

Annex E - Proposed Amendments to Copyright and Registered Designs Legislation on the Interface Between Copyright and Registered Designs

Note:

- (i) This annex does not contain all the legal provisions relating to copyright and registered design. For a list of the legal provisions relating to the interface between copyright and registered design, please refer to paragraph 4.1.1 of **Annex A**, and for the full text of these legal provisions, please refer to the IPOS legislation webpage at <https://www.ipos.gov.sg/AboutIP/IPLegislation.aspx>.
- (ii) The tracked changes indicate the proposed changes to be made to existing legislation. Please note that the wording of the proposed amendments is subject to change after legislation drafting by the Attorney General's Chambers.
- (iii) The proposed amendments are intended to come into operation on such date as the Minister may, by notification in the Gazette, appoint.

Section 7 Registered Designs Act

Computer programs, etc., not registrable

7.—(1) No computer program or layout-design may be registered under this Act.

(2) For the purposes of subsection (1), “layout-design” has the meaning assigned to it in the Layout-Designs of Integrated Circuits Act (Cap. 159A).

(3) The Minister may make rules —

(a) to exclude from registration under this Act designs for such ~~articles~~ articles and non-physical products of a primarily literary or artistic character as the Minister considers appropriate; and

(b) to provide that any design described in the rules shall not be registered under this Act, or shall not be so registered unless such conditions as may be prescribed are met.

Rule 9 of the Registered Designs Rules

Designs excluded from registration

9. The Registrar shall refuse to register a design intended to be applied to any of the following ~~articles~~ articles and non-physical products:

(-a) works of sculpture (other than casts or models used or intended to be used as models or patterns to be multiplied by any industrial process);

(-b) wall plaques, medals and medallions;

(-c) ~~printed~~-matter primarily of a literary or artistic character, including book jackets, calendars, certificates, coupons, dress-making patterns, greeting cards, labels, leaflets, maps, plans, playing cards, postcards, stamps, trade advertisements, trade forms and cards, transfers and similar articles.

Section 9 of the Registered Designs Act

Provisions as to artistic works

9.—(1) Subject to subsection (2), where an application is filed by or with the consent of the owner of copyright in an artistic work for the registration of a corresponding design, the design shall not be treated for the purposes of this Act as being other than new by reason only of any use previously made of the artistic work.

(2) Subsection (1) shall not apply if the previous use consisted of or included the sale, letting for hire, or offer or exposure for sale or hire of ~~articles~~ items to which had been applied industrially —

(a) the design in question; or

(b) a design differing from it only in immaterial details or in features which are variants commonly used in the trade,

and that previous use was made by or with the consent of the copyright owner.

(3) The Minister may make rules to provide for the circumstances in which a design is to be regarded as having been applied industrially to items ~~articles~~ or any description of items ~~articles~~ for the purposes of this section.

(4) For the purposes of subsections (2) and (3), each item is an article or a non-physical product.

(5) For the avoidance of doubt, in subsection (2), the sale, letting for hire, or offer or exposure for sale or hire of non-physical products may take place via the sale, letting for hire, or offer or exposure for sale or hire of one or more projectors.

Note: The term “projector” in the proposed Section 9(5) RDA refers to the equipment that is used to project the non-physical product.

Rule 12 of the Registered Designs Rules

Industrial application of designs

12.

- ~~—(1) For the purposes of section 9 of the Act, a design is applied industrially if—~~
- ~~(a) more than 50 reproductions in 3 dimensions are made of it for the purposes of sale or hire;~~
 - ~~(b) it is reproduced in 3 dimensions in one or more articles manufactured in lengths for the purposes of sale or hire; or~~
 - ~~(c) it is reproduced as a plate which has been used to produce—~~
 - ~~(i) more than 50 reproductions of an object in 3 dimensions for the purposes of sale or hire; or~~
 - ~~(ii) in 3 dimensions one or more articles manufactured in lengths for the purposes of sale or hire.~~

{S 742/2014 wef 13/11/2014}

- ~~(2) For the purposes of paragraph (1), 2 or more reproductions in 3 dimensions which are of the same general character and intended for use together are a single reproduction.~~

12.

