one of its more uncontroversial and indisputable benefits. This is because the EU as such, i.e. as an intergovernmental organisation (IGO), became a signatory to the Hague Agreement in 2008 (through the 1999 Geneva Act) which then paved the way for individual member states such as the UK who are not individual parties to the Agreement to use the system.

There are currently 60 signatories to the Hague Agreement which means that any of these states or IGOs can be starting points or end points of industrial design protection within the scheme. This includes an IGO such as the African Intellectual Property Organisation (OAPI), itself comprised of 16 French speaking African States, and countries as diverse as Azerbaijan, Egypt, Mongolia and Ukraine where direct national filings can incur large third party as well as Government costs. So how does the system work and why is it so good for British business?

Instead of having to file separate applications in numerous jurisdictions, having to use local attorneys, issue powers of attorney, pay for legalisation of documentation, incur translation costs, pay separate registration fees and more, the Hague Agreement allows for a single central application for up to 100 designs in a single procedure for protection equivalent to a local registration in up to 60 designated jurisdictions. You deal with one office only (the International Bureau of WIPO) which provides central management for a variety of downstream transactions such as renewal. There is also a time limit within which protection has to be granted by individual countries unless there are serious objections. Most importantly, there is the huge potential savings which often amounts to a 65% cost reduction. As an example, a right holder who wants to protect 5 designs (with 4 views each) in the EU and in Croatia, Norway, Ukraine, Singapore, Switzerland and Turkey would pay in filing costs – if going the traditional route of filing separately with each Office – around £3,550. Through the Hague system, it would cost £1,200.

So why aren't we filing our industrial designs via the Hague route? The UK comes close to the bottom of the list of eligible filers, with just 17 applications filed in 2011. France and Germany, on the other hand, who rank amongst our biggest economic competitors in Europe, are prolific users of the system, as is Switzerland.

In 2011 British businesses filed for 4,566 Community Design Registrations. If, for the sake of argument, there had been 10 individual designs in each, every application would cost around £1,500. Through the Hague system it would have cost £890 - a saving of £610. If multiplied by 4,566, then that's £2.8 million in savings.

If we wish to be in the business of promoting design protection for UK exports, then surely we should also be promoting the Hague Agreement to our UK businesses.

Biography: Dr Roman Cholij, UK and EU trade mark and design attorney, is the founder of Cam Trade Marks & IP Services in Cambridge (www.camtrademarks.com). He sits on various committees, has authored numerous publications, and collaborates with the Von Hügel Institute, St Edmund's College, University of Cambridge.

List of Delegates Registered for Seminar

Susan	Amor	Head of Knowledge Exchange Strategy and Partnerships	Arts and Humanities Research Council
Keith	Arrowsmith	Solicitor	JMW Solicitors
Jocelyn	Banley	Researcher	Baroness Whitakers Office
Dr David	Barlex	Curriculum Developer	Educational Consultant
Linda	Barron	Design Mentor	Materials and Design Exchange/Materials KTN
Tim	Bodinnar	Commercial Manager	Foster + Partners
Nicola	Borthwick	Solicitor	Speechly Bircham
Julia	Boyle	Head of Intellectual Property	O2
Adrian	Brazier	Head, Online IP Policy	Department for Culture, Media and Sport
Laura	Bruin	Trainee Solicitor	Speechly Bircham
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Teri	Carnegie	International Trade Advisor	UK Trade & Investment
Emilie	Chalcraft	Reporter	Dezeen
Dr Roman	Cholij	Trade Mark & Design Attorney	Cam Trade Marks & IP Services
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Tony	Clayton	Chief Economist	Intellectual Property Office
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Roger	Figg	International Trade Advisor	UK Trade & Investment
Duncan	Fitzsimons	Director, Invention & Ergonomics	Vitamins
Simon	Forrester	Patent Attorney	Dyson Technology
Madelaine	Fraser	Operations Executive, Atelier Swarovski	Swarovski
Emily	Gosling	Reporter, What's On Editor	Design Week
Lara	Grant	Trade Mark Attorney	Avidity IP

Philip	Green	Group Corporate Affairs Director	Meggitt
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Lorrie	Humphrey	Head of Commercial - Intellectual Property and Technology Law	BAE Systems
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Hugo	Spowers	Founder	Riversimple
Iain	Stansfield	Partner	Olswang
Robert	Stevenson	Partner	Berrymans Lace Mawer
Ben	Strutt	Head of Design	Cambridge Design Partnership
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Baroness	Whitaker	Vice-Chair, Associate Parliamentary Design and Innovation Group	House of Lords
Danielle	Whitehurst	Research Manager	Madano Partnership
Adam	Wilder	Trade Mark Counsel	Unilever
Gavin	Williamson MP	Co-Chair, Associate Parliamentary Design and Innovation Group	House of Commons

