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Protection of the Works of Artist-Craftsmen

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(1) Société de la Propriété Artistique et des Dessins et Modèles
(Society for artistic property and property in designs and models)

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PART ONE

The artist-craftsman in the European Economic Community

The artist-craftsman and his activities constitute one of the cultural elements that is universal to the nine Member States of the Community. He also provides a cultural diversity which it is important to safeguard and even to develop, as it is one of the fundamental traits of the European identity and at the same time the source of its richness.

To assist the re-emergence of a craft sector that is not a picturesque survival of folk-art maintained for tourists, but an active means of defence against the dessicating excesses of mechanization and the technocratic civilization, is today an essential objective to work for at regional level. There is here an opportunity for effective action by the European Community in the cultural field to develop the various regions of Europe, whose unity depends less on political frontiers than on geographical, historical and economic factors. The development of craft activities from ancient times until the present day and the parallel development of art and of ideas about manual work (see Chapter I) well illustrate this.

But in order to demarcate and define the artist-craftsman and his activities one must first place him in relation to craftsman in general, as the legal status of craftsman is the status adopted by the majority of artist-craftsmen (see Chapter II).

After comparing the artist-craftsman with the artist proper, we shall examine all aspects of the former's activities in order to bring out the elements of a possible definition (Chapter III) and this definition, supplemented by a review of the relevant economic, social and cultural context (Chapter IV), will enable us to place and to evaluate the artist-craftsman in the countries of the Community as far as is possible with the statistical information at our disposal.

We shall then (in Part Two) deal with the products of the craftsman, which are both economic goods and cultural goods; help must be given, not only through economic, social and fiscal measures but also by an approximation of legislation, in order to obtain better protection for the works of the artist-craftsman in the Community. This is a necessary condition for genuine abolition of the obstacles to free trade in these cultural goods and, by the same token, for an increase in the freedom of movement and establishment of those who are the creators and producers of these goods: the artist-craftsmen.

Chapter I

History of the craftsman up to the present day

1 - Etymology

The French words "artisan" and "artisanat" (here translated as "craftsman", "the craft sector", etc) are recent creations, having come fully into use only at the end of the 19th century, but they nevertheless reflect a reality that is long established: originally they covered all non-agricultural manual activities and no distinction was made between the craftsman and the artist. The Latin root "ars" reveals the ambivalence of the term that has produced "artigianato" in Italian. The northern countries use the notion of manual work, "Handwerk" in German and "handicraft" in English.

2 - Brief outline of the history of the craftsman

The craftsman's history is as old as the skills that he uses.

The craftsman has followed the transformations of European societies and civilizations.

a) Development of ideas on manual work and techniques

Plato, in "The Republic", had drawn a distinction between technical intelligence and speculative intelligence, between the motor and the intellectual functions of the soul. Aristotle, faithful to his mentor, considered it normal that manual workers should be prohibited from any participation in the exercise of power.

Under the system of closed estates manual activities were confined within the "villae" or rural estates, where were housed the workers of all trades essential to the upkeep of an autarchic organization, such as baker, weaver,mason, wheelwright, saddler and trades ancillary to agriculture, as well as the trades involved in the making of weapons and tools.

Monasteries were patrons of certain crafts, and parchment makers, goldsmiths, glassmakers and sculptors moved about from one monastery to another.

During the Carolingian era cloth-making developed in Flanders.

In the Middle Ages the great fairs of Champagne enabled craftsmen to compare experience, techniques and processes despite their closely guarded trade secrets.

It appears that in the Middle Ages there was no difference in rank between craftsman and artist. Some craftsmen were given their freedom as a reward for their work or to guarantee their work. From the 9th century onwards they grouped themselves into mutual protection societies such as guilds or brotherhoods with charitable aims and religious principles. Later there arose associations that were strictly professional: the jurandes, the Hanses, the corporations, the associations of masters.

In the 11th century, with the growth of town and village, building craftsmen became more common and there was an increase in numbers of makers of new agricultural implements for the intensified clearance of forest and the cultivation of virgin lands. So farriers, wheelwrights and harness-makers set up in rural centres, where the exercise of trades and commerce was free.

Gradually we see skilled workers beginning to defend their monopolies, preventing "foreigners" and "outsiders" from setting up in business or forbidding the exercise of trades by travelling workers without covered stalls. Trades become governed by public regulations sanctioned by the "prévosts" and restricting access to the trade or making promotion within the ternary hierarchy more difficult.

b) Progressive divergence of the concepts of craftsman and artist

In the 13th century most of the guilds in the north started to bar from their membership all those, even master-craftsmen, who "laboured with their hands" and accepted them only if they had given up their trade beforehand. In the south the brotherhoods took the same attitude towards "brassiers" or those who were hired for the work of their arms.

So the esteem accorded to the dignity of manual work in the Middle Ages must not be overestimated.

Thus in 1241 the Coutume (customary law) of Damme in Flanders excluded the following categories of persons from the urban magistracy in the same sentence: "thieves, counterfeiters and those who have not abstained from all manual work for one year". (1)

With the Renaissance the low regard in which manual workers were held became even lower as humanism gained ground. The Renaissance proclaimed that "mechanical people" were "vile persons". A gap opened between mechanical arts and liberal arts. Craftsmen were relegated to a status on a par with domestic servants since they lived by manual labour, which carried a social stigman.

Luther and Calvin, however, attacked the contempt in which "mechanical" workers were held.

Some artists of the Renaissance actually tried to close the gap between pure science and its applications. Albertini praised technical accomplishment and Leonardo da Vinci saw mechanics as the noblest and most useful of sciences.

This train of thought was to be amplified and made official in the edicts of Turgot which contained measures to "set the poor to work".

In England Locke, who adumbrated a form of "civil service", suggested that every gentleman should be apprenticed to a trade, as Rabelais had proposed in "Gargantua" and Rousseau was to propose in "Emile".

At the beginning of the 18th century manual work came back into fashion as a result of the teaching of several philosophers, among them Diderot who, in "L'Encyclopédie" glorified the craftsman's calling and called for the abolition of the distinction in status between art and craft.

But, as today, craftsmen were differentiated from artists.

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(1) E. Coornaert: Les corporations en France avant 1789 (The corporations in France before 1789).
Editions Ouvrières, 2nd edition, 1968, pp. 270 ff.

