



# Copyright, Designs and Patents Act 1988

## 1988 CHAPTER 48

### PART III

#### DESIGN RIGHT

#### CHAPTER I

##### DESIGN RIGHT IN ORIGINAL DESIGNS

##### *Introductory*

#### **213 Design right.**

- (1) Design right is a property right which subsists in accordance with this Part in an original design.
- (2) In this Part “design” means the design of any aspect of the shape or configuration (whether internal or external) of the whole or part of an article.
- (3) Design right does not subsist in—
  - (a) a method or principle of construction,
  - (b) features of shape or configuration of an article which—
    - (i) enable the article to be connected to, or placed in, around or against, another article so that either article may perform its function, or
    - (ii) are dependent upon the appearance of another article of which the article is intended by the designer to form an integral part, or
  - (c) surface decoration.
- (4) A design is not “original” for the purposes of this Part if it is commonplace in the design field in question at the time of its creation.
- (5) Design right subsists in a design only if the design qualifies for design right protection by reference to—

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- (a) the designer or the person by whom the design was commissioned or the designer employed (see sections 218 and 219), or
- (b) the person by whom and country in which articles made to the design were first marketed (see section 220),

or in accordance with any Order under section 221 (power to make further provision with respect to qualification).

[<sup>F1</sup>(5A) Design right does not subsist in a design which consists of or contains a controlled representation within the meaning of the Olympic Symbol etc. (Protection) Act 1995.]

- (6) Design right does not subsist unless and until the design has been recorded in a design document or an article has been made to the design.
- (7) Design right does not subsist in a design which was so recorded, or to which an article was made, before the commencement of this Part.

#### Textual Amendments

- F1** S. 213(5A) inserted (20.9.1995 with effect as mentioned in [s. 14\(2\)\(3\)](#) of the amending Act) by [1995 c. 32, s. 14\(1\)](#); [S.I. 1995/2472, art. 2](#)

#### 214 The designer.

- (1) In this Part the “designer”, in relation to a design, means the person who creates it.
- (2) In the case of a computer-generated design the person by whom the arrangements necessary for the creation of the design are undertaken shall be taken to be the designer.

#### 215 Ownership of design right.

- (1) The designer is the first owner of any design right in a design which is not created in pursuance of a commission or in the course of employment.
- (2) Where a design is created in pursuance of a commission, the person commissioning the design is the first owner of any design right in it.
- (3) Where, in a case not falling within subsection (2) a design is created by an employee in the course of his employment, his employer is the first owner of any design right in the design.
- (4) If a design qualifies for design right protection by virtue of section 220 (qualification by reference to first marketing of articles made to the design), the above rules do not apply and the person by whom the articles in question are marketed is the first owner of the design right.

#### 216 Duration of design right.

- (1) Design right expires—
  - (a) fifteen years from the end of the calendar year in which the design was first recorded in a design document or an article was first made to the design, whichever first occurred, or

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- (b) if articles made to the design are made available for sale or hire within five years from the end of that calendar year, ten years from the end of the calendar year in which that first occurred.
- (2) The reference in subsection (1) to articles being made available for sale or hire is to their being made so available anywhere in the world by or with the licence of the design right owner.

### *Qualification for design right protection*

## **217 Qualifying individuals and qualifying persons.**

- (1) In this Part—
- “qualifying individual” means a citizen or subject of, or an individual habitually resident in, a qualifying country; and
  - “qualifying person” means a qualifying individual or a body corporate or other body having legal personality which—
- (a) is formed under the law of a part of the United Kingdom or another qualifying country, and
  - (b) has in any qualifying country a place of business at which substantial business activity is carried on.
- (2) References in this Part to a qualifying person include the Crown and the government of any other qualifying country.
- (3) In this section “qualifying country” means—
- (a) the United Kingdom,
  - (b) a country to which this Part extends by virtue of an Order under section 255,
  - (c) another member State of the European Economic Community, or
  - (d) to the extent that an Order under section 256 so provides, a country designated under that section as enjoying reciprocal protection.
- (4) The reference in the definition of “qualifying individual” to a person’s being a citizen or subject of a qualifying country shall be construed—
- (a) in relation to the United Kingdom, as a reference to his being a British citizen, and
  - (b) in relation to a colony of the United Kingdom, as a reference to his being a British Dependent Territories’ citizen by connection with that colony.
- (5) In determining for the purpose of the definition of “qualifying person” whether substantial business activity is carried on at a place of business in any country, no account shall be taken of dealings in goods which are at all material times outside that country.

## **218 Qualification by reference to designer.**

- (1) This section applies to a design which is not created in pursuance of a commission or in the course of employment.
- (2) A design to which this section applies qualifies for design right protection if the designer is a qualifying individual or, in the case of a computer-generated design, a qualifying person.

