



AUSTRALIAN DESIGN ALLIANCE

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Submission in response to the Advisory Council on Intellectual Property's Issues Paper – Review of the Designs System

The Australian Design Alliance (ADA) welcomes the opportunity to make this submission in response to the Advisory Council on Intellectual Property's Issues Paper *Review of the Designs System*. Our comments are reflective of practitioner experience and have not been subjected to legal scrutiny.

About the ADA

The ADA was established to harness the collective voice of the design professions and to work on areas of common interest to all members.

Collectively the design professions want to see the economic, social and cultural benefits of good design realised for all Australians; a country that values good design and design thinking; that integrates design; and that promotes the very best of Australian design internationally.

The ADA's mission is: Promoting the use of DESIGN to boost Australia's productivity, sustainability and innovation.

There are now 13 members of the ADA:

- Australian Craft and Design Centres
- Australian Graphic Design Association
- Australian Institute of Architects
- Australian Institute of Landscape Architects
- Australian Network for Art and Technology
- Australian Production Design Guild
- Council for Humanities Arts and Social Sciences

- Council of Textile and Fashion Industries of Australia
- Design Institute of Australia
- Engineers Australia
- Good Design Australia
- National Association for the Visual Arts
- Planning Institute of Australia

Combined membership of our member organisations is close to 150,000 with a broader reach to over 500,000 design professionals.

Submission

Duration of design protection – Question 1

We believe that the Designs System in Australia should be aligned with The Hague System or appropriate international equivalent. The difficulty here is with the different durations for design protection in different countries, that is, which one do we choose, but it would seem that there is merit in considering some alignment that makes sense rather than a duration that is different to key jurisdictions.

Grace Period – Questions 2, 3, 4

While we acknowledge that a grace period may be problematic given that it does not exist in all jurisdictions, there would certainly be merit in considering a grace period in the context of changing the system to include ‘application’, followed by ‘registration’, rather than the current system of ‘registration’ followed by ‘certification’.

There is merit in considering a grace period similar to that in the patent system to align the two systems.

Unregistered Design Rights – Questions 9, 10

The ADA supports the position of the Australian Copyright Council in relation to unregistered design rights that this would not add anything to the current system and may undermine what exists in relation to design and copyright protection.

Confusion regarding the process of design registration – Questions 16.17

We believe that the current system is confusing. The term ‘registered design’ implies that the design has been through a process but that is in fact not the case. A better term may be ‘application submitted’ and then ‘registered design’ only be used when a design has been through the certification process.

Border Protection Measures – Question 12

The Notice of Objection scheme would give Australian designers a greater degree of protections from imported designs that infringe on their rights.

The impact of new technologies

The ADA supports a full investigation in this review of the applicability of the designs system to the impact of technology particularly rapid prototyping made possible through 3D printing. Many designers are using this technology to create and co-create work, the whole area of online protection for designs is one that requires careful consideration so that the possible implications of the current system and any changes to the system are taken into account.

Other comments

The Council may wish to consider in its review: user interface design, user experience design, service design and business systems design and how they are dealt with under the current system.

A communications campaign should also be considered in an effort to improve designers' understanding of the Designs System and copyright protections and how Australian law is different from other jurisdictions, to assist designers working globally.

Please contact if we can provide any further information or assistance to the Council.

Yours sincerely

Lisa Cahill
Executive Director
31 October 2013