

Design Law Update

Important changes to the EU Designs system as well as the national design regulations have been approved by EU Parliament in March 2024 and voted on by the Council in October 2024. The new European Design Regulation (EUDR) will begin to apply in May 2025. Provisions that require implementing secondary legislation will be applicable in July 2026.

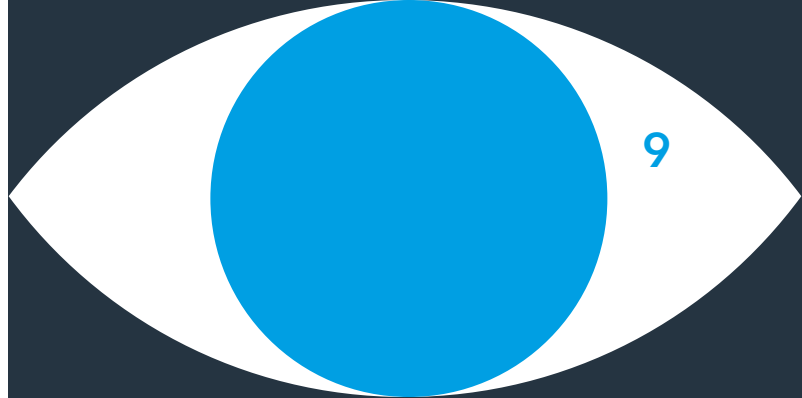
Important changes include the following:

There will be a **name change** and Community Designs will in the future be called Registered EU Designs (REUDs) and Unregistered EU Designs (UEUDs). This change is in line with the change for trademarks many years ago that are now referred to as EU trademarks and emphasizes the importance of the EU design system that conveys protection in all EU member states.

A **new symbol** has been introduced by which, after registration, holders may now inform the public of their ownership, namely a *D in a circle*. This corresponds to the ® for registered trademarks and is useful tool to make third parties aware of existing design rights.



The **scope of protection** will be increased significantly as the definition of a design will now include non-physical objects like the movement, transition or any other sort of animation of the appearance of a product or a part thereof. The definition of product will be extended to symbols, logos, surface patterns, typographic typefaces, GUIs or even the spatial arrangement of items intended to form an interior or exterior environment like a shop layout. Further possible new products include objects of the metaverse, NFT objects as well as animations, maps and fonts. While



computer programs as such are still exempted from protection, this amendment will considerably broaden the scope of protection of designs. Further, the creation, downloading, copying, sharing or distribution of media or software recording the design to enable the manufacture of an infringing product will constitute a design infringement. In other words, the holder of a design will now be able to prohibit infringing products that are made by using 3D printing technologies. Further, at least under certain circumstances, the mere transit of a design through the EU can also be prohibited by the holder of a design.

A further important change concerns **visibility**. While protection is only granted for features of a design that can be seen in the design application, it will no longer be required that the concerned features be visible during normal use of the product. This amendment ends the current practice of EUIPO and the EU courts requiring

visibility during normal use for protection and will again significantly strengthen the protection of a design.

With respect to the **application process**, it should be noted that the limitation to seven views per design will not continue to apply. Further, representation will no longer be



limited to static views like drawings of photographs but may be done by providing dynamic or animated representations like videos. And finally, for multiple applications, the requirement of unity of class will be abolished so that multiple applications may contain designs in different Locarno classes.

While the holders' rights have been strengthened by the above-mentioned measures, the **defenses** available against accusation of design infringement have also been extended, namely to referential use, comment, critique and parody.

Further changes ahead concern the **national design laws of the EU member states** that **will be harmonized**.

For example, member states may no longer allow protection for **non-registered designs**. The only way to obtain protection for non-registered design will be a non-registered EU design. Non-registered national design will no longer be possible and even regarding non-registered EU designs only deliberate imitations are prohibited, accidental parallel creations remain permitted.

Further, the EU member states now have to introduce a **repair clause** according to which design protection is limited regarding component parts of complex products that are used for repairing purposes aimed at restoring the original appearance of a product, where the appearance of the component part depends on that of the complex

product and the manufacturer of the spare part product complies with certain information and due diligence obligations. While design protection in this respect will of course be limited by such a repair clause, it should be noted that the European Court of Justice has so far also applied the repair clause existing for EU designs not only to »must match« parts, where the exact shape of the spare part is needed to restore the original appearance of a product like mudguards of a car, but also to products whose design may be independent of that of the rest of the product like the rims of a car. This clause is intended to liberalize the spare parts market.

Another amendment concerns **referential use and use identifying the manufacturer** of a product. Accordingly, acts carried out for the purpose of identifying or referring to a product in order to identify or refer to a product as that of the holder of the right to a design will not constitute design infringement.

While the harmonization of the national design laws and the modernization of the EU Design Regulation are to be welcomed, it remains to be seen what the authorities and courts will make of the changes and how those will prove themselves in practice.



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