

Review of the Hong Kong Registered Designs Regime

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Commerce and Economic Development Bureau
The Government of the Hong Kong Special Administrative Region
of the People's Republic of China



Intellectual Property Department
The Government of the Hong Kong Special Administrative Region



Background

Current regime & review

- Registered Designs Ordinance (Cap. 522)
 - Localised designs registration system since 1997
 - Modelled on UK Registered Designs Act 1949 at the material time
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Background

Objectives of the review

- Comprehensive review of current regime launched in 2024
 - Local registration system should be on par with international standards and norms
 - Capable of conferring rights to designs worthy for protection
 - Procedures of obtaining, maintaining and enforcing such rights should be effective and efficient

Statutory definitions of “design” and “article”

Current definition of “design”	Possible amendments
<u>Features... applied to an article</u>	<u>Appearance of a product resulting from features...</u>
Features of <u>shape, configuration, pattern or ornament</u> applied to an article	Features of, <u>in particular</u> , shape, configuration, pattern or ornament, colours, line and contours...

Statutory definitions of “design” and “article”

Current definition of “design”	Possible amendments
Applied by an industrial process	Applied by an industrial process
Reference to “ <u>article</u> ”	Reference to “ <u>product</u> ”
Current definition of article does <u>not</u> include handcraft or handmade items	To include handcraft or handmade items

Scope of design protection

Virtual designs

- Currently, GUIs and icons applied to physical articles (e.g. Class 14-04 (graphical user interfaces and icons)) are allowed for registration.

- **Examples:**

HK Design no.:

2526474.2M005

Title of article:

Temperature control GUI for
electronic devices

HK Design no.:

1915205.3M001

Title of article:

Graphical user interfaces for
mobile phone

Scope of design protection

Examples of other types of virtual design	Example	Protectable?
Animated characters	EU Design No.: 015048999-0001 Indication of product: Animated characters, Graphic symbols [comic figures] Class: 14-04, 32-01	<ul style="list-style-type: none"> ✓ The EU and the UK: “graphic symbols” are “products” ✓ The Chinese Mainland: if applied to or embodied in physical product ✓ Japan and Korea: if related to product operation or functionality
Projected image (e.g., projection onto a windshield, optical/laser projection keyboard)	Laser projection keyboard (extracted from “Catalogue on the Practices on the Protection of New Technological Design” published by the ID5)	<ul style="list-style-type: none"> ✓ The EU, Japan, Korea and the UK ✓ Singapore: “non-physical product” ✓ The Chinese Mainland: if applied to or embodied in physical product
Screensavers	Korea Registration No. 30-0352433 Indication of product: A computer monitor on which a GUI design is displayed Class: 14-02	<ul style="list-style-type: none"> ✓ The EU and the UK: “graphic works” are “products” ✓ Korea: protectable as GUI designs × The Chinese Mainland: not related to man-machine interaction × Japan: not related to product operation or functionality

- What types of virtual designs should or should not be protected? Any specific conditions?

Scope of design protection

Spare parts and parts of articles

- A design for a “part of an article” is registrable in Hong Kong if:
 - The part is “made and sold separately”; and
 - It does not fall within the “must-match” exclusion
 - ◆ Parts that are dependent upon the appearance of another article of which the article is intended to form an integral part
- Prevents unduly broad design protection for spare parts

Scope of design protection

Component parts

- The concept of “complex product”
 - Composed of at least two replaceable component parts permitting disassembly and reassembly of the product
- Introduce “must fit” exclusion
 - Excludes parts that must necessarily be reproduced in the exact form and dimension so as to permit the product to be mechanically connected to another product so that either product may perform its function.
 - Examples: prongs of a power plug and light bulb socket
- “Right to repair” defence

Scope of design protection

Partial designs

- Currently no protection for designs that form part of a greater article but not sold separately (e.g. handle of a cup)
- In contrast, partial designs are widely accepted in many jurisdictions
- Whether HK should accept partial designs whether made or sold separately

Novelty

“New” designs

- Only “new” designs are registrable in Hong Kong
- The design must not
 - have been registered; or
 - have been published to third parties in Hong Kong or elsewhere; or
 - be substantially similar to another design
- Substantially similar if the designs differ only in immaterial details, or in merely features which are variants commonly used in the trade
- *Glaxo Group Limited v Chia Tai Tianqing Pharmaceutical Group Co., Ltd.*
[2022] HKCFI 1350

Novelty

Beyond requiring “novelty”

- Apart from requiring a design to be “new”, Australia, the EU, and the UK require a design to be “distinctive” or have “individual character”
- This additional requirement requires a difference in overall impression of the design from the existing design corpus rather than on details
 - through the eyes of “informed user”
 - degree of designer’s freedom
- Differences in details alone are insufficient if overall impression is the same

Novelty

Examination of “novelty”

- Registrar only required to conduct formality examination, with the discretion to refuse the application where the design, on the face of it, is not new or is not registrable
- Shorter registration process that is both cost-effective and accessible to design owners
 - Infringement proceedings may only be commenced after certificate of registration is issued
 - Trade competitors to challenge validity