Contributor Biographies

Simon Clark, Partner, Berwin Leighton Paisner

Simon is head of the firm's Intellectual Property Group and has wide experience in all aspects of intellectual property law, including copyright and design rights, patents, trade marks, passing off and breach of confidence. Simon is a Solicitor Advocate holding full Higher Rights in the Civil and Criminal Courts. The Intellectual Property Magazine nominated Simon for 'IP Lawyer of the Year' in 2011 and awarded BLP's Intellectual Property practice 'Copyright Law Firm of the Year' the same year. The Legal 500 has described Simon as having "an outstanding reputation". He is named as a leading individual in intellectual property in Chambers UK and Chambers Europe, and as an expert in intellectual property in *Legal Experts*, published by Legal Business.

Deborah Dawton, Chief Executive Officer, Design Business Association

Deborah graduated with a Degree in Industrial Design from the University of Northumbria before she decided to become an advocate for design rather than working as a designer herself. Deborah began her career with the RSA working on their Student Design Awards. It was her privilege to meet the great and the good of the design industry whose influence determined a career in working with design support organisations. She set up her own business delivering design events, competitions and conferences all over Europe for leading organisations like the UK's Design Council, Design Museum and D&AD and the Pan-European Brand Design Association. In 2003, she answered the call of the Design Business Association joining them as CEO. Funded entirely by the design industry with a remit to drive up their professionalism and the profile of design's value in business, the DBA's membership has doubled along with the association's turnover. With some major projects in the pipeline, the future holds some exciting developments for the DBA. Deborah has spoken extensively to design and business audiences on subjects relating to the running of a design consultancy and design effectiveness in business. Deborah became President of the Bureau of European Design Associations (BEDA) in early 2011, where she now works with the BEDA board to influence design policy on the European stage.

Duncan Fitzsimons, Director, Invention & Ergonomics, Vitamins

Duncan is a designer and director at Vitamins, a Design and Invention Studio based in Spitalfields, London. Working across a range of industries, from consumer and medical products through to software and workspaces, Vitamins are a true innovation company, whose core business is to invent new IP for almost any situation where people and technology meet. As well as consulting internationally for large firms such as Blackberry, Olympus and Samsung, Vitamins also develop their own designs, some of which are patented, and one of which is licensed. Duncan set up Vitamins with two fellow graduates of the Royal College of Art in 2009.

Lorrie Humphrey, Head of Commercial - Intellectual Property and Technology Law, BAE Systems

Lorrie was sponsored through University by BAE Systems, where she studied aeronautical engineering. On graduating she began her career with BAE Systems in the Harrier jump jet engineering team as a systems integration manager. After a brief stint in project management Lorrie joined the BAE Systems IP team in 1999 where she qualified as a UK chartered Patent Attorney and a European Patent Attorney. Lorrie soon realised that the commercial exploitation of IP was where her interests lay and she has specialised in this area for the last 6 years and now head up the IP & Technology Law Commercial Team within Group Legal which has overall responsibility for all IP transactional and exploitation matters for the BAE Systems Group. Lorrie is married with two sons, aged 8 and 6.

Michelle Lewiston, Solicitor, Speechly Bircham and contributor, *The Development of Design Law - Past and Future*

Michelle is an intellectual property specialist, and a key member of the trade mark, designs and brands practice at Speechly Bircham. She has extensive experience in the fashion and design sectors and in the broadcast media world (having previously spent six years working in-house as legal counsel to a cable and satellite television company). Michelle began working with Alexander Carter-Silk, Head of IP and Technology at Speechly Bircham in 2007 where she was quickly able to develop her passion for design with her involvement in the case of Gina Group Plc v Moda in Pelle and the protection of Gina's iconic "Zeta" design (amongst others) through the use of unregistered design rights. Michelle represents shoe designer, Daniel

Sullivan and his “Irregular Choice” and “Poetic Licence” brands, dress designer, Katya Wildman and t-shirt designer, Blackstone Designs Ltd. Michelle has advised Irregular Choice both in the defence of allegations of infringing designs and concerning the enforcement of Irregular Choice’s unregistered design rights in their “Flick Flack” shoe design. Michelle also works closely with Elle Macpherson in relation to the licensing of her successful lingerie line, and in connection with the global expansion of her brand.

