

# PROTECT YOUR DESIGNS



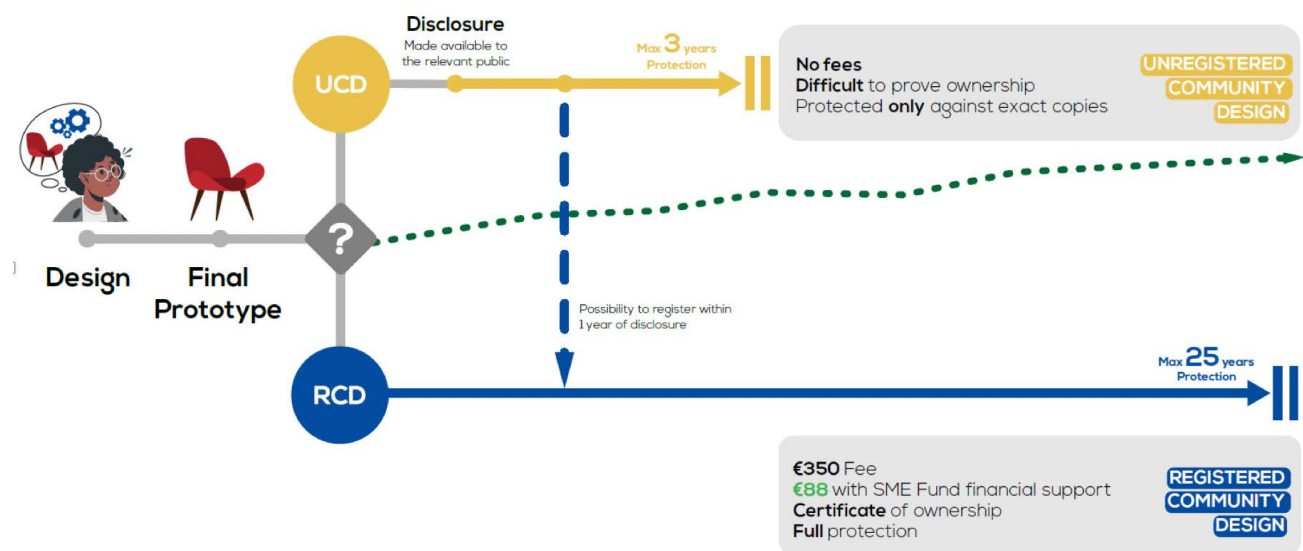
HANDY MANUAL

# TWO OPTIONS



## Going to a fair? You have two ways to protect your designs

When going to a trade fair, you may want to consider protecting your designs at national or European Union (EU) level. Besides the possibility of protecting your designs in one or more Member States of the EU, you can also protect your design in all EU Member States at once. This manual focuses on how to get protection in the entire EU market. You have two choices: registered or unregistered protection.



The option you choose will depend on your design portfolio strategy, ranging from design protection for products with a short market life without any registration procedure, to exclusive rights for up to 25 years. In other words, you can either commercialise your design directly without registering it and rely on what is known as an **unregistered Community design (UCD)** or register your design at the European Union Intellectual Property Office (EUIPO) and get a **registered Community design (RCD)**.

When deciding which option best suits your needs, you will need to consider the differences in terms of scope of protection, duration and costs. Registered designs are protected against similar designs even when the infringing design has been developed in good faith (i.e. without knowing about the earlier design), whereas unregistered designs grant the right to prevent commercial use of a later design only if that design is a result of copying the protected one (i.e. knowing about the earlier design).

In terms of duration, registered designs are valid for 5 years from the date of filing and can be renewed every 5 years up to a maximum of 25 years, whereas unregistered designs are protected for 3 years from the date on which the design was first made available to the public in the EU.

Finally, in terms of costs, registered designs are conditional on payment of a minimal fee, whereas unregistered designs are free. However, the costs for enforcing an unregistered design before a court can be extremely expensive and time consuming, whereas enforcement of registered designs is straightforward.

In this document, we will explain the characteristics of each type of design. Once you decide on your preferred option, we will guide you on the way forward and the key aspects that you need to consider.

