Response to the Consultation on the

Review of the Hong Kong Registered Designs Regime

Chapter 8: Interplay between Registered Design Rights and Other IP Rights

This submission is prepared and submitted on behalf of Jellycat Limited which has achieved extraordinary popularity and commercial success all over the world including in Hong Kong over the past years ("our client"). Our client has instructed us to make this submission and has reviewed and endorsed its contents. It therefore expressly reflects their views and interests.

(a) Overlapping protection of registered design rights and copyright

(i) Do you consider that the current treatment of the interplay of registered design rights and copyright under the CO is sufficiently clear and effective in achieving its objective, and if not, whether and how the current statutory arrangements should be enhanced? Please explain.

We consider that the current treatment of the interplay between registered design rights and copyright under the Copyright Ordinance (Cap. 528) ("CO") is sufficiently clear but NOT effective in achieving its objective. The 1997-era policy of curtailing copyright to encourage design registration is now outdated in light of international developments and Hong Kong's strategic positioning as an intellectual property hub.

Our client offers a remarkably wide and diverse range of luxurious soft toys and accessories, from seasonal designs to enduring classics both of which have gained immense popularity worldwide. Its seasonal collections span occasions such as Halloween, Christmas and Valentine's Day, with different unique designs every year. Alongside these seasonal releases, our client also maintains a core line of timeless soft

toy characters, e.g. Bashful Bunny which has gained the recognition and affection of millions around the globe.

Hence, our client's products not only feature seasonal designs, but also signature products that remain in continuous and recurring production and circulation for decades. For our client, predictable and durable copyright protection is critical to ensuring its designs are appreciated by fans as the special creativity of Jellycat and for safeguarding substantial investment and deterring copying and counterfeiting across markets.

Copyright owners should NOT be penalised merely because the corresponding design has not been registered. Such curtailment cannot be justified by the policy aim of increasing the number of design registrations in Hong Kong. The number of design registration does little to advance Hong Kong's aspiration to become an intellectual property hub. By contrast, a longer and more robust term of copyright protection would meaningfully attract right holders, including our client who has a strong presence in Asia especially Mainland China and Hong Kong, to base their IP development, their experiential retail and commercialisation activities in Hong Kong, thereby reinforcing its role as a regional and international IP hub.

We therefore recommend, on behalf of our client, **repealing 87(3) CO** and amending sections 87(2) as follows:-

"After the end of the period of 25 years from the end of the calendar year in which such articles incorporating a registered ***or unregistered*** *corresponding design are first marketed, the work may be copied by making articles of any description, or*

doing anything for the purpose of making articles of any description, and anything may be done in relation to articles so made, without infringing copyright in the work."

We set out below a detailed analysis of the legislative intent and the interplay of registered design rights and copyright in Hong Kong, the United Kingdom, the European Union and Australia.

A. The Initial Legislative Intent in Hong Kong

1. Special Regime for Industrially Exploited Artistic Works

Under Hong Kong law, the duration of copyright protection for artistic works is governed by section 17 of the CO. Generally, copyright in an artistic work subsists until the end of the period of 50 years from the end of the calendar year in which the author dies.

However, under section 87(2) of the CO, where a design derived from an artistic work has been exploited by an industrial process, the term of copyright protection is curtailed to 25 years from the end of the calendar year in which the articles were first marketed. This approach aligns with the maximum term of protection for registered designs prescribed under section 28(2) of the Registered Designs Ordinance (Cap. 522) ("RDO").

Section 87(3) further limits copyright in articles incorporating an "unregistered corresponding design" to the end of the period of 15 years from the end of the calendar year in which such articles were first market.

Section 87 of the CO was substantially modelled on section 52 of the Copyright, Designs and Patents Act 1988 ("CDPA 1988") in the United Kingdom, which similarly limited copyright protection for artistic works that had been applied industrially. However, there is **NO** equivalent provision of section 87(3) of the CO in the CDPA 1988.

2. Legislative Intent

According to the Report of the Bills Committee on the Registered Designs Bill (Paper for the House Committee Meeting, 23 May 1997), the legislative intent behind section 87(2) was "*not to reduce copyright protection of artistic works, but to preserve the existing position for the duration of copyright protection of a design to be cut down once it is registered for protection under the registered designs law*"[1].

As regards section 87(3) of the CO, the rationale was that copyright protection for "registrable" but unregistered designs should be limited to a shorter period, thereby **encouraging proprietors to seek design registration**[2].

