The European Design Directive became law in the United Kingdom on Sunday 9 December 2001 and provides new opportunities for designers. Because it allows a wide range of aesthetic and functional designs to be registered, designers will be able to protect more of their creations, licence those creations, and take action against copying.

Other European states have either implemented the Directive or will also be implementing the Directive in due course and, combined with the proposed introduction of a new Community Design system (which will allow both a registered and an unregistered right protecting designs across the entire European Union), will begin the push to harmonise design law throughout Europe.

The British government has decided to implement the Directive by amending the Registered Designs Act 1949 (“the Act”). Following 9 December 2001 there are six major changes in the law relating to registered designs.

Contrary to the previous position, the design itself is protected, rather than the article to which it is applied. Even graphic symbols and typefaces are registrable. Additionally, the new definition of what constitutes a design makes no distinction between aesthetic and functional designs. Therefore a much wider range of designs will be able to be registered, including designs which have no aesthetic elements.

Under the previous legislation only items made by industrial processes were protectable, and at least 50 items had to be manufactured. Under the new legislation, items made by hand can be registered. This means that works of art such as sculptures can be registered.

The Act as previously in force required an item to have an “independent life of its own” to be considered for registration. This meant that detachable parts of a design were not capable of protection unless they had a function without the rest of the item. However, the new legislation registration covers parts of products and component parts, provided they are ordinarily on view when the item is in use.

Previously, an application for registration would have been refused if the design was not new in the UK. The new regime looks further afield, and a disclosure anywhere in the world will defeat the novelty of an item. The applicant will need to prove that the disclosure is too obscure to be taken into consideration.

The new legislation brings in a test for “Individual Character” which did not exist under the old regime. This test is to establish whether the new design is sufficiently dissimilar to existing designs and should therefore be afforded registration. The test will be considered from the point of view of an “informed user” i.e. a person who is familiar with the products in question. A design will have individual character if the overall impression it produces on the informed user differs from the overall impression produced on such a user by any prior design.

Under the previous system in most circumstances disclosure of the item by the designer before any application for registration was fatal to the application on the grounds of novelty. The new legislation introduces a 12-month grace period from the date of initial disclosure. The design of the must make any application within 12 months of the earliest public disclosure.

The new legislation will have a wide-ranging impact on the law relating to designs and will open up registered design protection to a much broader range of designs. Owners of designs should consider the various options open to them. If the design is a graphic symbol, copyright will still protect it but, in order to prove infringement, the owner will have to prove actual copying. If the design is registered the owner only has to prove that the infringement is “a design which does not produce on the informed user a materially different overall impression”. In certain circumstances, it may be better to apply for protection of a design, for example the shape of an article, by way of a trade mark. It may even be possible, where a design is not inherently distinctive from a trade mark perspective, to obtain a registered design and, when the design protection ends, apply for a trade mark based on acquired distinctiveness.

Organisations should carefully consider the new Directive in association with other intellectual property legislation to ensure they are obtaining the best protection for their rights. The organisation that makes best use of its rights is well-placed to obtain a competitive advantage in today’s economy.
On January 1, 2002, the euro (€) replaced the national currencies of 12 of the 15 Member States of the European Union. These nations constitute the “Eurozone”, where more than 300 million Europeans now share one currency. The euro has existed for paper and electronic transactions since 1999, but euro banknotes and coins have not been available until this year.

The consequences of the euro changeover will be felt not only in Europe, but also in the United States and other countries that do business in the Eurozone or with companies located there. This article focuses on the some of the legal aspects of the changeover.

1. The Countries of the Eurozone

Eurozone Countries: Austria, Belgium, Finland, France, Greece, Luxembourg, Italy, Ireland, the Netherlands, Portugal and Spain.

Denmark, Sweden and the United Kingdom, although members of the European Union, decided not to join the Eurozone. This situation is likely to change in the future, however, as interest in the euro grows.

2. Conversion Rates

The applicable conversion rates between the euro and national currencies of the Eurozone were fixed by the relevant Member States in 1998. These conversion rates have not changed since January 1, 1999 and continue to apply.

On the other hand, the rate of exchange between the euro and the U.S. dollar is not fixed and will continue to fluctuate with the currency markets. The current conversion rate is 1.09 to $1.00.

3. Calendar for Withdrawal of National Currencies

The calendar for withdrawal of national currencies will not only affect citizens but also retailers, merchants and U.S. banks that operate within the Eurozone. National coins and banknotes will be withdrawn from circulation as follows:

- Until February 28, 2002 at the latest, national currencies may be used for cash payments in most Eurozone countries in the Eurozone. In France, for example, Francs may be used for cash payments only until February 17, 2002. Nevertheless, as of January 1st, merchants and retailers situated in the Eurozone are required to return change in euros to facilitate the withdrawal of national currencies.

- Until March 31, 2002, banknotes of any participating Member State may be exchanged for euros at points designated by the national central banks of the 12 participating Member States (e.g., Spanish pesetas may be exchanged in Belgium, but only at a designated Belgian bank).

- Until December 31, 2002 at the latest, banknotes of a participating Member State may be exchanged only at commercial banks of the Member State concerned (i.e., national currency may be exchanged only in the issuing country). Banknotes may be exchanged until December 31, 2012 at the latest at the central bank of the Member State concerned (in practice, exchange may take place at the national headquarters or the regional/local offices of the central bank).

4. Effect of Changeover on Existing Contracts

Effective January 1, 2002, references to phased-out currencies in contracts were automatically replaced with the equivalent in euros, except as otherwise agreed by the parties. The euro equivalent is calculated in accordance with the fixed conversion rates referred to above. A party may not be discharged from, alter, or terminate a “legal instrument” due to the changeover to the euro.

The term “legal instrument” includes contracts, judicial decisions and a payment instruments other than banknotes and coins.

5. Effect of Changeover on Bookkeeping

Effective January 1, 2002, financial statements and tax returns must be drawn up in euros. A related issue is whether past financial statements should be converted into euros to facilitate year-to-year comparisons. This matter has been left to national law, and Member States have taken different positions on the issue. For example, Greece requires conversion of past years’ financial statements into euros, while Italy does not.

6. Benefits of the Euro for U.S. Companies

As a result of the changeover to the euro, a company that is based outside the Eurozone will benefit from both paperwork simplification and elimination of currency conversion costs when dealing with Eurozone companies. The changeover to the euro is also anticipated to boost trade with and within the Eurozone.

Companies located outside of the Eurozone, particularly manufacturers, may see an advantage to moving production into the Eurozone to minimize exposure to exchange rate fluctuations.
The Euro (EUR) Replaces National Currencies in 12 European Countries

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Companies located outside of the Eurozone, particularly manufacturers, may see an advantage to moving production into the Eurozone to minimize exposure to exchange rate fluctuations.

The determination of the need for legal services and the choice of a lawyer are extremely important decisions and should not be based solely upon advertisements of self-proclaimed expertise. This disclosure is required by rule of the Supreme Court of Iowa.
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