# MAKE YOUR CHOICE



Don't worry, if you have already made your design available to the public and now decide that you want to apply for a design registration to get full protection, you can still do so within a year of disclosure. This is known as the 'grace period'.



## Unregistered Designs

### Protection for short-lived products – no registration procedure

This is a right that automatically comes into existence just by making the products that incorporate the designs available to the public (i.e. if the design has been published, exhibited, used in trade, or otherwise disclosed) in the EU.

This informal right aims to satisfy the need for a design protection right for products with a short lifespan with no need for a registration procedure.

The act of making a design available to the public is called '**disclosure**' – disclosing a design and being able to prove it are key to unregistered design protection. Proving that your design was made available to the public in the EU at a particular time is not always easy. You may also find it difficult to prove that your design has been copied and that the infringer should have been aware of the existence of your design.

## Path to protection

There is no need to register the design and the scope of protection may include the whole design, only part of it, or some features. Firstly, the **design**:

### DESIGN



**Must** be new and have individual character with respect to prior designs  
**Must** consist of the appearance of a product (definition of 'design')  
**Must** not be contrary to morality and public order

Secondly, to claim UCD protection, you must ensure that the act of making the design available to the public (i.e. disclosure) complies with certain **conditions**:

### DISCLOSURE



The design **must** be published, exhibited, used in trade, or otherwise made available to the public in EU territory.

## HOW TO DISCLOSE



Finally, to enforce your rights, you will have to **demonstrate** that the above conditions were met. You will have to provide objective evidence that the date of disclosure was no more than 3 years before an act of infringement and that the disclosure was in EU territory.

An ideal way to prove disclosure at trade fairs is to get an **official certificate** issued by the trade fair organiser. The certificate should contain relevant information including:

- place, date, time, and name of the event;
- number of attendees;
- details identifying the design's proprietor/s;
- images of the design, i.e. images of the product, taken from different angles to show clearly what protection is sought;
- pictures of the design being exhibited (or otherwise disclosed) or at least dates of the start and end of the exhibition of the product.

## Practical and financial advantages

An unregistered design right constitutes a vital element of protection for industries such as clothing and footwear. For example, the fashion industry, which renews their collections every season, can be protected against counterfeiting and other infringing copies without the formality or costs involved in registering their designs in the entirety of the EU.

The right is limited to 3 years and forbids the use of copies of original designs.

Cost:



**Warning:** The costs of enforcement before the court can be very high and the scope of protection is limited to copies. You will have to comply with the conditions mentioned above and demonstrate that your design has been copied.



## Registered Designs

### The exclusive rights for long-term products

A registered design gives you exclusive right to use your design and prevent others from using it without your consent. A single registration protects your design across the whole the EU and prevents others from:

- manufacturing a product incorporating your design;
- putting a product on the market incorporating your design;
- offering a product for sale incorporating your design;
- marketing a product incorporating your design;
- importing/exporting a product incorporating your design.

Registered designs are protected against similar designs even when the infringing design has been developed in good faith (i.e. without knowing about the earlier design). As mentioned above, unregistered designs are only protected when the design has been copied.

### Path to protection: Registration

For protection in all EU countries, you need to file an application for registration. There are two options. You can:

- file an [application](#) at the EUIPO; or
- file an application at the International Bureau of the World Intellectual Property Organization (WIPO) and designate the EU.

## Practical advantages

You will get a certificate of ownership and your design right will be governed by a single legal system, providing strong and uniform protection throughout the EU.

Registration is easy (i.e. one application, one filing language and one file to manage) and you are allowed to include several designs in one application, such as variations of the same design.

## Financial advantages

The fee for registering and publishing one design is **€350** for 5 years' protection.

If you apply to the SME Fund first, you can get 75% reimbursed (that's design protection in the EU for only €88)

Registering your design at EU level saves you translation and administrative costs. Moreover, the design system offers a 'bulk discount' (i.e. for a multiple application, the fees for registering the 2nd to 10th design have a 50% discount and from the 11th design onwards the fee is just 25% of the basic fee per design).

with the **SME Fund**



**Do you need help with your application?** The Information Centre staff at the EUIPO can guide you both **before and during** the application process:



**+34 965 139 100**



**information@euipo.europa.eu**

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