3 - Interest of great contemporary artists in crafts

At the end of the 19th century and during the opening years of the 20th the decorative style revolutionized the décor of everyday living, such as the "rococo" or "nouille" styles, or even art nouveau which was a discovery and exaltation of new materials, principally iron and reinforced concrete.

Then came the era of the "folies bourgeoises" and the rather artificial richness of Hector Guimard's ironwork, of floral decoration with intermingled scrolls, the posters of Cheret, the glasswork of the School of Nancy and the furniture of Majorelle.

But it is above all the modern artists with a taste for research who have rediscovered the artistic crafts, thus renewing tradition in the spirit of the artist-craftsmen of the Middle Ages, particularly with tapestry-making, stained glass and ceramics which they have revived and reinvented.

4 - "From the Bauhaus a single art was to be born" (1) (1919/32)

Following William Morris and Van de Velde in symbolically uniting the two art schools of Weimar, the fine arts school and the applied arts school within a single institution called the Bauhaus (building house), Walter Gropius removed the segregation between "art for pleasure" and "useful art". His object was to unify art and technique, painting, sculpture and architecture by eliminating the distinction between craftsman and artist, every artist having also to be a craftsman.

A single art was to be born from this fusion, the art of the 20th century, a socially useful art. These ideas were actually put into practice: a vast output of designs meeting the needs of the whole of man's environment came out of the Bauhaus. Almost every object in our daily life, everything that seems most modern, was conceived and designed in the Bauhaus: furniture (beds, kitchen cupboards, chairs - such as Marcel Breuer's steel tube chair or stool), lighting by Moholy-Nagy and Marianne Brandt, textiles by Anni Albers, typefaces by Herbert Bayer, photo-montage and photography used in posters by Moholy-Nagy, abstract stained glass designs by Albers, pottery by Lindig and Bogler, metal tea and coffee sets by Marianne Brandt, designs for advertising kiosks by Herbert Bayer ...

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(1) Michel Ragon: Histoire mondiale de l'architecture et de l'urbanisme moderne (World history of modern architecture and town planning). Editions Castermann.

In order to bring about this revolution enabling the whole human environment to be recreated, a revolution from which art and crafts, art and techniques, were to emerge finally reconciled, the teaching of art had to be revolutionized: after the same elementary training, students received advanced practical training in a studio under the simultaneous guidance of an artist and a craftsman, based on a scientific and economic education, and then themselves became masters of both form and technique. Moreover, such creativity would not have been possible without the participation and active collaboration of manufacturers (training courses in factories). When the objects were produced the students received a percentage on the sale of their designs.

In fact it was the United States which benefited from the Bauhaus heritage: there the movement gave rise to the tremendous renaissance of architecture, gave birth to American design and, in a more general way, brought industrial aesthetics into being.

Chapter II

Status of and legal system governing craft activities

1 - Definition of craftsmen and of craft firms

Craft firms have been officially defined in the Federal Republic of Germany, France, Italy and Belgium.

Dutch legislation does not contain the concept of craft activity; a definition can be arrived at only by reference to established practice.

The same is true of the United Kingdom and Ireland, where there is no specific definition of craft activity.

Moreover, there is not in any of the three last-mentioned countries a specific legal status for small firms in general.

Denmark also appears to belong to the latter category of countries.

Finally, at Community level, the Commission itself has not adopted any definition.

Federal Republic of Germany

The craft firm in the Federal Republic of Germany is defined neither by size nor by the number of persons employed, nor by the size of turnover. Under the Crafts Code (Handwerksordnung) of 28 December 1965 a firm is not considered a craft firm unless its type of activity is listed in Annex A to the Code; this criterion is not affected by the number of persons employed. Thus the Siemens Group is a craft undertaking as far as some of its activities are concerned.

France

The definition given to craft activities in France by the decrees of 1 March 1962 and 4 August 1970 is complex and relies on several different criteria, chiefly the type of activity and a maximum number of employees. It thus covers a multitude of heterogeneous firms which are perpetually changing.

Italy

Italy has a very elaborate definition of the craft firm. The firm must meet a number of criteria laid down by the law of 25 July 1956 and by various decrees (23 October 1956 and 8 June 1964); it must have a definite object in the form of a type of production or service listed on a schedule of trades, the head of the firm must fulfil certain specific conditions, and conditions are also laid down with regard to the method of production used and the maximum number of personnel employed, according to the type of production.

Belgium

In Belgium, where the craftsman has a twofold status, legal and economic, the law of 18 March 1965 has established a very restrictive definition of the craftsman, which states that he must be a person whose trade is not accompanied by the supplying of goods. From the economic point of view the craftsman is not entered in a register of craftsmen but in the commercial register in the same way as any ordinary commercial firm.

2 - Conditions necessary for the exercise of a craft activity

We try below to list the criteria used to define craft activity, whether in terms of legislation, custom or professional practice.

A) Qualitative conditions

a) General

Federal Republic of Germany

In jurisprudence and administrative practice a trade is regarded as a craft trade only if it is carried on "in the manner of a craft" in one of the activities appearing on the list of craft trades, that is to say if:

a. Any mechanical equipment used in the trade merely supplements and facilitates the manual work.

b. The work is carried on principally by qualified workers.

c. The proprietor of the craft firm possesses the knowledge and skill necessary to practise his profession and works at it himself.

Belgium

"The following shall be regarded as a non-trading craftsman: any natural person who habitually, either as his principal occupation or as a subsidiary occupation, by virtue of a contract of industrial hire, carries out work that is principally material, provided such work is not, or is only occasionally, accompanied by the supplying of goods". (Restrictive legal sense.)

Denmark

Firms carrying out repairs, providing services and carrying out construction work are regarded as craft undertakings in Denmark, regardless of the number of persons engaged in the work.

France

Only firms carrying on activities of production, processing, repairs or providing a service are regarded as craft undertakings. Excluded are agricultural or fishery undertakings, commission or agency undertakings, business offices (within the meaning of Article 632 of the Commercial Code), and firms whose activity is restricted to the sale or hire of articles without further processing or whose services are specifically intellectual in nature (the liberal professions). Activities which are exercised by a firm only occasionally or accessorily do not give rise to registration.