—(1) For the purpose of Section 9 of the Act, a design shall be deemed to be applied industrially if it is applied —

- (a) to more than fifty items which do not altogether constitute a single set of articles or set of non-physical products or set of articles and non-physical products, as defined in Section 2(1); or

- (b) to articles manufactured in lengths or pieces, not being hand-made articles.

(2) For the purposes of paragraph (1)(a), each item is an article or a non-physical product.

Notes:

For the definition of “set of articles”, please refer to the existing Section 2(1) of the RDA. For the proposed new definitions of “set of non-physical products” and “set of articles and non-physical products”, please refer to **Annex B**.

Section 7(1) Copyright Act

Proposed new definition of “non-physical product” to be inserted into Section 7(1) Copyright Act

Interpretation

7.—(1) In this Act, unless the context otherwise requires —

“non-physical product” has the same meaning as in Section 2(1) of the Registered Designs Act (Cap. 266); and

Sections 73 and 74 of the Copyright Act

Interpretation of this Division

73.—(1) In this Division “corresponding design”, in relation to an artistic work, means a design which, when applied to an article or non-physical product, results in a reproduction of that work.

(2) In this Division —

(a) references to the scope of the copyright in a registered design are references to the aggregate of the things, which, by virtue of the provisions of the Registered Designs Act (Cap. 266), the registered owner of the design has the exclusive right to do; ~~and~~

(b) references to the scope of the copyright in a registered design as extended to all associated designs and articles and non-physical products are references to the aggregate of the things which, by virtue of that written law, the registered owner would have had the exclusive right to do if —

(i) when that design was registered, there had at the same time been registered every possible design consisting of that design with modifications or variations not sufficient to alter the character or substantially to affect the identity thereof, and that owner had been registered as the owner of every such design; and

(ii) the design in question, and every other design such as is mentioned in sub-paragraph (i), had been registered in respect of all the articles and non-physical products to which it was capable of being applied; ~~and-~~

(c) “projector” means the equipment that is used to project the non-physical product.

Special exception in respect of industrial design

74.—(1) Where copyright subsists in an artistic work and a corresponding design is registered or deemed registered under the Registered Designs Act, it shall not be an infringement of the copyright in the work —

(a) to do anything, during the subsistence of the copyright in the registered design, which is within the scope of the copyright in the design; or

(b) to do anything, after the copyright in the registered design has come to an end, which, if it had been done while the copyright in the design subsisted, would have been within the scope of that copyright as extended to all associated designs and articles and non-physical products.

[25/2000]

(1A) Subsection (1) shall have effect subject to the provisions of the Schedule in cases falling within the Schedule.

(2) Where copyright subsists in an artistic work, and —

(a) a corresponding design is applied industrially (whether in Singapore or elsewhere) by or with the licence of the owner of the copyright in the work;

(b) items articles to which the design has been so applied are sold, let for hire, or offered for sale or hire whether in Singapore or elsewhere; and

(c) at the time when those items articles are sold, let for hire or offered or exposed for sale or hire, they are not items articles in respect of which the corresponding design has been registered or, is deemed registered under the Registered Designs Act (Cap. 266),

subsections (3), (4), (5) and (6) shall apply.

[14/94; 25/2000]

(2A) For the purposes of subsections (2) and (4), each item is an article or a non-physical product.

(2B) For the avoidance of doubt, in subsections (2)(b) and (4), the sale, let for hire, or offering for sale or hire whether in Singapore or elsewhere of non-physical products may take place via the sale, letting for hire, or offering for sale or hire of one or more projectors.

(3) Subject to subsection (5) —

(a) during the relevant period of 15 years, it shall not be an infringement of the copyright in the work to do anything which, at the time when it is done, would have been within the scope of the copyright in the design if the design had, immediately before that time, been registered in respect of all relevant articles and non-physical products; and

(b) after the end of the relevant period of 15 years, it shall not be an infringement of the copyright in the work to do anything which, at the time when it is done, would, if the design had been registered immediately before that time, have been within the scope of the copyright in the design as extended to all associated designs and articles and non-physical products.

