



# Fact Sheet

## Design Right and Copyright



## What is Design Right?

Design Right provides free automatic protection for the internal or external shape or configuration of a design. Design right allows the creator of the design to stop anyone else from copying the shape or configuration of the product. It is an additional right to Registered Designs (see our separate Fact Sheet).

The purpose of Design Right is to provide protection for purely functional designs which have no eye appeal and thus do not immediately qualify for protection under copyright. However, there is an overlap with Registered Designs, and if applicable, we would always advise you to seek a Registered Design and to take advantage of the 25 year monopoly which is the maximum which can be allowed under Registered Designs.

In contrast to a Registered Design, Design Right does not confer a monopoly on the use of a design, but merely prevents the design from being copied. If another person produces the same or nearly identical design independently and applies it commercially to products, then there will be no protection accorded by the Design Right.

Design Right does not provide protection for two-dimensional designs. These can be protected using copyright or registered designs.

### Obtaining Design Right

Design Right is automatic and comes into existence when the design is created. You do not need to make any application for design right and no fees are payable. In order to be able to support any later claim to design right, you should keep a copy of all records relating to creation of a design, such as files, drawings, prototypes, etc. You should also ensure that you have full details of the creator of the design, including their nationality and state of residence.

Design Right lasts either 10 years after the first marketing of the products that use the design or

15 years after creation of the design, whichever is the earlier. There are also design rights which apply to the European Community lasting for 3 years from the point the design is first disclosed or is made available to the public in some manner.

## What is Copyright?

Copyright protects creative or artistic works. Copyright automatically comes into being when an artistic work is created. This means that you do not have to apply for copyright.

### What can be protected by Copyright?

Various types of works can be protected by copyright. These are

- Literary works such as manuscripts, books, articles, manuals, leaflets, etc.
- Dramatic works such as plays and choreographic scores
- Musical works such as recordings and musical scores
- Artistic works such as photographs, paintings, drawings, architectural drawings, sculpture, maps and logos
- Typographical arrangements such as magazine layouts
- Sound recordings including radio broadcasts
- Films, including television broadcasts

### Can computer programs be protected?

Yes, as they are considered to be literary works

## **Obtaining Copyright**

In the United Kingdom, and indeed in most other countries, there is no official registration system for copyright. You do not need to fill in any forms or pay any fees to obtain copyright protection. As long as a work which qualifies for copyright protection has been created, then copyright exists. In order to be able to prove that you have copyright, it is essential to keep all original designs or proofs relating to the work, e.g., preparatory drawings, draft designs and layouts, etc. You should also ensure that you date and sign all these initial preparations in order to be able to prove when the copyright came into being.

## **Marking**

Although there is no requirement to mark anything which has copyright, it is advisable to mark it with the © symbol, the name of the copyright owner and the year of publication. This will ensure that other people will know when the term of protection started and who they need to approach in order to ask for permission or for a licence to use the work protected by the copyright.

## **Duration of Copyright**

Copyright lasts for different lengths of time, depending upon the particular right involved.

For literary, dramatic, musical or artistic works, including computer programs, the duration is 70 years from the end of the calendar year in which the last remaining author of the work dies, or the work is made available to the public, by authorised performance, broadcast, exhibition, etc.

For sound recording and broadcasts, copyright lasts for 50 years from the end of the calendar year in which the last remaining author dies, or the work is made available to the public by authorised release, performance, broadcast, etc.

For typographical arrangements, the term is 25 years from the end of the calendar year in which the work was first published.

## **Who Owns the Rights?**

Usually the individual or group who created the work will own the rights. However, if the work is produced as part of employment, then the work will normally belong to the organisation that employed the individual. For commissioned work, rights will usually belong to the author of the work, unless there is an agreement to the contrary, e.g., a contract of service.

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During our work for you we may need to instruct third parties (for example, patent and trade mark attorneys in other countries, or searchers) to act on your behalf. We might instruct such parties directly on your behalf. Alternatively you might need to sign a power of attorney or similar appointment to engage such third party. Any such party is not part of Urquhart-Dykes & Lord LLP. While we shall endeavour to select third parties of appropriate good standing, we shall not be responsible for any default or negligence by such third parties.

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