Italy

The craft undertaking should have as its main object the production of goods, either artistic or utilitarian, or the performance of services appearing in a list laid down by the decrees

of 23 October 1956 and 8 June 1964, which is a list of "artistic trades, traditional trades and made-to-measure clothing trades", divided into thirteen categories comprising over a hundred general trades. The manager must himself devote his skill to the trade, with the help - if applicable - of his spouse and members of his family, whilst at the same time assuming all the responsibilities and bearing the charges and risks inherent in the management of the firm. The work must be manual but may be assisted by small mechanical tools.

b) Qualifications or diplomas required

In order to carry on craft activities the head of the firm is required in the Federal Republic of Germany to have passed his master's examination, in Luxembourg to hold a master's certificate or equivalent, and in Italy to hold the professional certificates stipulated by law. In France the possession of a craftsman's certificate or a master's certificate is merely evidence of the level of qualification of the head of the firm.

B) Conditions as to size and maximum labour force

Denmark

The following are regarded as craft firms: industrial firms in which one to five persons work and - as we have already seen - repair, service and construction firms whatever the number of persons working in them.

France

Craft firms may not employ more than five wage-earners, excluding members of the family and associates (to a maximum of three).

In the case of food trades and personal services, this figure has been raised to ten (decree of 4 August 1970).

Italy

The craft firm may employ a greater or smaller number of persons according to circumstances. If it does not carry on serial production, it may comprise up to ten persons with, in addition, ten apprentices; if it carries on small-scale serial production which is not fully mechanized or if it is a transport firm, it may comprise up to five persons with, in addition, ten apprentices.

But firms carrying on traditional artistic work or specializing in made-to-measure clothing may employ, in addition to members of the family, twenty apprentices and as many workers as desired. We must emphasize the important advantage thus given to artistic and creative firms in particular, through their very favourable status, from both economic and fiscal points of view.

C) Registration formalities

Finally, in order to carry on a craft activity once the conditions examined above have been fulfilled, it is necessary to register:

- In the Federal Republic of Germany in the craft register maintained by the chambers of craft trades.

- In Belgium in the craft register in the case of craftsmen in the legal sense (law of 18 March 1965) and in the commercial register in the case of craftsmen in the economic sense (those who supply goods but whose trade has a craft character).

- In France in the directory of trades kept by the chambers of trades.

- In Italy entry in the register kept by the chambers of commerce is not obligatory. But because of the existence of laws giving assistance to craft trades, most craft firms do so. Their applications are examined by the provincial craft commissions who basically revise the provincial registers every three years. These applications are then reviewed at regional level by the regional commissions and at national level by the Central Crafts Commission.

D) Legal forms taken by craft firms

We find that all available legal structures of associations, trading companies and co-operatives are used, in addition to the status of self-employed worker or sole trader, according to the possibilities offered by each country.

Thus in the Netherlands craftsmen entered in the commercial register may limit their liability by forming a joint stock company or a limited liability company.

On the other hand, certain exclusions or conditions are imposed in several countries.

Thus in Italy the craft firm is an association of persons which may choose the status best suited to it including co-operative status but may not become a limited liability company or a limited partnership. However, one essential condition must be fulfilled: most of the associates must take part personally in the work and their contribution in the form of work must be more valuable than their contribution in the form of capital.

But the specific nature of the craftsman's work encourages individualism in craftsmen. In some countries, such as Italy, there are far more de facto associations and groupings than legally constituted companies or than co-operatives.

E) Craftsmen and the freedom of establishment

The rapid examination which we have just carried out of the conditions of entry into and exercise of craft trades in the different Member States of the Community demonstrates the relevance and importance, in the absence of Community regulations on craft activities, of a harmonization or at least a co-ordination of the laws, regulations and administrative provisions of Member States in this field in order that the principle of freedom of establishment, enshrined in the Treaty of Rome, should become a reality.

This right has banished conditions of exercise of a trade based on nationality from the laws of the Member States. But the right is also exercised under the discriminatory conditions imposed on nationals of the host country: mobility is very difficult if a national diploma is required or if the other conditions or the status of trades vary widely from one country to another.

The right of establishment is legally established but remains purely theoretical for craft activities and, a fortiori, for the artistic professions. Mr Colonna di Paliano, when he was the Commission member responsible for industrial policy, stated in a report which he presented on behalf of the Commission: "A policy for the craft trades is an indispensable concomitant of the Member States' industrial policy".

In connexion with the application of the Treaty to the cultural sector, it is fortunate that priority action is being taken by the Commission to eliminate the administrative, legal and social obstacles to the mobility of "cultural workers".

Craftsmen should be able to carry on their professional calling in a Community country other than their country of origin.

3 - Towards a definition of craft trades in general

We saw from our survey of the historical development of the craft trades that discrimination between the "liberal arts" as practised by artists and the "mechanical arts" as practised by tradesmen started during the 16th century and that discrimination then developed in the latter category between tradesmen and those operating "manufactories", the forerunners of industrialists.

Exmination of the present legal status of craft activities in each of the Member States of the Community shows the difficulties besetting definition of the craft sector and the sometimes considerable differences existing from country to country.

The craftsman must not be confused with the small or medium-sized firm nor with the dealer. Craft activity is always on a small scale but is never industrial in nature. The craftsman may supply goods but they are always made by himself whereas the dealer only sells goods without further processing.

From another angle, it is clear that craftsmen are different from home-workers and workers employed in small industrial firms, since the latter work only to the instructions of their employers.

The criteria most often used, either together or separately, are the size of the firm (in terms of the number of persons working), the professional skills of the head of the firm, the mode of production or the activities carried on. According to the country concerned, craft activities include activities of production, processing, repair or the provision of services. Sometimes the activities are limited by law.

It must be admitted, however, that the characteristics of size or legal structure of a firm are not sufficient to designate the presence of craft activities because they apply equally to minor industry and small-scale business, with which moreover craft activities are readily confused in certain countries.

Should we then base our definition on social and professional criteria, considering the professional skill of the worker in question or the qualifications and qualities of the head of the firm, including his psychological traits - a spirit of independence and tradition - his attitude to work, and the absence of division of labour? But these characteristics are not peculiar to the craftsman. Should we have regard to the mode of working, which is often directly to order and is largely manual? But craft activities are not exclusively congruent with manual activities, since there is a certain degree of mechanization, however slight, in all crafts.

