Protection for GUIs in UK & EU

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Applications for registered designs (or design patents in some countries) for **Graphical User Interfaces** (GUIs) are on the rise around the world. A GUI is an interface which allows a user to interact with electronic devices, such as through graphical icons on a screen. GUIs are of increasing commercial importance because:

— A growing number of industries now interact with customers primarily through software, instead of physical products or stores.
— For example, most consumers consume news and print media, gaming and gambling, shopping, learning and more through websites, apps and software.
— Even where physical products haven't been entirely replaced by smartphones and websites, companies still invest heavily in designing bespoke and proprietary user interfaces.

At the same time, it has never been easier for nefarious actors to copy – and thus benefit from - the efforts companies put into designing distinctive and slick interfaces.

At one end of the scale, copycats perform wholesale scrapes of apps and websites. At the other end, sophisticated 'design around' approaches are taken, looking to imitate the look and feel of a game, app or website, in the hopes of making it easier for your customers to switch to a copycat service.

Might you be overlooking this versatile, affordable, flexible approach to protecting your company's valuable and commercially important IP?

What is protectable as a registered design in the UK and EU?

Registered designs provide protection for the visual appearance of a product. In the context of GUIs, this means that the unique visual elements of your digital interfaces (i.e. the lines, contours and shapes) can be safeguarded against unauthorised use by competitors.

The code of computer programs are excluded from design protection, but visual aspects of software are very commonly protectable as long as they are 'new' (i.e. not a direct copy of anything that has come before) and possess 'individual character' (i.e. that the design produces a different 'overall impression' than anything that has come before). These tests are considered from the perspective of an expert user, such as your in-house designer.

A third party will infringe a registered design if an offending article produces the same overall impression on the informed user as the registered design. The assessment is primarily visual.

Protection for a strikingly novel product will enjoy greater protection than one which is more common. However, even a combination of relatively banal or common elements (such as open source icons arranged into an app) may qualify for protection as a registered design if they way the elements combine is different to what has come before. This makes registered design protection perfect for apps and software interfaces.

Benefits of registered designs

→ Registered designs in the UK and EU undergo only a brief formalities check before being registered. There are no prior art searches or similar conducted by examiners and a registration certificate typically issues whin weeks. In addition, unlike trade marks, a design registration is enforceable against any type of product that is visually similar, rather than being restricted in scope to particular goods or services.

→ With registered designs the registration represents a prima facie record of protection, and is thus more straightforward to rely on in takedown requests, letters before action and other enforcement procedures than other rights such as copyright. In effect, relying on a registered design reverses the burden of proof so that instead of a design owner needing to prove the existence of copyright, the alleged infringer must instead challenge the validity of the registered design. Many infringers will not bother to do so.

→ Registered designs also enjoy a long period of protection of up to 25 years in the UK and EU, subject to renewal every five years - more than enough time to commercially exploit GUI, which change rapidly.

→ Design registration is also cheaper than trade mark and patent protection.   In the UK, the official fees to file a single design application starts at just £50, with additional designs in the same application costing even less. The EUIPO charges €350 for a single design, with discounts available for multiple designs filed simultaneously; the 2nd to 10th design costs €175 per design and then each additional design is €80.

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Anticipated rise in case law

Industry pundits predict a surge in case law related to registered designs for GUIs. As more companies recognise the value of protecting their digital interfaces, disputes over design infringement are expected to become more common. This evolving legal landscape will likely result in clearer guidelines and precedents, further solidifying the importance of registered designs. We know that the UKIPO is currently working on new guidelines for animated or moving designs, which should see greater flexibility introduced.

Companies that overlook design protection risk being left behind as the legal framework around GUIs becomes more defined. By securing registered designs now, you can position your business to benefit from future legal developments and avoid potential pitfalls.

Increasing trend of applications from Chinese companies

Recent data indicates a particular increase in the number of registered design applications from Chinese companies, with their western counterparts lagging behind. By way of example, statistics from the last four years show China is the second largest country of origin of owners for UKIPO-filed designs (just after the UK). This trend highlights the growing recognition of the value of design protection in the global market. Chinese firms are increasingly aware of the competitive advantage that registered designs can provide, and they are acting accordingly to secure their intellectual property rights.

For UK and EU companies, this trend underscores the importance of not falling behind. By proactively registering your GUI designs, you can maintain a competitive edge and prevent potential market encroachment by foreign entities.

Conclusion

Considering whether registered designs should be filed for GUI elements should be part of your routine pre-launch, or pre-update workflow. Many companies see doing so as is a strategic investment in a flexible, cost-effective right which is growing in importance. By taking this step, you can safeguard your innovative designs, stay competitive in a global market, be ready to take action against the increasing raft of copycats, and be prepared for the expected uptick in legal actions in this area.

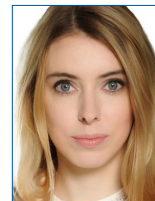**Sarah Wright**
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