
From: David Shaw <david@streetandgarden.com>
Sent: Friday, 24 July 2020 10:23 AM
To: MDB-Consultation
Subject: Re: Consultation on draft legislation implementing recommendations from the ACIP's Review of the Designs System [SEC=UNCLASSIFIED]

Hi Paul .. I am not sure what I said in my original submission, but I think a key component in relation to IP protection is the punitive implications of an infringement. In effect the act of appropriation of someone's IP is theft. It has economic implications in many cases, significant loss of potential income from the originator of that IP. My opinion is that it should be treated at law in the same way as any other kind of theft. Significant fines and jail terms potentially.

Otherwise no matter how carefully IP protection is legislated the rewards for infringement will outweigh the risk taken by a perpetrator.

At the moment IP protection is only as good as the depth of your pockets, \$ to fight infringement. So contesting infringement is at significant cost and risk as in most cases it is very difficult to bring perpetrators to task.

That is my personal experience. We work with Government instrumentalities and have been placed in a position where if we complain about ideas being offered to competitors so Council can get a cheaper version, we risk black banning for future work, the private sector is not beyond the same tactic.

So unless there are some real and not incredibly costly ways of protecting IP, and some significant deterrents, I fear that no matter what legislation tries to do to protect IP developers, nothing will change.

There needs to be this significant IP protection so that there is an incentive to find invention and new ideas. Without originality Australia has little more to sell than raw materials to those who return those to us significantly value added through Design. It's the key to successful manufacturing, and the creation of new markets for our products. And of course is part of all aspects of invention in every sector of our economy.

My brother is an agricultural scientist, he invents ways of improving food production. His ideas and the cost and time to test them and bring them into food production involve Government bodies providing approval. Those government bodies then regularly hand over his developments to his competitors (Ag Department) So his incentive to invest in that IP is very low. His methods of weed and pest control are in international use often with others claiming authorship. His company is Agonico based in Tasmania. He is a very significant quiet achiever in all aspects of food production.

best regards, David Shaw Founding Director www.streetandgarden.com

On Thu, Jul 23, 2020 at 3:56 PM MDB-Consultation <consultation@ipaustalia.gov.au> wrote:

Good afternoon

Thank you again for taking the time to contribute to IP Australia's consultation in late 2019 on accepted [recommendations](#) from the former Advisory Council on Intellectual Property's (ACIP) [Review of the Designs System](#). On 11 May we published [our response](#) to this consultation which summarised the outcomes and reasoning for proposals that would be progressed in the draft legislation.

We are now consulting on the proposed *Designs Amendment (Advisory Council on Intellectual Property Response) Bill* and *Designs Amendment (Advisory Council on Intellectual Property Response) Regulations* (Draft Legislation) and accompanying Explanatory Material.

The proposed changes in the draft legislation include:

- Introducing a 12 month grace period to help protect designers from losing their rights through inadvertent disclosures made prior to filing.

- Expanding the existing limited prior use defence to protect third parties who started preparations to make a design before someone else tried to register it.
- Simplifying the design registration process by removing the publication option and making registration automatic six months after filing
- Aligning with the other IP Rights by giving exclusive licensees legal standing to sue for infringement
- Making a number of technical improvements to the Designs Act

Consultation closes on 28 August 2020. Please visit our [consultation page](#) and provide a submission. If you have any questions about the consultation, please contact Paul Gardner 6283 2145 or Paul.Gardner@ipaaustralia.gov.au.

IP Australia is also working on a new online filing system to make the application process smoother, improving access to information on our website, and exploring further reform measures resulting from our research into the design economy and the role of the design rights system. This includes a [series of research reports](#) that are now available online.

You can read more about IP Australia's design initiatives [here](#).

Kind Regards

Paul Gardner

Director

Domestic Policy & Legislation

IP Australia



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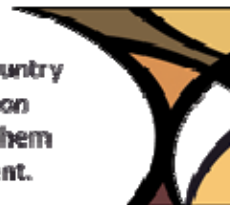


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IP Australia acknowledges the traditional owners of country throughout Australia, and their continuing connection to land, sea and community. We pay our respects to them and their cultures and to elders both past and present.



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