Can a distinction be made according to the type of customer served or the price of the products? This notion is becoming less and less meaningful for craftsmen as a result of the interpenetration of markets and the diffusion of economic information.

Is it an attribute of the craft sector that it produces well-finished work, personalized goods and services? Other economic sectors make this claim, particularly when they can use it for publicity purposes.

In fact, there is no precise legal definition and the laws in force merely try to delimit "a craft sphere" which varies, sometimes fundamentally, from country to country. For this reason any definition covering precise economic, social or legal realities is difficult, if not impossible, in countries that are undergoing rapid change.

Each of the characteristics mentioned is partially valid and taken together they form the limits of the craft sphere.

In this connexion, the definition (more economic and social than legal) given by Professor Gutersohn seems sufficient: "Craft activity is characterized principally by its capacity for and its orientation towards providing goods or services which are clearly differentiated according to place and time and ordered, in the majority of cases, as a result of specific desires individually expressed" - to which must be added "bearing the stamp of individuality and authenticity which mass production does not provide".

Four categories of craft trade may be distinguished, as the Italian authorities intend officially to recognize:

1. Traditional or maintenance.

2. Pre-industrial, i.e. undertakings which manufacture in a craft fashion articles which in more developed parts of the Community are mass-produced.

3. Para-industrial or as sub-contractors to large firms.

4. Artistic or creative.

It is with the latter category that we are concerned here.

Conditions of entry into and exercise of a craft trade

	Legislation	Entry in register of trades or crafts	Qualification or diploma	Maximum size or work-force	Other conditions	List of trades
Federal Republic of Germany	Crafts Code, law of 28 December 1965	Yes	Master's examination	—	Pursuit of one of the listed activities "in the manner of a craft"	Which may be pursued "in the manner of a craft"
Belgium	Law of 18 March 1965	Yes - craftsman in legal sense		—	Carrying out of material work without supplying goods (restrictive legal sense)	
France	Decree of 1 March 1962 Decree of 4 August 1970	Yes		Not more than five employees	Activities: production, processing, repair or provision of services	Which may be described as craft trades (order of 12 October 1966)
Luxembourg		Yes	Master's certificate or equivalent	—	Professional standing	For which a master's certificate is required
Netherlands	Law of 1954 on establishment of enterprises			Between ten and twenty-five according to trade		
Italy	Law of 25 July 1956	Not obligatory (register of craft undertakings	Professional qualifications as stipulated by law	Not more than ten (except specified trades)	Production of artistic or utilitarian goods or of services specified on list	103 trades (decrees of 23 October 1956 and 8 June 1964)
Denmark				Either firms comprising one to five persons	Or repair, service or construction firms whatever the number of persons engaged in the work	

Chapter III

The artist-craftsman and his products

1 - Legal status of the artist-craftsman

This varies greatly from State to State. The artistic and creative professions may be pursued in the majority of Member States of the Community by craftsmen who meet the conditions set out in the foregoing chapter. In countries where restrictive lists of activities considered as craft activities have been adopted, these lists generally cover most artistic and creative callings. This is true of the Federal Republic of Germany where the list of trades under the Crafts Code embraces the majority of traditional art and craft professions. It is also true of the list of 100 "artistic trades, traditional trades and ... clothing trades" adopted in Italy, where the artistic and creative professions occupy an important position.

Craftsmen may also adopt various different association or company forms according to the possibilities afforded by the respective legislations of each of the countries (Chapter II - 2, D page 22).

In certain countries the artistic and creative professions may also be carried on by freelance artists. This applies in Germany in the case of freelance artists ("freischaffende Künstler") who hold no master's certificate but nevertheless possess academic training and sufficient talent to be considered craftsmen, as stipulated in the conditions of entry to the associations of artist-craftsmen. This is also the case in Luxembourg where creative artists ("artistes créateurs") carry on a liberal profession requiring no precise legal qualification but may sell only their own work. The same is true in France in the case of independent artists ("artistes libres").

Alongside the activities of artist-craftsmen in the private sector there are also art and craft activities in the public sector. Traditionally devoted to the restoration of works of national heritage and preserving craft skills which are in danger of disappearing, this sector has also seen its creative activities developing.

This is the case in France. In 1964 Mobilier National set up a creative workshop which makes prototype articles of furniture from drawings by designers, distributes them through the medium of private companies and sells them in France and abroad. The Gobelins (high-warp tapestry) and Beauvais (low-warp tapestry) works and the Savonnerie factory (carpets) produce their articles from cartoons commissioned from modern artists and the Sèvres factory produces porcelain to designs by contemporary artists. These factories employ skilled workers but they also take on creative designers for certain periods of time. However, "official art" activities of this kind cannot be compared with the activities of the private sector, either because there is no adequate market for their products (Sèvres porcelain) or because the techniques and processes used are very different (tapestry), not to mention the working conditions and security of employment that the authorities can offer.

Thus the artist-craftsman does not always have the same legal status as the craftsman in general. Firstly, the definitions, when any exist, are too narrow, as in Belgium where the craftsman may not supply goods; secondly, in some countries artistic and creative craftsmen may for reasons of convenience adopt a status akin to artist, which means that they are treated in the same way as the practitioners of a liberal profession.

2 - Towards a definition of the artist-craftsman

Is it possible to isolate a general concept applicable to all artist-craftsmen and to reveal their specific characteristics? This is what the artist-craftsmen themselves would wish in order to be able to identify themselves more clearly and put forward their particular concerns.

a) Craftsmen in general and artist-craftsmen

Like all craft activities, the activities of the artist-craftsman will remain, despite an irreversible economic and social development, "an enterprise on the scale of man" (1) unless:

a. Specialization in work is pushed to the point of requiring prior specializations.

b. The mechanization introduced totally replaces manual work.

c. Serial production eliminates the human contact which alone allows goods and services to be made personal.

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(1) L. Gingembre, President of the Confédération Générale des Petites et Moyennes Entreprises (General confederation of small and medium-sized enterprises).

Although the ambiguity persisted until the middle of the 19th century, one may consider, in an initial approach, that the activities of artist-craftsmen differ from the activities of craftsmen in general in that the former cover certain professions in which creativity and aesthetics play an essential role.