It is both ironic and concerning that the Hong Kong Government is now relying on precisely the same policy argument in 2025 — that curtailing copyright will encourage design registration — to justify an even more drastic step: the complete removal of copyright protection for industrially exploited artistic works through adoption of a strict "copyright cut-off" regime. Having used this rationale once in 1997 to shorten

[1] LegCo Bills Committee Report (23 May 1997), paras15-16 (https://www.legco.gov.hk/yr96-97/english/bc/bc15/papers/1635!!!.htm#E709E4)
[2] LegCo Bills Committees on Copyright Bill (minutes) (8 May 1997), para11 (https://www.legco.gov.hk/yr96-97/english/bc/bc14/minutes/bc140805.htm)
LegCo Bills Committee on Registered Design Bill (Minutes) (15 May 1997),para21 (https://www.legco.gov.hk/yr96-97/english/bc/bc15/minutes/bc151505.htm)

protection from the normal copyright term to 15 years for unregistered designs, the Government now proposes to use it again to eliminate copyright protection entirely once a design is capable of registration. This repeated reliance on a 28-year-old policy lever, without regard to intervening international developments, the EU's clear affirmation of cumulation, the UK's repeal of its equivalent provision, demonstrates why the 1997-era approach is outdated and why the current statutory arrangements are no longer effective.

B. Comparative Position: United Kingdom and European Union

1. United Kingdom

Section 52 of the CDPA 1988 limits copyright in certain artistic works, copies of which are industrially manufactured (i.e. more than 50 copies are made), to a period of 25 years from the end of the year in which the copies were first marketed.

The May 2012 "*Impact assessment – copyright protection for designs*" published by the UKIPO explained the overall purpose of Section 52 of the CDPA 1988 as follows:-

> *"The overall purpose of this provision is to stop copyright being used to prevent the copying of designs and to reduce double protection. It does so by aligning the period of copyright protection for an artistic work which is mass produced with the period that it would have enjoyed as just a registered design. The 25 year period is based on the current maximum term of registered design protection and the provision acts as a sort of boundary line between the copyright and design regimes."*

In addition to section 52, section 51 of the CDPA 1988 excludes certain acts from copyright infringement. Specifically, section 51(1) states that:-

> *"It is not an infringement of any copyright in a design document or model recording or embodying a design for anything other than an artistic work or a typeface to make an article to the design or to copy an article made to the design."*

This provision prevents copyright in underlying design drawings, models, or documents from being used to block the reproduction or manufacture of functional or industrial articles based on those designs. This contrasts sharply with the current regime under Hong Kong's CO which does not contain an equivalent broad exclusion. We will discuss the implication of this section further in our response relating to unregistered design rights.

The Case that triggered the repeal of s. 52 of the CDPA 1988

In January 2011, the European Court of Justice issued a judgment (Flos SpA v Semeraro Casa e Famiglia SpA, Case C-168/09) that dealt with the importation from China and distribution in Italy of lamps which infringed the copyright in the well-known Arco lamp which belongs to Flos. The CJEU held that EU law did not permit Member States to deny copyright protection to designs which met the criteria for such protection.[3]

Following the Flos judgment, the UK Government passed the Enterprise and Regulatory Reform Act 2013 ("ERRA") in April 2013. Section 74 of the ERRA repealed section 52 of the CDPA 1988 on a date to be specified by a commencement

3 Flos SpA v Semeraro Casa e Famiglia SpA, Case C-168/09 (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62009CA0168)

order. The repeal subsequently took effect on 28 July 2016 and restored full term copyright protection to artistic works, including those applied to mass-produced articles.

It is important to mention that the decision to repeal was prompted not because of the dual protection of copyright and design but due to (i) concerns about the non-alignment between UK and EU laws and (ii) the strong voices against the abuses arising from the discrepancy over the term of copyright protection in the UK and the EU.

Key Takeaways from UK

The UK's former section 52 of the CDPA 1988 aligned copyright protection for industrially applied artistic works with the maximum term of registered design protection. Its purpose was to mark a boundary between copyright and design regimes — **not** to penalise creators who did not register their designs.

It is pertinent to note that at no point did the CDPA 1988 include any equivalent to Hong Kong's 15-year limit for unregistered corresponding designs. The UK never treated "registrable but unregistered" designs as deserving materially weaker protection. This distinction is unique to Hong Kong and lacks a clear doctrinal or policy foundation in the UK model from which section 87 of the CO was derived. The Hong Kong rationale of using copyright attrition as a lever to push design registration therefore finds no support in UK legislative intent or practice.

While the UK ultimately restored full-term copyright protection, its original 25-year alignment illustrates a defensible middle ground for jurisdictions seeking balance.

From a Hong Kong perspective, retaining a single 25-year limit applicable to both registered and unregistered designs is well justified as a carefully calibrated compromise between copyright and design policy. Such a framework provides sufficient incentives for creators to invest in the development of industrially manufactured artistic products, allowing them a realistic opportunity to recoup development and commercialisation costs from successful designs. Retaining the subsistence of copyright for industrially applied artistic works is important in avoiding Hong Kong being an outlier. Hong Kong should be known as a jurisdiction that protects and therefore fosters creativity in business.. This, in turn, promotes higher levels of legitimate production and discourages the proliferation of cheap replicas, many of which are of inferior quality. A non-discriminatory 25-year protection period is therefore essential to foster innovation and protect original design, leading to job creation, opportunities for new and emerging designers, and enhanced competition within the market.

