

Constructive notice – products protected by registered designs

Department for Business, Innovation and Skills

RPC rating: validated

Description of proposal

Owners of designs may choose to mark their products with a registered number to help protect their appearance (e.g. shape, configuration and decoration) against copying. Details of multiple registered rights in a product's design often change at different times over a product's life. Owners may, therefore, choose to make frequent adjustments to markings on individual products.

The proposals would permit design owners to mark products with the address of a website containing up-to-date details of registered designs. Businesses choosing this option would not need to re-mark individual products when details of registered designs change. This would be easier and less costly to businesses.

The proposals would be optional for design owners, who could still choose to mark their products in the traditional way.

Impacts of proposal

A business making use of the option would need to construct a website or, if it already has one, set up a new page. The Department expects these costs to be minimal compared with the costs of marking products by stamping them or attaching labels.

The Department considers that there would be no new impact on third parties. This is because the third parties already consult websites in order to check design protections, even if registration numbers are stamped on products. However, the proposal might offer additional benefits to those checking on protections, since use of product-specific URLs might remove the need for them to remember and re-enter registration numbers (users would see just a list for the product) and would be able to see easily whether protections had lapsed or changed.

Costs

The IA states it is not possible to monetise the costs as it is not certain how many businesses would choose to set up a website. There is no cost at all to business if a registered design holder does not choose to use this new option. According to the Office of National Statistics, 80 per cent of UK businesses have websites. However, the IA estimates the cost of setting up a website varies widely. Template-based services can be bought from as little as £3 per month and freemium options (where the basic service is free) is also available. Custom-built sites can cost more.

Benefits

The IA states that design owners who currently choose to label or stamp their products and use this option instead would make cost savings by no longer having to re-mark every single product when details changed. Instead, amendments could be made once - to a website. However, the Department does not have any data on how many businesses physically mark their products as the Department is not required to collect this information. As such it is unable to quantify the benefits.

Quality of submission

The IA explains that the proposal is permissive in nature because making use of the proposed product specific URL option is entirely optional for businesses. It is reasonable to assume that registered design holders will choose to take up the new option only if they believe the benefits of doing so would be greater than the costs. The provision is deregulatory but the extent of the benefits will depend on the number of firms that decide to make use of it. Given the permissive nature of the measure and the lack of evidence on potential take up, the RPC is able to validate an EANCb of £0 (zero).

Small and micro-Business assessment

As the proposals are deregulatory, a small and micro-business assessment is not required. However, the Department has provided one. It states that micro businesses are within scope of the proposal. It will be beneficial to all businesses including micro businesses which can choose to use it if they feel it will benefit them. It will also benefit those businesses which do not own a registered design, but who need to find information relating to the registered design protection afforded to a particular product. This may result in them being able to discover more quickly what they are free to do without infringing a registered design.

Initial departmental assessment

Classification	OUT
Equivalent annual net cost to business (EANCb)	£0 (zero)
Business net present value	£0 (zero)
Societal net present value	£0 (zero)

RPC assessment

Classification	OUT
EANCb – RPC validated	£0 (zero)
Small and micro business assessment	Not required (deregulatory), but one provided which is sufficient.

Opinion: EANCB validation
Origin: domestic
RPC reference number: RPC15-BIS-3060(2)
Date of implementation: 1 October 2016



Michael Gibbons CBE, Chairman