In the next section we shall examine to what extent artist-craftsmen consider they differ from other craft trades in the countries in which they have similar legal status to bakers, butchers, hairdressers, laundrymen, etc.

b) The artist-craftsman and the artist

The idea of a difference in status between the craftsman and the artist did not emerge until the Renaissance. Until that time there were no major differences: the sculptor was on a par with the stone-cutter.

In the era when the manufactories were developing, craftsmen were tradesmen who produced the objects necessary for daily life. In the country districts the craftsman continued to produce useful objects (popular or folk art), deriving his repertory of designs from a tradition handed down from generation to generation.

The concept of the artist came into being in the Renaissance and the (French) word "artisan" (i.e. craftsman) did not come fully into use until the middle of the 19th century.

Dictionary definitions give a revealing glimpse of this development, from Diderot's "Encyclopédie", which draws a distinction between liberal arts and mechanical arts (1), to the "Grand Larousse Encyclopédique" of 1960, in which only sketchy definitions are given.

One sees immediately how the line between artist and craftsman is ill-defined and arbitrary.

Can it still be said today that craftsmanship ends and art begins when the object ceases to be useful and is appreciated only for its beauty?

Many basically utilitarian objects are now produced by artist-craftsmen solely for their decorative appearance.

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(1) "On examination of the objects produced by art, it became apparent that some were the work more of the mind than of the hand whereas others were the work more of the hand than of the mind."

In all the creative professions it is very difficult to separate art from craft. Artistry is not the privilege of any one profession. Etymology tells us that the artist is first of all an artisan. There is no watertight division between the different modes of artistic creation and there is no reason to establish a classification between the various artistic professions to distinguish minor arts from major arts or to segregate craftsmanship from artistry.

Some painters, like Picasso, Dali, Klee, Léger, Chagall and Braque wish to be considered craftsmen. Some craftsmen wish to be considered artists, and the industrial designer often wishes to be considered both at once, due regard being paid to the industrial demands he must comply with.

One of the most active leaders of French artist-craftsmen, Jacques Anquetil, has written: "A person is an artist or a craftsman when he says he is, that is to say when he adopts a certain intellectual attitude. To be an artist the craftsman must go to the outermost limits of self-realization. What is important is the work that is brought into being, the creation of a form, whether craft or industrial. This form either exists or does not exist, it is either genuine or false. The essential thing, therefore, in every sector, is to express oneself fully, to develop continuously, and not to shut oneself off as a result of making certain judgments, in compartmentalized or artificial categories, in cliques."

These remarks are essential to the pursuit of our study because they indicate the fundamental unity between creative workers in different disciplines. But artists have international conventions or effective national legislation to recognize and protect their rights as creators, whereas artist-craftsmen have long suffered from their hybrid status, falling between the status of artists who, as already mentioned, enjoy protection for their original works (copyright) and manufacturers, who are protected by legislation on industrial property, equally effective but adapted to their own special needs.

c) From artist-craftsman to creative craftsman

Artist-craftsmen thus consider that there is no longer any difference of rank or classification between creative workers, the quality of the object created being the sole important criterion, but that they nevertheless constitute a separate category between craftsmen in general and artists.

In some countries a new awareness has arisen progressively and by stages. As a result of the shift of the concept of the artist towards that of the craftsman, the first stage has been the emergence of the new concept of the artist-craftsman. Today, after an explosion of ideas about the artist and the craftsman, there has been a fusion which has given rise to the category of creative craftsmen. It is no longer a question of artists saying that they are in fact also craftsmen. It is a question of acknowledging that some craftsmen and some artists are engaged in the same type of activity, have the same problems, and form a wholly separate group of creative workers with the same aims and the same ideas about how to attain those aims. This new category meets a need felt within certain professions.

d) Elements for a possible definition of artistic and creative craftsmen

There is nowhere a satisfactory definition: it is very difficult to find appropriate criteria with regard to the concept of art, which is in itself highly ambiguous.

Criteria for the definition of artistic and creative craftsmen are not to be found in:

a. the legal status of craftsmen in general, of whom artistic and creative craftsmen form only a very small part and because the activities of the latter are carried on in other legal forms - as members of the liberal professions or as self-employed persons, like artists, or as commercial companies, like some art firms;

b. the techniques used, which always include a large proportion of manual work but do not exclude mechanization; moreover, techniques have developed continually from the Middle Ages to the present time;

c. the nature of the end product. For, according to circumstances, it is the result - or not, as the case may be - of artistic work;

d. the usefulness or decorativeness of the product. A useful object may be decorative but a non-useful object is not necessarily decorative;

e. the type of activity; titles or labels do not make a craftsman nor do they give him the ability to pursue an artistic or craft profession, any more than they do the artist.

If creativeness itself cannot be defined, it can at least be acknowledged that among the artistic and craft professions there are those who make use of techniques of creation and those who use techniques of execution or maintenance, even if it is not possible to place precise limits between the two categories for, as Mr P. Dehaye (1) stresses,

(1) "Rapport sur les difficultés des métiers d'art" (Report on the difficulties of the artistic and craft professions), 1975, presented by Mr P. Dehaye to the President of the French Republic.

"A good craftsman assistant, the artist's irreplaceable collaborator, like a good repair man or restaurateur, cannot be merely a technical man".

A typology of artistic and craft professions, even though imprecise, can greatly facilitate our approach to the sphere of the creative craftsman.

Utilitarian or rural craftsmen. These are concerned with day-to-day products meeting needs which are increasingly disappearing (farriers, blacksmiths, harness-makers, coppersmiths, tinsmiths, etc) or utilitarian products connected with agriculture (weavers, basket-makers, carpenters, etc). They use only traditional forms. Hence there is no creativity, except where these practitioners of ancient crafts turn to a new clientele, city-dwellers or tourists, who have a taste for the rustic, and adapt or modify the ancient forms to such an extent that they can be said to be making a creative contribution whilst at the same time preserving the overall style of the period.

Craftsmen engaged in high-quality production. These are generally located in towns (gold and silversmiths, engravers, cabinet-makers, passementiers, enamellers, medal-makers, glass-makers, stone-carvers, makers of articles in tortoiseshell, mother-of-pearl, ivory, etc). Apart from those who do traditional restoration work and make articles to long-established designs, there are some who produce truly creative work, using either traditional or new techniques, which places them unquestionably in the ranks of the creative craftsmen.