In December 2023, the Intellectual Property Department published the *2023 Study on Contribution of Intellectual Property-Intensive Industries to Hong Kong Economy*, which concluded that copyright-intensive industries contributed HK$132.7 billion (approximately 4.9%) of Hong Kong's GDP on average during the 2019–2021 period. Against this backdrop, it is both timely and necessary to extend copyright protection to industrially exploited artistic works in order to incentivise continued growth and investment within copyright-intensive industries.

All in all, the proposed 15-year limit for unregistered corresponding designs is not grounded in UK law or supported by any coherent comparative policy rationale. Instead, it operates primarily as a policy lever to promote design registration at the expense of

designers, right holders, and the broader IP ecosystem in Hong Kong. For many creative businesses that are in their early stages of development, there is no capacity for processes of reviewing designs and choosing design registration. Early designs and early stage companies would be the most vulnerable under this change. The new shoots of a creative business important to the Hong Kong economy in would be vulnerable to copying with no legal recourse since one an opportunity to register a design is missed, that design cannot be registered. Maintaining a discriminatory regime for industrially exploited artistic works that lack a corresponding registered design is disproportionate and raises significant policy concerns.

It should also be noted that the requirements for a finding of a valid right and of infringement are different between copyright and design right. Even for a rights holder that had registered designs, some copies will not infringe a registered design but will infringe copyright. For example, a copy that has been "tweaked" in terms of some of its features to bring it out of the reach of the "same overall impression" test for registered design may nevertheless infringe copyright if the copy takes the key creative elements of the design. Removing copyright completely or restricting its term, will leave creative business with less protection even if they register their designs.

In view of the above, repeal of section 87(3) of the CO would bring Hong Kong back into line with the original UK logic while preserving the 25-year limit as a balanced policy choice.

2. European Union

In December 2006, the European Parliament and The Council of The European Union issued the Directive 2006/116/EC on the term of protection of copyright and certain related rights. In particular, recitals (11) provides that:-

> *"(11) The **level of protection of copyright and related rights should be high**, since those rights are **fundamental to intellectual creation**. Their protection **ensures the maintenance and development of creativity** in the interest of authors, cultural industries, consumers and society as a whole." (emphasis added)*

In October 2024, the European Parliament and Council affirmed the principle of cumulation in Directive (EU) 2024/2823 as follows:-

> *"Recital 12: It is important to establish the principle of cumulation of protection under specific law for registered designs protection and under copyright law, whereby **designs protected by design rights should also be eligible to be protected as copyright works**, provided that the requirements of copyright law are met." (emphasis added)*
>
> *"Article 23: Relationship to copyright*
>
> ***A design protected by a design right** registered in or in respect of a Member State in accordance with this Directive **shall also be eligible for protection by copyright** as from the date on which the design was created or fixed in any form provided that the requirements of copyright law are met." (emphasis added)*

A journal article titled *"The copyright and design protection interplay post-Cofemel: continuity or recalibration?"*, published in the *Journal of Intellectual Property Law & Practice* by Oxford University Press in December 2024[4], presented an empirical analysis of EUIPO data relating to Locarno Class 2 (fashion/clothing) which revealed that application volumes remained relatively steady notwithstanding the availability of cumulative protection under both design law and copyright following the *Cofemel*[5] decision:-

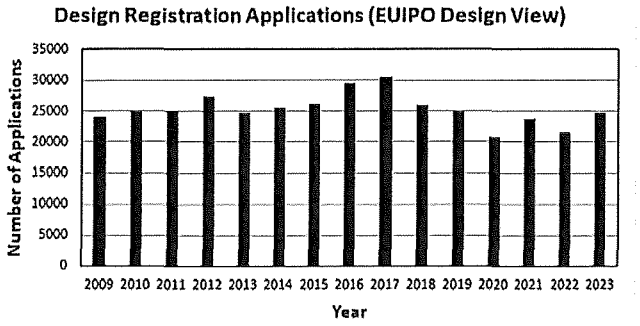


Figure 1. Design Registration Applications (EUIPO DesignView)—© Spyros Sipetas.

Notably, despite copyright offering a significantly longer term of protection than registered designs, the fashion industry remained relatively loyal to design rights and the practical benefits they confer:-

(a) registered design rights are generally easier to enforce, particular where fashion houses seek a swift removal of infringing products from online platforms through standardized notice-and-takedown procedure; and

(b) ownership of a registered design right and thus the entitlement to invoke it against alleged infringers is usually clear and undisputed, whereas copyright enforcement often involves evidential challenges in establishing authorship and the subsequent chain of title.

[4] https://academic.oup.com/jiplp/article/20/2/92/7928768?login=false

[5] C-683/17 Cofemel – Sociedade de Vestuário SA v G-Star Raw CV, judgment of 12 September 2019

Key Takeaways from EU

EU law reflects a clear international trend towards dual protection under both design law and copyright. However, considering the potential economic costs to consumers arising from IP right holders gaining extended periods of monopoly protection, Hong Kong would be well-placed to adopt a calibrated approach that preserves dual protection while maintaining a more proportionate 25-year limit for industrially exploited designs.