Dids Macdonald, Chief Executive Officer, Anti Copying in Design (ACID)

Dids Macdonald has over 30 years’ experience within the design sector, latterly as a designer-maker. She co-founded ACID (Anti Copying in Design) because her products were consistently copied. ACID began informally in 1996 and has developed into a not-for-profit trade organisation representing over 1000+ design-led companies within the creative industries. One of ACID’s key lobbying objectives since it began has been to champion IP and design reform especially for lone, micro and SMEs culminating in the recent recommendation by Professor Hargreaves for a Designs Consultation (now considering submissions and calls for evidence to simply design law). Dids is also Vice Chair of the Alliance for Intellectual Property, a member of the IPO Trade Marks and Designs Forum, a Director and Parliamentary Convenor of IPAN the Intellectual Property Awareness Network and an Assistant to the Court of the Worshipful Company of Furniture Makers. She also serves on the Furniture Makers’ Design Guild Marks committee.

Dr Emma Murphy, Lecturer, Design Management, Lancaster University

Dr Emma Murphy is a Lecturer in Design Management at ImaginationLancaster, an open and exploratory design-led research lab at Lancaster University. Her research interests include design procurement, design business models, brand manifestation, and design briefing. Emma previously led the marketing and research workstream for cross-disciplinary design consultancy Graven Images, working with clients including BBC, Hotel Missoni, Glasgow City Council, Standard Life, RBS, and Volkswagen. Her connections with creative industries, academia, corporate and public sectors position her effectively to connect people and opportunities, and her passion for the creative industries make her a real advocate of design and its role in creating value strategically, economically and culturally. Emma has worked with the British Design Initiative, Architecture and Design Scotland (A+DS) and the RIAS on research to benefit design education and recently collaborated with the IPO and The Work Foundation on the Design’s International Supply Chain report. Emma is also a Visiting Lecturer at Duncan of Jordanstone College of Art and Design, University of Dundee and Strathclyde University.

Howard Ripley, Policy Advisor, Intellectual Property Office

Howie Ripley is part of the Intellectual Property Office’s Designs Review Team, which is working to make improvements to the designs legislative framework. He has worked in strategic and operational policy development within Government and the Third Sector. He has implemented both Primary and Secondary Legislation, such as The Inquiries Act 2005 and the statutory transfer of tribunals to the authority of the Ministry of Justice, and helped build national campaigns around the reform of social care and employment opportunities for working-age disabled people.

Andrew Sissons, Researcher, Big Innovation Centre

Andrew leads the Big Innovation Centre’s research on Markets, Networks and Places, exploring the sources of innovation and growth in different parts of the economy. His research has looked at a range of issues related to the future of manufacturing, services and the design industry, and includes a major report into intellectual property and international trade in the design industry. Andrew also runs the Big Data and Digital Networks action group at BIC, exploring the role of data in transforming the UK economy. Prior to becoming part of the Big Innovation Centre, Andrew was a researcher on The Work Foundation’s Knowledge Economy programme, and worked as an economic consultant.

Hugo Spowers, Founder, Riversimple

Hugo Spowers, a former motorsport engineer, realised that a step change in vehicle technology was both essential and possible, but that the principal barriers were to do with people, politics and business. The industry, shaped by the 20th century, is not well suited to the constraints of the 21st; redesigning both the architecture of cars and the business model reduces barriers and risks. This led to founding Riversimple with Sebastian Piech of the Porsche family. Chris Reitz, formerly of Alfa Romeo, has joined the team and is styling the new production vehicle that they are developing for local use.

Clive Thorne, Partner, Reynolds Porter Chamberlain

Clive is a Partner in our IP, Technology & Outsourcing Group. He practises all areas of IP law including patents, designs, copyright, trade marks and trade secrets. He has a particular interest in the arbitration of IP Disputes. He has been appointed an ICC Arbitrator on an IT dispute and is on the WIPO panel of Arbitrators. He is also on the WIPO panel of experts for domain name disputes and has been on the Nominet panel of experts. He has been involved in many of the leading IP disputes in the UK and overseas. He is particularly experienced in multi-jurisdictional litigation.