But the great majority of creative craftsmen are to be found among those who, using ancient or modern techniques but drawing on tradition, attempt, in an original and personal endeavour, to create objects which apply modern design to valuable or everyday materials.

However, these genuine creative workers should not be confused with the "false craftsmen" who are often organized on an industrial scale to pander to bad taste in tourist spots by producing shoddy pseudo-folk articles.

So, knowing that we are dealing with a concept essentially of professional order, we shall examine how those concerned define and identify themselves, in order the more easily to encompass a definition.

"There is truly a 'co-opting' among us, which means that we recognize each other as creators". (1) They do feel that they are different from the usual heads of firms registered in the directories of trades or commercial registers (bakers, plumbers, etc).

"What characterizes our profession is endeavour. If a craftsman makes plates all his life, he may make a profit from his materials but he will not be creative. What makes a craftsman creative is that each day he must produce something different" (2). Like the plastic artist he must continually experiment with form and colour.

They all have in common a very keen concern with aesthetics. They are conscious of the damage being inflicted on our environment and the ugliness amidst which we live; they regard it as their duty to make public opinion aware of the need for a collective attempt to obtain an environment worthy of man. (3)

They wish to get rid of the false idea of folk art. They realize that there is in existence a poor quality craft sector and deplore the fact that some craftsmen, caught up in the commercial system, are dependent on retailers and wholesalers of whom they are the victims.

By contrast, they consider that they must be continually active at the creative level; and this concern with aesthetics makes them think that they must act to combat intellectual ossification and a form of craft activity that dishonours them.

Finally, they state that mastery of the craft is essential in their view. The work of the artist-craftsman must be based on very sound technique.

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(1) and (2) O. Giroud, "Artisan ou créateur?" (Craftsman or creator?) - Resonnance, 31 May 1974.

(3) Première Rencontre Nationale des Métiers d'Art (First national meeting of artistic and craft professions) - October 1973 at Goutelas.

So the creative craftsman is an "artist who applies his creativity to producing everyday objects with a twofold function - both utilitarian and aesthetic - which expresses itself in traditional or new materials and who devotes his principal activity thereto". (1) An integral part of contemporary creativity, the creative craftsman considers that he can participate "individually or collectively in the contemporary environment and humanize it". (2)

Unable to cast the artist-craftsman in the rigid mould of a definition, we have at least tried, as Michel David (3) hoped, not to lose contact with the ever-changing reality of a world where man's hand, matter and art come together on privileged ground. It is through the quality and beauty of the object produced that the craftsman can attain the perfection of the artist's prodigious hand, "equal to and rival of his thought; the one is nothing without the other", to quote Paul Valéry.

3 - Rough list of artistic craft professions

In characterizing artist-craftsmen by what they produce, we have tried to draw up a list, which is as complete as possible, even though it cannot be regarded as exhaustive, of the various professions still actually practised in the Member States of the Community; some members of these trades or professions may be considered creative craftsmen if they meet the definition given in the preceding paragraph.

It should be pointed out that although it is easy to draw up a list of trades or professions which may contain artist-craftsmen, it is more difficult to decide what, in a given trade or profession, may be said to denote the existence of an artist-craftsman. Few types of article are produced of which it can be said that their artistic value is the essential condition for the activity which gave rise to them.

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(1) and (2) Minutes of the Première Rencontre Nationale des Métiers d'Art (First national meeting of artistic and craft professions) at Goutelas, October 1973. This was the definition proposed by the Maison des Métiers d'Art Français (Chamber of French Artistic and Craft Professions) which had served as reference: "An artist-craftsman or creative craftsman is a person who, with sure technical competence in the use of one or more materials, makes, in a studio or workshop, either alone or with the help of specialist workers, a small number of objects which are valued for both their utility and their beauty."

(3) Director of Small Trades in the Ministry of Commerce and Small Trades (France).

Graphic arts

Graphic art studio
Poster artist
Printer (including silk-screen printing)
Engravers, etc (on wood, metal, etc)
Book-binder
.....

Arts/crafts using clay

Potter
(inc. stoneware)
Ceramist
Faïencier
Porcelain maker
.....

Metal and stone work

Engraver (decorative patterns on metals)
Sculptor (stone, bronze)
Art metal-founder
Art metalwork (iron, cast iron)
Designer and maker of brassware (cast brass)
Designer and maker of copperware
Gold and silversmith (precious metals)
Jeweller (gems)
Lapidary (cutting precious stones other than diamonds)
.....

Glasswork

Art glassmaker (blown, engraved, painted, etc glass)
Designer and maker of small glass articles
Stained glass designer
.....

Textile work

Carpet designer
Art tapestry-maker and weaver
Fabric designer
Lace-maker
Embroiderer
Knitwear designer (in wool, cotton, silk)
.....

Leather work

Morocco leather-work
Saddler
.....

Woodwork

Cabinet-maker
Creative woodworker
Carpenter
.....

Picture-frame maker - Gilder
Basket-maker (osier, cane, rush)
Designer and maker of candles (in moulds, etc)
Mosaic artist (in stone, glass, etc)
Designer and maker of dolls and toys (in wood, fabrics, etc)
Creative enamel worker
Worker in tortoiseshell
Worker in ivory
Designer of art lighting
Designer of automats.

4 - Products of the artist-craftsman

We can conclude this chapter by stating, simplifying in the extreme, that there are three major categories of objects corresponding to three modes of fabrication and three types of creator:

a. The work of art, a single object produced by the artist meeting "spiritual and gratuitous" needs.

b. The industrially mass-produced article, an object created by the industrial designer to meet "natural and functional" needs of mass consumption.

c. Between the two, and trying to reconcile the two extremes, the small-scale production of the craftsman, imparting an aesthetic and spiritual quality to day-to-day objects.

The artist-craftsman's output therefore consists either of unique articles or of articles produced in relatively small batches, but it is difficult to specify the threshold beyond which one may no longer speak of the artist-craftsman. Only craftsmen who personally take part in production, at least occasionally, may be called artist-craftsmen.