EUIPO statistics demonstrate that the availability of copyright protection has not displaced the continued use of registered design rights. It strongly suggests that applying a single 25-year copyright term to both registered and unregistered designs would not undermine the practical value or uptake of the design registration system and that copyright and registered design rights would continue to operate in a complementary manner.

All in all, adopting a 25-year term would be an excellent balance that gives a legitimate term of protection sufficient to incentivise creation and investment, while at the same time without reducing the appeal of registered design rights.

C. The Australian Position

By contrast, Australia adopts a copyright cut-off system under sections 74–77 of the Copyright Act 1968, whereby copyright protection ceases once a design is industrially applied and capable of registration under the Designs Act 2003. This approach has

attracted sustained criticism from creators' organisations which argue that such provisions impose an unfair burden on artists and creative industries, create gaps in protection, and result in an unjustified loss of copyright protection for creators.

The Australian experience illustrates the risks of over-reliance on design registration as a gatekeeper to protection. In many cases, designers only become aware of copying once infringing products enter the market. At that stage, an unwitting designer who has not registered the design—often for legitimate commercial reasons—may be keen to take prompt steps to prevent the infringement from continuing, only to discover that it is already too late to obtain registered protection and that copyright protection has been curtailed, leaving them effectively without meaningful legal recourse.

In fact, our client has encountered real and ongoing practical difficulties arising from the current 15-year curtailment under section 87(3) of the CO for unregistered corresponding designs. The adoption of a strict copyright cut-off regime would exacerbate these difficulties and cause significant commercial harm to their businesses. In practice:

(1) many soft toys designs are not registered in every jurisdiction for legitimate commercial reasons — multiple iterations, seasonal editions, or timing considerations. Once the 15-year period expires, our client loses the ability to assert copyright even where the works remain commercially active. Counterfeiters and copyists exploit this gap, inflicting substantial and ongoing damage to our client's investments in creative development and brand equity and creating copies of poor quality that disappoint Jellycat fans;

(2) enforcement (customs seizures, platform takedowns, foreign court proceedings) is weakened because of the shorter term of copyright protection thereby reducing the

effectiveness of Hong Kong as an enforcement and dispute-resolution hub for our client, who has a strong presence in Asia especially Mainland China and Hong Kong.

These difficulties directly affect our client's ability to protect its investments in iconic, long-running collections and to maintain brand integrity against cheap replicas that tarnish reputation and damage legitimate sales channels. Any rigid or early copyright cut-off models risk disconnecting legal protection from commercial reality. Jurisdictions that impose strict or premature copyright cut-offs therefore risk disadvantaging sectors that depend on substantial creative investment and brand equity.

In this regard, Hong Kong has greater flexibility to adopt a dual-protection framework. A single 25-year limit applicable to industrially exploited designs would offer a more proportionate and balanced alternative. It preserves incentives for creation and investment while avoiding excessive or unjustified erosion of copyright protection.

D. Policy Considerations in Hong Kong

Hong Kong's policies strongly support the development of the city as a regional IP trading hub, backed by initiatives from both the HKSAR Government and the Central Government. Maintaining robust copyright protection, including for industrially applied artistic works, aligns with these goals to boost competitiveness.

The HKSAR 2022 Policy Address[6] outlined plans to position Hong Kong as a regional

[6] https://www.policyaddress.gov.hk/2022/en/p53.html

IP trading centre by strengthening IP rights protection. More recent Policy Addresses, including 2025, continue this trajectory through measures aimed at promoting IP financing, valuation and protection. In parallel, the 2026-27 Budget allocates resources to reinforce Hong Kong's IP hub status amid economic growth priorities.

At the national level, the 14th Five-Year Plan explicitly supports Hong Kong as a regional IP trading centre[7], integrating this objective into national innovation goals and Greater Bay Area cooperation. The GBA Outline Development Plan highlights Hong Kong's IP protection advantages for trading and services.[8]

Reducing copyright protection for industrially applied works risks weakening Hong Kong's IP regime, which would run counter to hub-development strategies that depend on strong protection to facilitate IP trading, financing, and innovation. Retaining or extending the term of copyright protection would better align with PRC national plans and HKSAR objective, helping to attract IP-related business and strengthen Hong Kong's global competitive edge. Such an approach preserves incentives for creators while aligning with international standards.

Moreover, a longer copyright term would further advance Hong Kong's ambition to become an IP hub by attracting international designers and IP disputes to its jurisdiction. Enhanced protection incentivises rights holders to choose Hong Kong law for contracts and IP dispute resolution, reinforcing Hong Kong's position as a preferred venue for cross-border IP matters. This, in turn, complements budgetary initiatives such as the IP Academy and IP financing tools, contributing to the development of a comprehensive and sustainable IP ecosystem.

