



Incoming waters: - The latest on the Design Legislative Reform -

Astrid Graul, Legal and Policy Affairs Officer
Intangible Economy Unit, European Commission, DG GROW

5th IP Case Law Conference 2024
EUIPO

Context and evolution

- Directive on the legal protection of designs & Community Design Regulation (incl. transitional spare parts regime) date back to 1998/2001
- Revision announced in [COM IP Action Plan](#) of November 2020
- [Package proposals](#) for recast Directive on the legal protection of designs and for amending Regulation Community designs [adopted on 28 November 2022](#)
- Negotiations with Member States at Council under CZ, SE and ES Presidency
- [Provisional Agreement](#) reached on [5 December 2023](#), still subject to formal adoption

Most significant achievements

- Significant, coherent step in updating and further harmonising the law
 - **fulfilling the objectives:** making it future-proof, more accessible and efficient across entire EU & completing a single market for spare parts
 - **meeting stakeholder needs and demands** in response to solid and ample consultation and based on thorough analysis and research
 - **without succumbing to the temptation of over-interfering with a well-performing system**

Opening up the spare parts market

What is the problem?

- Patchwork of diverging national regimes:
 - partly providing design protection for parts of a complex product destined for repair purposes and partly not
- Provided design protection conflicts with essential function of design law and may result in foreclosure of competition



Opening up the spare parts market

Repair clause added in Design Directive to finally terminate transitional regime and complete single market in repair spare parts

- ✓ limited to form dependent „must match“ parts (only!) used for purpose of repair
- ✓ duty to inform public about commercial origin and the identity of the manufacturer of the parts to be used for repair
- ✓ instant legal effect only for the future
- ✓ transitional eight-year period for design rights already granted
- ✓ defence to design right infringement
- ✓ for consistency: corresponding adjustments made to clause already contained in CDR

Modernisation & more legal certainty

- **Renaming: Community Design -> EU Design**
- **Broader and clearer definitions of design and products**
 - ✓ To align them with digital age realities
 - ✓ To increase clarity and transparency on eligible subject-matter of design protection
- **Designs:** include movement, transition or any other sort of animation of the features of the appearance of a product
- **Products:** include non-physical products;
 - the spatial arrangement of interior or exterior environment
 - graphic works, logos, surface patterns and graphical user interfaces
- **Registration symbol 'D' in a circle**



RCD 008200927-0001

Simplified & streamlined procedures

- **Scope of substantive examination & grounds for non-registrability and invalidity in Design Directive**
 - to align scope of examination across EU-MS with that at EU level, grounds for refusal are set out exhaustively and with a view to keeping burden/cost for applicants at minimum
 - Adjusted to accommodate MS requests in view of **cultural heritage** of national interest



Alhambra, Generalife and Albayzín, Granada (Spain)
Unesco World Heritage

Clarifying design rights in terms of scope and limitations

- **Wider scope of protection of registered design rights**
 - to **fight infringement and counterfeiting** in the context of
 - ✓ the deployment of 3D printing technologies for copying of protected designs
 - ✓ the placement of counterfeit products in customs situations (in line with trade mark legislation)
- **Clarifying limitations**
 - by adding **referential use and critique and parody** as permissible uses of a design

Next steps

- **Formal adoption** of the package
- EU Member States will have to **transpose** the new rules of the Design Directive into national law within **3 years**
- Phased entry into force for EU Design Regulation:
 - amendments not dependent on new secondary legislation being enacted to become applicable **4 months after entry into force**;
 - amendments dependent on such new secondary legislation only **18 months after entry into force**

Thank you

astrid.graul@ec.europa.eu



© European Union 2020

Unless otherwise noted the reuse of this presentation is authorised under the [CC BY 4.0](https://creativecommons.org/licenses/by/4.0/) license. For any use or reproduction of elements that are not owned by the EU, permission may need to be sought directly from the respective right holders.

