



Interaction between copyright and design

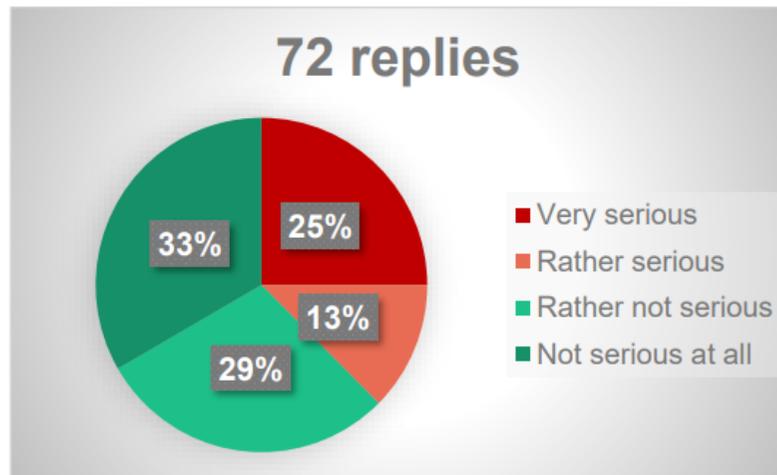
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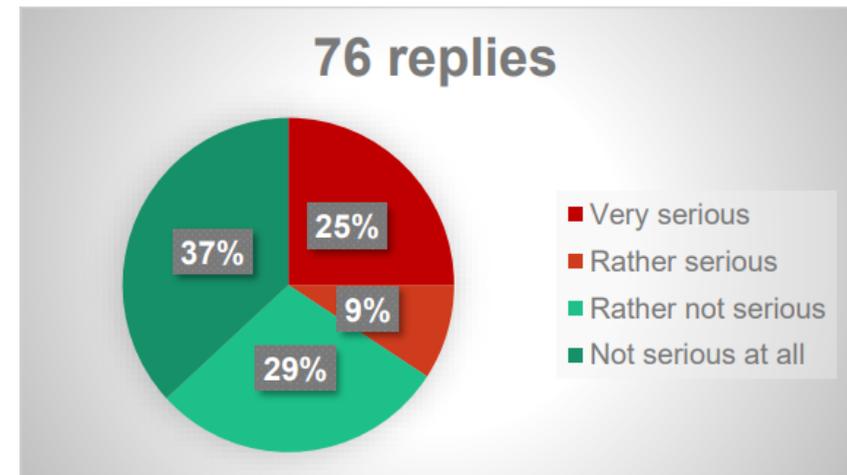
2022 EU-Taiwan Seminar on Design Protection

Interface between design and copyright protection

How would you assess the following concern? Potential right holders opt for copyright protection instead of design protection, to a degree that the special design regime created for designers and design-oriented industries runs void



How would you assess the following concerns? The conditions for granting copyright protection in addition to design protection lead to overreach of protection and distortion of competition





Principle of cumulation

Articles 17 Dir. + 96(2) Reg.

- ✓ A design can be protected by both design and copyright law
- ✓ Condition: the protection requirements are fulfilled for both these rights
- ✓ The level of originality required is determined by the Member State.

Principle of cumulation

- Provisions stem from time that there was no harmonisation of copyright yet.
- What is a 'Work' in copyright?
- An autonomous concept of EU law.
- Must be interpreted and applied uniformly.
- Has to be an author's individual creation, resulting from free creative choices and
- Reflecting the personality of the author.



Court of Justice



Clarification relationship design \leftrightarrow copyright through clarifying notion of work.



Flos, C-168/09, no exclusion of copyright protection for designs.



Widening the copyright protection for works of applied art and the possible overlap with design law

Cofemel, C-683/17

Limited possible overlap

Cumulative protection may only
“be envisaged in certain
situations”

Aesthetic effect is not enough -
does not equal originality



Brompton, C-833/18

Shape solely dictated by technical function : **no copyright.**

Unless it satisfies the condition of originality and is eligible for copyright protection.

Condition: the author has reflected his personality in that subject matter, as an expression of free and creative choices.



Brompton bike



Chedeck bike



Conclusion

Is there a reason to change the cumulation principle?

With Directive 2001/29/EC and case law of CJEU there is more clarity as to what is a work.

Should level or originality be left up to Member States?

Keep in touch



Review of the EU rules on Industrial designs

[Intellectual property – review of EU rules on industrial design \(Design Regulation\)](#)

[Intellectual property – review of EU rules on industrial design \(Design Directive\)](#)



Evaluation of EU legislation on design protection

[https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/1846-](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/1846-Evaluation-of-EU-legislation-on-design-protection)

[Evaluation-of-EU-legislation-on-design-protection](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/1846-Evaluation-of-EU-legislation-on-design-protection)



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Thank you



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