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[7] https://www.info.gov.hk/gia/general/202103/11/P2021031100464.htm

[8] https://www.ipd.gov.hk/en/mainland-international-cooperation/mainland-cooperation/16-Co-operation-Measures/index.html

In addition, we do not want an argument that curtailing or eliminating copyright protection for industrially exploited artistic works, such as through a strict copyright cut-off regime, could raises issues of constitutional significance under the Basic Law. Copyright constitutes a form of property falling within the protection of Articles 6 and 105 of the Basic Law, which safeguard private ownership of property and the rights of acquisition, use, disposal, and compensation for lawful deprivation. Any fundamental change to a copyright regime that has been in place since at least 1997 would therefore risk undermining Hong Kong's international image as a jurisdiction committed to the robust and predictable protection of intellectual property rights.

Further, Article 8 of the Basic Law which preserves laws previously in force and reflects a constitutional commitment to legal continuity, certainty, and stability as a core feature of Hong Kong's legal system. While legislative amendment is permissible, such changes must be exercised consistently with constitutional guarantees, particularly where entrenched proprietary interests are affected and where industries have long relied on the existing legal framework.

Where legislation restricts constitutionally protected property rights, Hong Kong courts apply a structured proportionality analysis, commonly articulated as a four-step inquiry:

(i) whether the measure pursues a legitimate aim;

(ii) whether it is rationally connected to that aim;

(iii) whether it is no more than necessary; and

(iv) whether a reasonable balance is struck, such that the burden imposed is not unacceptably harsh.

Accordingly, any proposal that diminishes existing copyright protection must be supported by cogent evidence demonstrating both necessity and proportionality and must show why less intrusive alternatives would be inadequate.

To the extent that the strict copyright cut-off model removes or materially diminishes an established category of copyright protection, it may arguably constitute significant interference with the "use" and "disposal" of property. Where existing rights are effectively extinguished, particularly in respect of works already created or exploited, such measures risks amounting to a deprivation of property without constitutionally adequate safeguards.

The impact of abrupt removal of long-standing proprietary protections is particularly acute for industries that have structured their design, licensing, and enforcement strategies in legitimate reliance on the continued availability of copyright protection under Hong Kong law. Beyond its domestic effects, such a shift would send an adverse signal to international stakeholders and investors, potentially weakening confidence in Hong Kong's long-standing reputation as a stable and IP-friendly jurisdiction.

Additional Proposal: Voluntary Copyright Registration Systems

While copyright protection in Hong Kong arises automatically upon creation, its practical value lies not merely in subsistence but in enforceability. In infringement disputes, right holders are frequently required to establish authorship, ownership, and critically the date of creation of the work. These evidentiary burdens can be costly, time-consuming, and uncertain, thereby materially weaken enforcement outcomes.

Consistent with the Berne Convention's prohibition on formalities, many jurisdictions have adopted voluntary copyright registration or recordal systems that coexist with automatic protection. A 2020–2021 WIPO survey confirms that 95 out of the 109 responding countries indicate that they have a legal system for copyright registration, recordation of transfers of rights and/or legal deposit.[9] These systems are expressly designed to improve enforcement efficiency while respecting formality-free copyright subsistence.

In particular, Mainland China already operates a well-established voluntary copyright registration system, administered primarily by the Copyright Protection Center of China (CPCC) under the National Copyright Administration. As such, introducing a similar voluntary copyright recordal system in Hong Kong would align closely with prevailing practice in the PRC. Such alignment would facilitate greater cross-border consistency for rights holders operating in both jurisdictions.

In practice, voluntary recordal systems have been shown to deliver several concrete benefits:

- they provide a credible time stamp evidencing the existence of a work at a particular point in time;
- they facilitate earlier resolution of disputes, lowering enforcement costs;
- they enhance transparency for third parties by enabling clearance searches and risk assessment prior to commercialisation or licensing, thereby reducing inadvertent infringement and promoting market certainty; and

[9] WIPO Survey on Voluntary Copyright Registration Systems (Final Report) (https://www.wipo.int/en/web/copyright/activities/copyright-registration/index)

- They provide certainty as to the copyright work for enforcement authorities.

Importantly, international experience also demonstrates that copyright recordal systems must remain voluntary. Making recordal mandatory would risk reintroducing prohibited formalities, increasing compliance costs, and disproportionately burdening businesses. WIPO's comparative analysis emphasises that the effectiveness and acceptance of recordal systems depend on maintaining a careful balance between procedural simplicity, low fees, and optional participation, rather than compulsion.