Although original works of art and even multiples of original works (lithographs, high or low-warp tapestries, castings of sculptors' works, etc) are protected without difficulty by the law of copyright (as literary and artistic property) and "design" objects by special laws on designs and models (as industrial property), it is immediately obvious that the situation with regard to craft work, which is itself ambiguous by nature, is equally ambiguous on the legal plane, a fact that is particularly clearly reflected in the laws of the Member States of the Community.

Chapter IV

Economic, social and cultural context of craft activities and the artistic and craft professions

Although their importance and complexity at Community level would justify a special study, the present chapter is not a thorough analysis but an aide-memoire of the economic, social and cultural context in which the creative craftsman operates and of the problems that he faces in this connexion.

This review will illustrate the extent to which these questions are inseparable from the problem of securing real protection for the works of craftsmen in the European Community.

1 - Economic context

We will try to describe the evolution of craft activities in recent years in the light of the rare pieces of information, often incomplete in themselves, which we were able to obtain.

The very incomplete observations which we make and which are often based on general data about craft activities as a whole, will enable us to isolate some general information on permanent structures or on trends which have become sufficiently well established to influence future development.

a) Lack of statistics for this sector

It is not surprising that information on the economic and financial situation of artist-craftsmen should be scanty, for we are dealing with a multitude of very small firms or individual craftsmen who, apart from the little information which they are compelled to provide, are still too few in number to bother with gathering accounting details of their sector, even for their own management purposes.

It should not be forgotten either that there is no uniformity in the concept of craft activities, which may encompass very different realities from one country to the next, as we have seen in the previous chapter.

b) Partial data on turnover

It is very difficult to reach a figure that represents, even in global terms, the total value of craft output, particularly since the craftsman's place in the economy in general is not even recognized in some countries. The activities of the artist-craftsman as such are not scanned and analysed by the "economic observatories" who in many cases have great difficulties as it is in collecting data about craftsmen in general.

The extreme diversity of the trades and professions surveyed (see the list of trades and professions) makes it difficult to assess the volume of turnover achieved.

It is therefore with every reservation that we give some orders of magnitude found in certain countries.

France

400 million new francs (1), of which a large part is exports (from 10 to 80% for different artistic craft workshops).

Craft activities taken as a whole were on the increase until 1973, but there is little information about variations in the volume of turnover.

Italy

It does not seem possible to assess the output of craft trades in general, as they comprise goods and services which are difficult to compare and are influenced by the districts in which the firms are situated (local market and orders).

Exports by Italian craftsmen in 1972 were said to be worth approximately 450 000 million lire. (2)

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(1) Source: estimates of the Maison des Métiers d'Art Francais (Chamber of French artistic and craft professions).

(2) By assuming that craftsmen accounted on average for 20% of the total exports of small-scale industrial and craft enterprises which were:

in 1970 ..... 1 593 000 million lire
in 1971 ..... 1 797 000 million lire
in 1972 ..... 2 266 000 million lire

To the value of exports proper there must be added the value of indirect exports, i.e. sales made to the many tourists visiting Italy, representing a substantial proportion of the 1 260 000 million lire appearing in the Italian balance of payments for 1972 under the heading "tourism".

There is no figure for the total turnover of artist-craftsmen as such.

Federal Republic of Germany

The total turnover of craft enterprises has been increasing from year to year in significant proportions and was said to be of the order of DM 240 000 million in 1973. But artistic and craft professions are not distinguished within the statistics for crafts as a whole and it is therefore not possible to determine their turnover. One can only rely on the assurances of the officials of the chambers of trades, who state that the situation of German artistic and craft professions is satisfactory, which seems to imply that the overall turnover of this sector is on the increase.

Apart from the figures given above we have been unable to obtain any statistics. It is clear that only a methodically conducted economic survey of this sector could enlighten us as to the role and the size of artistic and craft activities in the economy of the European Community.

c) Profitability and structural difficulties

Technical and economic developments have not been favourable to a profession that is essentially manual in nature, particularly since in many countries it has had to bear the same social and fiscal charges as industry.

In Denmark and the Netherlands craftsmen enjoy no special fiscal advantages.

The same is true of the Federal Republic of Germany, Luxembourg and Ireland, but a distinction is made between the status of artist and craftsman.

This is not so in Italy where craftsmen have enjoyed special status since 1959. However, the new system which has extended the progressiveness of taxation and consequently made the tax system fairer has had the effect of considerably limiting the tax privileges which craftsmen had hitherto enjoyed.

In France the "law of orientation of commerce and small trades" of 1973 adopted the principle that the system of taxing small traders (self-employed workers) should be brought into line with that for employed workers, raising their tax exemption limit to that of employed workers and improving the system of taxing them by lump-sum payments. Exemptions in connexion with VAT are granted to certain works of art and creative works (1) which may be designed and made by artist-craftsmen (tapestries, jewellery, gold and silversmiths' work, lithographs and engravings, multiple works, etc) because they have to be made by hand and produced in a very small number of copies or even as single works. In fact, these exemptions affect artists much more than craftsmen.

In the United Kingdom craftsmen, like all self-employed workers, are subject to income tax at the usual rate and to VAT if their turnover is above a certain level (currently £ 5000); if their turnover is below this level, they may opt to apply VAT.

In Ireland the system of social security and the contributions applying to craftsmen are identical to the general system.

It is the same in the Netherlands, where craftsmen participate in the system of health, invalidity and retirement insurance and family allowances. In addition, a special provident fund enables limited allowances to be paid in cases of unemployment, for purchases of materials, and for experiments, etc. Subsistence allowances may be granted to needy craftsmen.

In Luxembourg the creative craftsman who is self-employed benefits from sickness and retirement insurance schemes enjoyed by that professional category; social security contributions vary with income.

In Italy craftsmen belong to compulsory insurance schemes covering sickness, invalidity, old age, accidents at work and short-time working.

In France social legislation has recently been enacted, through the "law of orientation of commerce and small trades" of 1973, to harmonize the social scheme covering the sickness and old age of small traders (self-employed workers) with that for employed workers with effect from 1 January 1977, sickness insurance contributions and family allowances being calculated on the basis of trading income.

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(1) France, decrees of 10 June 1967 and 23 December 1970.

In the United Kingdom craftsmen, as self-employed workers, can draw sickness benefit under the general scheme but not unemployment or industrial injury benefit.

