

# Copyright protection for industrial designs

Industrial designs in New Zealand can be protected under both the Copyright Act and the Designs Act 1953. This is unusual internationally and may be creating issues for New Zealand businesses. This session is an opportunity to discuss the advantages and disadvantages of this dual protection, the Hague Agreement Concerning the International Registration of Industrial Designs, and the use of new technology to distribute industrial designs.

## Conversation-starters:

- › What are the benefits of New Zealand’s dual protection regime for industrial designs and copyright, e.g. financial, ease of use, greater protection, etc?
- › What are the downsides to our dual protection, e.g. design registration is underutilised, copyright ownership is harder to prove in court, difficult to register the design overseas if owner relies on copyright in New Zealand, etc?
- › What advantages or benefits might New Zealand designers gain from New Zealand becoming a member of the Hague Agreement?
- › What disadvantages or costs might arise for New Zealand designers if we join the Hague Agreement, eg would it facilitate more foreign designs being protected in New Zealand, which might lead to less freedom to operate for New Zealand designers?
- › Are there new technologies that impact upon the protection and exploitation of industrial designs that we should be aware of?

## Notes recorded by workshop groups

Theme/sub-topic	Comments recorded
General	<ul style="list-style-type: none"> <li>› Dual protection is great – keep it</li> <li>› If relying on copyright, make public, can’t then register</li> <li>› Registration gives better protection               <ul style="list-style-type: none"> <li>› Not highly used in NZ</li> <li>› Fee – every five years</li> </ul> </li> <li>› Does the dual system encourage designers to come to NZ?</li> <li>› Benefits of dual industrial design:               <ul style="list-style-type: none"> <li>› Copyright is automatic and there is no cost</li> <li>› IPONZ registration carries a cost</li> <li>› In some countries if there is no registration, there is no protection</li> </ul> </li> <li>› Different purposes – monopoly vs ability to stop copying</li> </ul>



Theme/sub-topic	Comments recorded
	<ul style="list-style-type: none"> <li>› Why 50 units for design copyright?</li> <li>› Individual copyright is great</li> <li>› How is creative ownership being enforced?</li> <li>› Low awareness of IP</li> <li>› Low awareness of the registration process</li> <li>› Procurement rules skewed towards multi-nationals. Anything less than \$100,000 doesn't require procurement rules application</li> <li>› Unfair that businesses are forced to sign over their copyright on designs before commissioning and design can be used by the procurer. Inappropriate use of the Government Model Contract (GMC)(procurement)</li> <li>› The biggest issue is the commissioning rule</li> <li>› Enforcement of law that copyright owner receives compensation, e.g. Māori misuse of taonga internationally</li> <li>› Architects – business information management systems model</li> <li>› Model – mingling of technologies – 3rd party IP</li> <li>› Format changes of content, e.g. artwork, photo, photo on a t-shirt – how is this original? Artist compensated?</li> </ul>
<p><b>Term of protection for industrial designs</b></p>	<ul style="list-style-type: none"> <li>› Term of copyright – what should it be?</li> <li>› What is the rationale for the duration of protection? Is it too short?</li> <li>› 16 years – 25 years? Industrial vs artistic:               <ul style="list-style-type: none"> <li>› Harmonize</li> <li>› Snob factor re: 'pretty things'</li> </ul> </li> </ul>
<p><b>3-D printing</b></p>	<ul style="list-style-type: none"> <li>› 3-D to 2-D – information should be made clearer</li> <li>› Want to go after the scanner/distributer vs the 'printer' casually and individual at home, i.e. the consumer</li> <li>› 3-D printing – can an object create a file and is this infringement?</li> </ul>
<p><b>The Hague Agreement and international protection</b></p>	<ul style="list-style-type: none"> <li>› The Hague Agreement is good. It makes it easier to get protection. Unlikely to sign inbound filings. Some of our trading partners are not in the agreement (Australia).</li> <li>› Australia did not join due to increased copyright term</li> <li>› Hague Agreement – international protection for kiwi designs. Single file portals will increase international filing in NZ as our fees are cheap. Would make it difficult for Kiwis to not infringe in NZ.</li> <li>› Can never protect yourself internationally. Try to protect in the market you're in and assume that China will reproduce after 5 years. Need to be nimble.</li> <li>› NZ is out of step with the rest of the world's practice</li> <li>› Does registration give more international rights?</li> </ul>