Novelty

Enhancement measures as an alternative to novelty examination

- **Australia:** substantive examination must have been conducted before the owner commences infringement proceedings
- **Singapore:** heightened checks for declaration of novelty
- **HK** to consider introducing enhancement measures

Exclusive rights

Scope of exclusive rights and infringement

- **Hong Kong: exhaustive list of rights granted to owner of registered design**
 - ✓ Make or import for sale
 - ✓ Hire or use in trade or business
 - ✓ Sell, hire, or offer or expose for sale or hire
- **The EU, the UK and Australia: to use the design or the product**
- **Statutory exceptions to analysis, private & non-commercial uses**
- **Scope of rights must be commensurate with the nature and scope of design**

Exclusive rights

Ownership

- **Hong Kong:** person commissioning the design is presumed to be the original owner, unless there is agreement to the contrary
- **Singapore, the UK and ID5:** designer is presumed to be owner of commissioned design, unless there is agreement to the contrary

Facilitation measures for application for registration of designs

What are grace periods and deferment of publication?

Now:



Proposed change:



Facilitation measures for application for registration of designs

Grace Period

- Designs disclosed to public before filing for registration are generally not “new”, unless within specified exceptions
- Limited exceptions in Hong Kong, including
 - Breach of good faith
 - 6-month grace period for filing application in relation to a design disclosed at “official international exhibition”
- Many jurisdictions have introduced a 12-month all-purpose grace period in line with Riyadh Design Law Treaty (RDLT)

Facilitation measures for application for registration of designs

Deferment of publication

Jurisdictions	Maximum Deferment Periods
Australia	6 months
The UK	12 months (Proposed to be extended to 18 months in a recent public consultation)
Singapore	18 months
The EU	30 months
Chinese Mainland	36 months
Japan	
Korea	

- RDLT makes it mandatory for contracting parties to allow an applicant to request deferment for at least 6 months from filing date

Application and registration formalities

- Restoration of priority claims/ requirements of priority documents
- Multiple designs application
- Statement of novelty

Term of protection and renewal

Jurisdiction	Maximum Term of Protection	Renewal Interval
Hong Kong	25 years	Renewable every 5 years
The EU (for EU Designs)		
The UK		
New Zealand	15 years	Renewable every 5 years
Singapore		
Australia		
Japan	25 years	Renewable every year
Korea		
Chinese Mainland		
The US	15 years	Granted in one fixed term

Statistics of renewals in Hong Kong

- Roughly 60% of registrations are renewed for each of their respective next terms
- 6% of the owners will seek the full term of protection of their registered designs
- Renewals are requested on the basis of conscious business decisions, reflecting the different residual commercial values of individual designs, rather than as a routine exercise

Interplay between registered design rights and other IP rights

- **Hong Kong:** copyright co-exists with exclusive rights of registered design, but is shortened to tally with maximum protection term of registered design
- **Australia and Singapore:** Prevents dual protection by removing scope of registered design rights from copyright protection
- **UK:** Allows co-existence of copyright and registered design rights but replaces copyright by a similar but separate unregistered design right

Interplay between registered design rights and other IP rights

	 <p>Act of reprographic copying of the blueprint (e.g. making a magazine cover)</p>	 <p>Act of copying the blueprint by making an article (e.g. a car)</p>
<p>If the design is registered, the owner has:</p>	<p>COPYRIGHT for the life of the designer plus 50 years unaffected</p>	<p>Maximum 25 years REGISTERED DESIGN RIGHTS</p> <p>AND</p> <p>Shortened 25 years COPYRIGHT from the article first being marketed</p>
<p>If the design is <i>NOT</i> registered, the owner has</p>		<p>No REGISTERED DESIGN RIGHTS</p> <p>AND</p> <p>Shortened 15 years COPYRIGHT from the article first being marketed</p>

(Image sources: Waiki Creative/Shutterstock.com; Rajiv_am96/Shutterstock.com)

Interplay between registered design rights and other IP rights

Unregistered design rights

- The EU and the UK provide for unregistered design rights
 - A “lesser right” that is shorter than registered rights
 - Proof of copying is a pre-requisite to infringement
- Australia and Singapore have decided not to introduce unregistered design rights after public consultations
- UK is currently considering consolidation of two different forms of unregistered design rights

Alignment with the international design systems

Hague Agreement

- China acceded in 2022, but not yet extended to the HKSAR
- Allows design owners to obtain an international registration simply by filing a single international application with the WIPO
- Owners may seek local territorial protection in up to 99 countries or regions concurrently
- Manage design rights in different regions through a one-stop process

Alignment with the international design systems

Riyadh Design Law Treaty (RDLT)

- Concluded in November 2024, China has yet to sign the RDLT which has yet to come into force
- Aims to harmonise and streamline application and registration procedures
- Establishes basic international standards
- Makes procedures less complex and more predictable

Submissions

Deadline: 16 March 2026

Email: design_consultation@cedb.gov.hk

Post: Division 3

Commerce and Economic Development Bureau
23rd Floor, West Wing
Central Government Offices
2 Tim Mei Avenue
Tamar, Hong Kong

Fax: 2147 3065

Consultation Document



Thank you!