Baroness Whitaker, Vice-Chair, Associate Parliamentary Design and Innovation Group

Baroness Whitaker was created a Life Peer in 1999. She was a member of the Select Committee on the European Union subcommittee on social policy, and of the Joint Parliamentary Committee on Human Rights. She has also taken a leading part in amendments to housing and planning legislation to further good design and secure fair treatment for Gypsies and Travellers. She was a founder member of the parliamentary Design Commission and is currently Vice-Chair of the Associate Party Group on Design and Innovation and of the All Party Parliamentary Group on Gypsies, Roma and Travellers. She co-chaired parliamentary inquiries into public service design procurement ('Design and the Public Good') and design education ('Restarting Britain'). She is President of the South Downs Society and a Vice President of the British Humanist Association.

Gavin Williamson MP, Co-Chair, Associate Parliamentary Design and Innovation Group

Gavin Williamson MP was elected to represent South Staffordshire in May 2010. Having been a member of the Executive of the Commonwealth Parliamentary Association he was delighted to join the Council for Education in the Commonwealth as one of their Parliamentary Chairs. He is Chairman of the All-Party Group for Motor Neurone Disease and in October 2011 was appointed Parliamentary Private Secretary to the Minister of State for Northern Ireland, the Rt Hon Hugo Swire MP. Prior to entering Parliament Gavin ran a number of potteries and managed an architectural business. He continues to show an interest in this area and has recently become Co-Chairman of the Parliamentary Design Group.

All biographies provided by speakers

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Speechly Bircham is an ambitious, full-service law firm with over 250 lawyers, headquartered in London. We work with business and private clients across the UK and internationally and have a particular focus on the technology, private wealth, financial services, real estate and construction sectors.

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Our Intellectual Property (IP) Team

Our IP team advises on all aspects of contentious and non-contentious intellectual property. We pride ourselves on being responsive, supportive and able to deal with complex issues in a clear and pragmatic way.

We provide practical guidance on agreements, navigating EU data protection laws and disputes relating to patents, design rights, confidentiality, copyright and trade mark infringement issues.

This approach has led to UK and international brands, and clients spanning the creative and technology industries to those operating in the sports and energy sectors, turning to us to help them protect, exploit and enforce their intellectual property rights.

Brands, Trademarks and Design

Recognised by policymakers for our expertise in this area, we were recently commissioned by the Intellectual Property Office to examine the effectiveness of design law in the UK, which resulted in our paper *The Development of Design Law, Past and Future - From History to Policy*.

Our core design team, comprising Alexander Carter-Silk and Michelle Lewiston, working in conjunction with research specialists, Mountainview Learning (in collaboration with the University of London) undertook a six month project to produce the above report, which highlights the procedural shortcomings of UK design law and identifies several areas where the UK's approach needs to change.

The report, commissioned following the recommendations in the Hargreaves Review (May 2011), looked to industry to gain an understanding of its perceptions of the current design law system and the key factors that the design community considers paramount in the advancement of its business.

The research insights

The report laid bare the daunting landscape faced by designers and industry when it comes to protecting some of their biggest assets - their designs.

Whilst a high proportion of UK companies (57%) indicated that the majority of their annual sales were generated by innovation in design, the combination of high costs generated by legal actions in the UK, combined with the unpredictability of the outcome of court proceedings, presented a significant barrier to all but the wealthiest of

claimants.

In addition, the speed of access to remedies and the ability to remove infringing designs swiftly from the market place were also fundamental considerations for design rights owners.

Policy Recommendations - Highlights

Throughout history, the protection of intellectual property and ‘design’ has responded to changes in industry and the economic pressures of particular market segments according to their economic strength and the given socio-political conditions prevailing at the time. As a result, the law concerning design today exists as an array of various rights, which are often viewed as being unnecessarily complex and incomprehensible to design rights owners.

However, UK design law has now reached a critical juncture. In order to strengthen the contribution made to the UK’s economy through design and innovation and for the UK to remain competitive, UK design law must recognise the economic value of aesthetics by providing a consistent, cost effective and intelligible system which businesses can easily navigate to protect their design rights.

Unfortunately the unpredictability and apparent interpretation of the legislation, combined with the impact of a potential adverse costs order, continues to render even the Patents County Court out of reach for many SMEs and individual designers. In addition, speed of access to remedies is fundamental to design rights particularly having processes that provide a workable method of swiftly removing infringements from the market.

Therefore, in addition to recommendations for a refined super-fast track for the Patents County Court together with expedited procedures for design cases, we also propose that consideration be given to having “industry lay assessors” experienced in the industry in question to sit on the bench with the Judge in determining design disputes.

For further information, or to discuss our IP, creative and design services, please contact:

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