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- (3) A joint design to which this section applies qualifies for design right protection if any of the designers is a qualifying individual or, as the case may be, a qualifying person.
- (4) Where a joint design qualifies for design right protection under this section, only those designers who are qualifying individuals or qualifying persons are entitled to design right under section 215(1) (first ownership of design right: entitlement of designer).

#### **219 Qualification by reference to commissioner or employer.**

- (1) A design qualifies for design right protection if it is created in pursuance of a commission from, or in the course of employment with, a qualifying person.
- (2) In the case of a joint commission or joint employment a design qualifies for design right protection if any of the commissioners or employers is a qualifying person.
- (3) Where a design which is jointly commissioned or created in the course of joint employment qualifies for design right protection under this section, only those commissioners or employers who are qualifying persons are entitled to design right under section 215(2) or (3) (first ownership of design right: entitlement of commissioner or employer).

#### **220 Qualification by reference to first marketing.**

- (1) A design which does not qualify for design right protection under section 218 or 219 (qualification by reference to designer, commissioner or employer) qualifies for design right protection if the first marketing of articles made to the design—
  - (a) is by a qualifying person who is exclusively authorised to put such articles on the market in the United Kingdom, and
  - (b) takes place in the United Kingdom, another country to which this Part extends by virtue of an Order under section 255, or another member State of the European Economic Community.
- (2) If the first marketing of articles made to the design is done jointly by two or more persons, the design qualifies for design right protection if any of those persons meets the requirements specified in subsection (1)(a).
- (3) In such a case only the persons who meet those requirements are entitled to design right under section 215(4) (first ownership of design right: entitlement of first marketer of articles made to the design).
- (4) In subsection (1)(a) “exclusively authorised” refers—
  - (a) to authorisation by the person who would have been first owner of design right as designer, commissioner of the design or employer of the designer if he had been a qualifying person, or by a person lawfully claiming under such a person, and
  - (b) to exclusivity capable of being enforced by legal proceedings in the United Kingdom.

#### **221 Power to make further provision as to qualification.**

- (1) Her Majesty may, with a view to fulfilling an international obligation of the United Kingdom, by Order in Council provide that a design qualifies for design right protection if such requirements as are specified in the Order are met.

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- (2) An Order may make different provision for different descriptions of design or article; and may make such consequential modifications of the operation of sections 215 (ownership of design right) and sections 218 to 220 (other means of qualification) as appear to Her Majesty to be appropriate.
- (3) A statutory instrument containing an Order in Council under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### *Dealings with design right*

## **222 Assignment and licences.**

- (1) Design right is transmissible by assignment, by testamentary disposition or by operation of law, as personal or moveable property.
- (2) An assignment or other transmission of design right may be partial, that is, limited so as to apply—
  - (a) to one or more, but not all, of the things the design right owner has the exclusive right to do;
  - (b) to part, but not the whole, of the period for which the right is to subsist.
- (3) An assignment of design right is not effective unless it is in writing signed by or on behalf of the assignor.
- (4) A licence granted by the owner of design right is binding on every successor in title to his interest in the right, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser; and references in this Part to doing anything with, or without, the licence of the design right owner shall be construed accordingly.

## **223 Prospective ownership of design right.**

- (1) Where by an agreement made in relation to future design right, and signed by or on behalf of the prospective owner of the design right, the prospective owner purports to assign the future design right (wholly or partially) to another person, then if, on the right coming into existence, the assignee or another person claiming under him would be entitled as against all other persons to require the right to be vested in him, the right shall vest in him by virtue of this section.
- (2) In this section—

“future design right” means design right which will or may come into existence in respect of a future design or class of designs or on the occurrence of a future event; and

“prospective owner” shall be construed accordingly, and includes a person who is prospectively entitled to design right by virtue of such an agreement as is mentioned in subsection (1).
- (3) A licence granted by a prospective owner of design right is binding on every successor in title to his interest (or prospective interest) in the right, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser; and references in this Part to doing anything with, or without, the licence of the design right owner shall be construed accordingly.

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## **224 Assignment of right in registered design presumed to carry with it design right.**

Where a design consisting of a design in which design right subsists is registered under the <sup>M1</sup>Registered Designs Act 1949 and the proprietor of the registered design is also the design right owner, an assignment of the right in the registered design shall be taken to be also an assignment of the design right, unless a contrary intention appears.

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### **Marginal Citations**

**M1** 1949 c. 88.

## **225 Exclusive licences.**

- (1) In this Part an “exclusive licence” means a licence in writing signed by or on behalf of the design right owner authorising the licensee to the exclusion of all other persons, including the person granting the licence, to exercise a right which would otherwise be exercisable exclusively by the design right owner.
- (2) The licensee under an exclusive licence has the same rights against any successor in title who is bound by the licence as he has against the person granting the licence.

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