Furthermore, the voluntary recordal should be a one-time process with no requirement for renewal or periodic maintenance fees in order to minimize administrative burdens on rights holders

While a voluntary copyright recordal system may assist in evidencing the existence of a work at a particular point in time, it should not be accorded prima facie evidentiary status. In this connection, the WIPO Survey indicates that:-

> *"Some countries also mention issues arising from voluntary copyright registration. The United Republic of Tanzania points to* ***the risk that people may register, in bad faith, works or other subject matter that are not their own****. This is a* ***real problem often reiterated by rightholders opposed to registration systems****" (emphasis added)*

IP practitioners in Mainland China have also highlighted the risks associated with bad-faith copyright recordal, noting that it often assists pirates while disadvantaging genuine rights owners, as evidenced in the following observations:-

"A party acting in bad faith might register a copyrightable work as a trademark, a design, or even a copyright. The party might then enforce such pirated right against the true right owner, putting the true owner in a disadvantageous situation, especially in e-commerce platform complaint cases."

"If a party earlier registered a copyright in bad faith, it will be very difficult to cancel it. In a typical case, a party will pirate another party's copyright by registering it in its own name with the China Protection Center for Copyright (CPCC). When the true owner seeks to cancel the copyright registration in the CPCC, it may find that there is not a simple procedure for cancellation comparable to filing an invalidation to cancel a registered trademark or registered patent. Instead, the only solution would be to file a lawsuit, and then, if successful, file the favorable court ruling with the CPCC. This can make the whole process of canceling a copyright registration lengthy and complicated."[10]

"many unscrupulous persons, catching the point of the voluntary registration system, register the copyrighted works that enjoy by others through the Copyright Protection Centre in China and then obtain the copyright registration certificate for such works as to sneak into the market cheating around. At this point, the actual copyright owner or other interested parties who need to cancel the copyright registration certificate of the work will encounter many obstacles."[11]

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[10] Chofn Intellectual Property Article: "Taking Precautionary Steps to Protect Copyrights in China" (23 September 2020) (https://en.chofn.com/Articles/609e7c3f68969c002fd7c82b/Taking_Precautionary_Steps_to_Protect_Copyrights_in_China)

[11] HongFang Law: "Cancellation of Copyright Certificate in China" (August 18, 2021) (https://www.hongfanglaw.com/en/news/cancellation-of-copyright-certificate/)

Given the absence of substantive examination, conferring evidentiary status would risk abuse by bad-faith filers who could copy existing designs and rely on recordal to shift the burden of proof. This would undermine the principle of automatic copyright protection, distort evidentiary balance in enforcement, and effectively render recordal mandatory in practice. Recordal should therefore be treated only as supporting evidence, to be weighed alongside other factual proof of authorship and creation.

Against this background, the introduction of a voluntary copyright recordal system in Hong Kong would enhance the practical enforceability of copyright without undermining the principle of automatic protection or imposing new regulatory burdens. Such a system would complement, rather than replace, the registered design regime. By strengthening evidentiary certainty while preserving flexibility, a voluntary recordal system would support creators, facilitate legitimate commercial use, and reinforce Hong Kong's position as a sophisticated and balanced IP trading hub.

Conclusion

In conclusion, the current statutory arrangements under section 87(3) of the CO, which curtail copyright protection for industrially exploited artistic works to 15 years for unregistered corresponding designs, are neither effective nor aligned with Hong Kong's strategic objective of developing into a leading regional IP trading hub.

These limitations are of particular concern to soft toys industry especially our client, who offers a wide range of luxury products, from seasonal collections to enduring signature characters. To our client, an innovator and constant creator of new soft toys and accessories, design registration of evert design is not commercially realistic,

especially where multiple iterations and seasonal editions are involved in a fast-moving market. The costs, administrative burdens and jurisdictional complexity of registration across the global markets further compound these difficulties.

The premature curtailment of copyright protection exposes these brands to copying, counterfeiting, and unauthorised reproduction, particularly in downstream markets, and materially weakens Hong Kong's attractiveness as a jurisdiction in which to base design, commercialisation, licensing, and enforcement strategies. Such erosion of protection risks discouraging continued investment in design innovation and brand-led creative industries in Hong Kong.

Importantly, such curtailment finds no support in comparative UK law, as the Copyright, Designs and Patents Act 1988 never imposed an equivalent limitation on unregistered designs. The decades-old policy rationale of "encouraging design registration" cannot, of itself, justify such a significant erosion of substantive proprietary rights, particularly where it disproportionately impacts industries that depend on strong and predictable copyright protection for high-value artistic works.

In addition, since the enactment of the Copyright Ordinance in 1997, Hong Kong courts have developed an extensive and settled body of case law interpreting and applying copyright protection to artistic works, including those embodied in industrially exploited designs, which provide the predictability and certainty essential to enforcement, licensing, and commercialisation strategies. A cursory search of the Hong Kong Judiciary online database for "copyright" and "infringement" returns 594 judgments, whereas the same search for "registered designs" and "infringement" returns only 72 judgments. This stark disparity confirms that copyright remains the

predominant and most practical enforcement tool for right holders. Any curtailment of these established rights would create unprecedented disruption to the business environment and introduce significant legal uncertainty for brands that have structured their operations in reliance on the existing regime for nearly three decades.

We further note that the strict copyright cut-off models adopted in Australia and Singapore risk imposing a disproportionate and unacceptably harsh burden on existing right holders, particularly design-driven brands with long investment horizons. We strongly object to the adoption of such an approach in Hong Kong.