[6/98; 25/2000]

(4) In subsection (3), “the relevant period of 15 years” means the period of 15 years beginning with the date on which items articles, such as are mentioned in subsection (2)(b), were first sold, let for hire or offered for sale or hire, whether in Singapore or elsewhere.

[6/98; 25/2000]

(5) For the purposes of subsections (2) and (3), no account shall be taken of any articles and non-physical products in respect of which, at the time when they were sold, let for hire, or offered for sale or hire, the design in question was excluded from registration under the provisions of the Registered Designs Act or the Registered Designs Act 1949 of the United Kingdom (U.K. 1949, c. 88) (as the case may be), by rules made under the applicable Act (which relates to the exclusion of designs for articles and non-physical products which are primarily literary or artistic in character).

[25/2000]

(6) For the purposes of any proceedings under this Act a design shall be conclusively presumed to have been excluded under subsection (5) if —

(a) before the commencement of those proceedings —

(i) an application for the registration of the design in respect of those articles and non-physical products under the Registered Designs Act (Cap. 266); or

(ii) an application for the registration of the design in respect of those articles under the Registered Designs Act 1949 of the United Kingdom (UK 1949, c. 88), being an application made before the date of commencement of the Registered Designs Act, has been refused;

(b) the reason or one of the reasons stated for the refusal was that the design was excluded from such registration by rules made under the Registered Designs Act or the Registered Designs Act 1949 of the United Kingdom (UK 1949, c. 88) (as the case may be); and

(c) no appeal against that refusal had been allowed before the date of the commencement of the proceedings or was pending on that date.

[25/2000]

(7) The regulations made for the purposes of this section may make provision for determining the circumstances in which a design is, for the purposes of this section, to be deemed to be applied industrially.

[Aust. 1968, ss. 75 and 77]

Regulation 12 of the Copyright Regulations

Circumstances in which design is to be deemed to be applied industrially

12.—(1) For the purposes of section 74 of the Act, a design shall be deemed to be applied industrially if it is applied —

(a) to more than 50 ~~items which do not altogether constitute a single set of articles or set of non-physical products or set of articles and non-physical products, as defined in section 2(1) of the Registered Designs Act (Cap. 266)~~ articles; or

(b) ~~to one or more articles (other than hand-made articles) manufactured in lengths or pieces to articles manufactured in lengths or pieces, not being hand-made articles.~~

(2) ~~For the purposes of paragraph (1)(a), any 2 or more articles—~~

~~(a) that are of the same general character;~~

~~(b) that are intended for use together; and~~

~~(c) to which the same design, or substantially the same design, is applied;~~

~~shall be deemed to constitute a single article.~~

(3) For the purposes of this regulation, a design shall be deemed to be applied to an article if —

(a) the design is applied to the article by a process (whether a process of printing, embossing or otherwise); or

(b) the design is reproduced on or in the article in the course of the production of the article.

Section 70 of the Copyright Act

Special exception for artistic works which have been industrially applied

70.—(1) Notwithstanding section 69, the making of any useful article or non-physical product in 3 dimensions (including a reproduction in 2 dimensions reasonably required for the making of the article or non-physical product) does not infringe the copyright in an artistic work if, when the useful article or non-physical product or reproduction is made, the artistic work has been industrially applied in Singapore or in any other country at any time before the useful article or non-physical product or reproduction is made.

(2) For the purposes of subsection (1), an artistic work is applied industrially if —

(a) more than 50 reproductions in 3 dimensions are made of it, for the purposes of sale or hire;

(b) it is reproduced in 3 dimensions in one or more articles manufactured in lengths, for the purposes of sale or hire; or

- (c) it is reproduced as a plate which has been used to produce—
- (i) more than 50 reproductions of an object in 3 dimensions for the purposes of sale or hire; or
 - (ii) one or more articles in 3 dimensions manufactured in lengths for the purposes of sale or hire.

(3) For the purposes of subsection (2), 2 or more reproductions in 3 dimensions which are of the same general character and intended for use together are a single reproduction.

(4) In this section, “useful article or non-physical product” means an article or non-physical product having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information.

(5) For the purposes of this section, an article that is normally part of a useful article is considered a useful article.