To enhance and rebalance the regime, we recommend repealing section 87(3) of the Copyright Ordinance and amending section 87(2) to provide **a single 25-year copyright protection period applicable to both registered and unregistered corresponding designs**. Registered design protection would continue to serve as a valuable and complementary layer of protection, without operating as a prerequisite to meaningful copyright protection.

Such reform would strengthen Hong Kong's IP ecosystem, align with national policies under the 14th Five-Year Plan and Greater Bay Area initiatives, enhance Hong Kong's attractiveness as a venue for international designers and IP disputes, and foster a more vibrant, competitive, and sustainable creative sector.

(ii) Have you encountered any real and practicable difficulty arising from the blurring lines between registered design rights and copyright in enforcing your design rights? Please elaborate.

No.

(b) Unregistered design rights

(i) Do you consider that there is any significant gap in the current domestic registered designs regime (if not otherwise filled in by the copyright regime) resulting in inadequate protection for certain unregistered designs? Please explain.

No.

(ii) What are the potential benefits and drawbacks for introducing an unregistered designs regime in Hong Kong?

Theoretically, an unregistered designs regime can be valuable to design owners, in particular those in industries focusing on designs with a short shelf-life. In reality, however, the same benefit can be provided under the existing registered designs regime filled in by the copyright regime in Hong Kong, i.e. section 87 of the CO, which is clear, coherent and certain. More importantly, there are a few major potential drawbacks for introducing an unregistered designs regime in Hong Kong.

As a preliminary remark, the UK and the EU provide unregistered design rights. It is however crucial to look at the legislative intents in the respective jurisdictions and ascertain whether they are also relevant in Hong Kong, so as to determine whether an unregistered design rights regime should be introduced in Hong Kong.

Legislative Intent of UK Unregistered Design Right

The UK unregistered design right was introduced in the CDPA 1988 under section 216-264 alongside the various moves in the CDPA to largely remove industrial design from

copyright's reach, so as to compensate for loss of copyright protection[12]. As one of the ways to minimise copyright protection for industrial designs, section 51 of the CDPA 1988 provides a defence to claims of copyright infringement in design drawings where a 3D article was copied (directly or indirectly) from the design drawing, with an exception only if the design drawing was for a design which itself constituted an artistic work. In other words, it prevents copyright from being used to protect functional industrial designs, ensuring that copying 3D articles made from 2D designs is not an infringement. The UK unregistered design right was therefore introduced as a form of limited design protection intended particularly for functional designs. It protects the internal and external shape and configuration (how the parts fit together) of the whole or part of an article for 10 years from first marketing or 15 years from first recording in a design document (whichever is shorter)

Legislative Intent of EU Unregistered Design Right

The EU unregistered design right was introduced in 2002 and established by the Council Regulation (EC) No 6/2002 to protect designs for products having a short market life without the burden of registration formalities. It protects 2D and 3D aspects of appearance e.g. features including the lines, contours, colours, shape, texture, materials and ornamentation only for 3 years from disclosure.

Current Regime in Hong Kong

The above legislative intents of UK and EU Unregistered Design Rights are simply NOT relevant in Hong Kong. As briefly discussed in the above section of 'Overlapping

[12] Cornwell, J & Chave, L 2024, Design law at the crossroads - a post-Brexit review of design protection in the UK. in D Beldiman (ed.), *Design Law: Global Law and Practice.* Elgar Intellectual Property Law and Practice series, Edward Elgar Publishing, pp. 337-377. https://doi.org/10.4337/9781800886520.00022

Protection of Registered Design Rights and Copyright Comparison', the broad exclusion under section 51 of the CDPA 1988 in the UK, which prevents copyright from being used to protect functional industrial designs, does NOT exist in Hong Kong. Rather, under section 87(3) of the CO, unregistered designs which are industrially exploited and derived from artistic works enjoy protection for 15 years from first marketing. Hence there is no such gap in Hong Kong for registered design rights to fill in.

On the other hand, the objective of protecting designs for products having a short market life without the burden of registration formalities observed from the EU can be well achieved by the current copyright protection of industrially exploited unregistered designs in Hong Kong as stated above.

In light of the foregoing, it would be conceptually redundant to introduce an unregistered designs regime when we already have a clear, coherent and certain system of protection for unregistered designs in Hong Kong. Introducing a new law out of whole cloth would serve no purpose other than creating significant legal uncertainty. The extensive and settled body of case law developed over the past years for the existing system will no longer be applicable, making it difficult to foresee legal outcomes, which in turn discourages investment in product designs in Hong Kong.

Further, introducing an unregistered designs regime in Hong Kong would unnecessarily complicate the laws and potentially re-create the complexity that the UK is now struggling with.

In the UK, there is a patchwork of overlapping rights for unregistered designs, which

is complex and difficult to understand. In short, it includes (i) UK unregistered design, (ii) supplementary unregistered design which mirrored the EU Unregistered Community Designs due to Brexit; and (iii) copyright. These three forms of rights were summarised in the Consultation Paper published by the UK Intellectual Property Office on 4 September 2025 ('UK Consultation Paper') in the table below [13]

Type of protection	What can be protected	Duration of protection
Supplementary unregistered design	2D and 3D aspects of appearance e.g. features including the lines, contours, colours, shape, texture, materials and ornamentation. Surface decoration can be protected.	3 years from disclosure in the UK
UK unregistered design	Shape and configuration (internal and external) i.e. 3D elements only – the shape of a product, the way parts of it fit together. Surface decoration cannot be protected.	10 years from first marketing or 15 years from first recording in a design document (whichever is shorter)
Copyright	Original works of artistic craftsmanship. Artistic craftsmanship excludes graphic works, photographs, sculptures and architecture (which have separate copyright protection). No other legal definition. May include areas such as furniture, ceramics and jewellery.	Life of the creator plus 70 years

[13] Consultation on changes to the UK designs framework (https://www.gov.uk/government/consultations/consultation-on-changes-to-the-uk-designs-framework/consultation-on-changes-to-the-uk-designs-framework#section-f-simplification-of-unregistered-designs-and-overlap-with-copyright)

It is worth noting the various qualifications and exclusions of the UK unregistered design right[14] which further makes the system difficult to understand:

(a) Qualification by Designer: the design must be created by a 'qualified person' or the first owner must be a 'qualifying person'. 'Qualifying person' includes:

(i) individual: habitual resident in a 'qualifying country' (i.e. the UK, the Channel Islands, the Isle of Man and a list of countries with which the UK has reciprocal agreements); and

(ii) legal person: formed under the law of a part of the UK or another 'qualifying country' or have a place of business there at which substantial business activity is carried on.

(b) Qualification by First Marketing: if the designer is not a qualified person, the design can still qualify if the first marketing (sale or hire) of the articles made to the design occurs in the UK or a reciprocating 'qualifying country'.

(c) Exclusion #1: surface decoration, which is not limited to purely flat ornamentation and can include 3D elements if the relevant feature can 'fairly be described as a decorated surface'.

(d) Exclusion #2: a method or principle of construction.

(e) Exclusion #3: features of shape or configuration of an article which enable the article to be connected to, or placed in, around or against, another article so that either article may perform its function ('must-fit' exclusion).

[14] CDPA 1988, sections 213, 217

(f) Exclusion #4: features which are dependent upon the appearance of another article of which the article in which UKUDR is claimed is intended by the designer to form an integral part ('must-match' exclusion).

The different types of protection, different aspects of products to be protected and different duration of protection make the system extremely complicated. As stated in paragraph 14 of Section F: Simplification of unregistered designs and overlap with copyright in the UK Consultation Paper:

'The UK designs sector is dominated by small businesses on designs and the linked designs survey that smaller companies and lone designers find the system too complex to understand. Even those who do understand the system, such as IP legal professionals, recognise it is complex and can be difficult to navigate for those without legal representation.'

In stark contrast, Hong Kong has a simple, certain and comprehensible regime under section 87(3) of the CO for unregistered designs which are industrially exploited and derived from artistic works. There is indeed no reason to risk complicating the existing system and adding complexity by introducing an unregistered designs regime in Hong Kong.

Conclusion

In conclusion, the major drawbacks of introducing an unregistered designs regime in Hong Kong include redundancy, legal uncertainty and unnecessary complication, which far outweigh the potential benefit of offering protection to designs with short shelf-life that can be well achieved by the existing registered designs and copyright

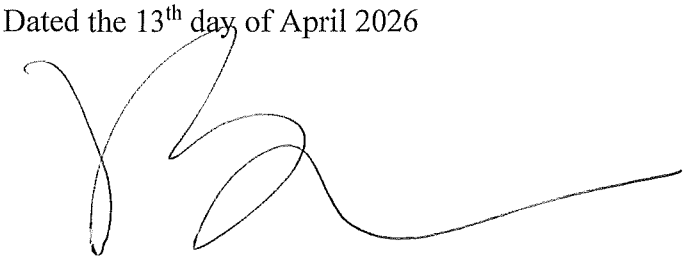
systems. We therefore strongly object to the introduction of such an unregistered designs regime in Hong Kong. We should instead focus on strengthening and preserving the existing copyright framework as recommended above.

(iii)If you consider there is a compelling case that Hong Kong should offer certain enhanced protection for unregistered designs, what is the proper scope of such protection, particularly in terms of the kinds of protectable design products, the duration of the protection and the exclusions/limitations pertinent to mitigating the legal uncertainty that may likely be brought onto other market players?

We do not consider there is a compelling case that Hong Kong should offer certain enhanced protection for unregistered designs.

We respectfully request that the above views and recommendations of our client be given full and careful consideration.

Dated the 13th day of April 2026



Robin Bridge & John Liu, for and on behalf of

Jellycat Limited