If demand for their products is increasing, artist-craftsmen are finding their profitability falling as a result of corresponding increases in charges, particularly for labour.

Only mass-production enables a corresponding reduction in fixed costs to be achieved and makes it possible to build up sufficient stocks to meet immediate demand. But it would seem difficult to make a profit from creative effort which entails an unceasing renewal of designs. For this reason the true craftsman who is constantly renewing the form of his output can find no way of expanding economically within his craft.

A fairer fiscal and social system for these specific creative professions ought to be sought in future.

Unlike other craftsmen, the creative craftsman cannot sell his "business", apart from his tools which are often of little value and his premises if he owns them; his business is only of value in connexion with his own creativity and his personal work and therefore has no market value.

The productivity of this economic sector is likely to remain below that of agriculture and industry; this does not matter, however, as quality takes precedence over output here.

d) Probable trend of development of craft trades

Nevertheless, a favourable current assisting the development of the artistic and craft professions is emerging with the rise in the standard of living, the increase in trade between Community countries, the renewed taste for natural and high-quality objects, and the individualization of needs: craftsmen are the only people who can meet the need for more diversified and personalized production in face of increasingly advanced industrialization.

In trying to outline the prospects opening up for artist-craftsmen under the most likely hypotheses as to the development of the economies and societies of the Member States of the Community, two series of factors must be taken into consideration:

External factors connected with foreseeable changes in demand. Considering fundamental and clearly long-lasting changes, one can say that the demand for services of every kind can only grow. This is the normal consequence of a rise in the standard of living and a personalization of needs.

Internal factors connected with the supply structures of artist-craftsmen. One should note the great adaptability of the craftsman, which is the consequence of the small scale of his organization and his high professional qualifications. The craftsman can react to all personalized or geographically dispersed needs.

Thus the artistic and craft professions alone are in a position to satisfy personalized needs which individually are of too small a volume to justify the creation of an industrial apparatus, even if this were possible, but which in total represent a not inconsiderable sector in the economy of Community countries.

Another factor is equally favourable. At a time when there is a need to combat the waste of scarce resources which not only causes pollution but also generates inflation and upsets the balance of trade, it is appropriate to encourage better quality and longer life in objects and this is something that craftsmen have always done.

To do this craftsmen must have a minimum of capital equipment and an adequate supply of skilled workers.

Thus in France capital investment by small craft firms has varied little and amounts to 5000 million francs at constant values.

In the Federal Republic of Germany craftsmen devote a significant proportion - of the order of 5% in 1973 - of their turnover to capital investment in order to improve and rationalize their techniques, with the aim of meeting competition from industry or from abroad (e.g. competition from Italian craftsmen in south Germany).

e) State aid to craft firms, marketing of craft products and professional organization of craftsmen

1. State aid to craft firms and professional organization of craftsmen in the Federal Republic of Germany, France, the United Kingdom, Italy and the Netherlands:

Federal Republic of Germany

In the Federal Republic craftsmen are not given privileged status compared with industry. On the contrary an attempt has been made to place them on an equal footing so as to encourage them to complete or to be complementary.

As we have already stated, the situation of the artistic craft trades is considered satisfactory (paragraph b) and therefore they receive no specific aid either from the State or from professional organizations. On the other hand, many measures have been taken under the Crafts Code or on the authority of circulars from the Economics Ministry or "programmes" adopted by professional organizations, which are intended to strengthen the capacity of craftsmen in general to provide goods or services. It is not a question of defending the craftsman but of giving him the means to adapt himself to a modern economy where competition is keen and where technical and commercialmethods and consumers' tastes are changing fast.

Within the very flexible framework of Federal legislation, and with financial aid from the State and in certain cases from the Länder, the crafts sector, both as a whole and at the level of each trade and each region, sees to its own organization. The basis of aid to the crafts sector is a system of professional training which combines theoretical and practical training (workshop apprenticeship backed up by professional or specialist schools and courses at workshop-schools) and, above all, economic and commercial training, financed almost entirely by the sector itself. Aid is also provided in the form of free advice bureaux set up by the chambers of trade and the professional associations, the aim of which is to facilitate the adaptation of small and medium-sized firms to economic and technical progress and to improve their competitive position (information about demand, consumer needs, etc). There are also advisory services for exporters, the longest-established of which is at Nuremberg. The advisory centre for Bavarian crafts not only gives information and assistance to all craftsmen interested in foreign markets but brings out a three-language catalogue and organizes a permanent exhibition. The artist-craftsmen have their own association (in Munich) which covers the whole of the Federal Republic; it groups together eleven

regional associations and currently has 1500 members. The Association of German Artist-Craftsmen organizes exhibitions in Germany including a permanent exhibition in Munich and arranges participation by German craftsmen at international shows, handles relations with the government and deals with matters relating to apprenticeships.

Finally, to compensate the sector for its lack of financial resources, the State grants preferential loans and various guarantees to the craft sector.

France

In France two recent series of measures have given artist-craftsmen important benefits and improvements. The "law of orientation of commerce and small trades" of 27 December 1973, known as the Royer law, from the name of the minister who worked unceasingly to get the law through despite heated political opposition, states that the small trades should "contribute to improving the quality of life, enlivening urban and rural life and increasing national competitiveness". Alongside measures relating to commercial matters (competition, consumer protection), there are provisions relating to small trades in general, both fiscal, social and economic, and relating to the professional training of craftsmen. Financial assistance is given to craftsmen in declining trades who retrain. There are measures to promote training at the pre-apprenticeship stage, and retraining and professional advancement courses.

On the basis of an excellent report (1), the French government adopted, on 29 January 1976, a programme for the encouragement of the artistic and craft professions comprising no less than 70 measures relating in particular to the involvement of artists and craftsmen in urban renewal operations, the teaching of artistic and craft professions (scholarships for apprenticeship and further training), continued vocational training from which they can benefit, the economic promotion of artistic and craft professions (marketing groups, exporting), the safeguarding of threatened artistic and craft professions, audiovisual information (radio and television) about these professions and the organization of a prestige exhibition every two years in Paris.

A fund for the encouragement of the artistic and craft professions, with a budget of 4.5 million francs for 1976, has been set up. Finally, some more general measures have been taken to improve the status of manual work in this connexion.

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(1) "Report to the President of the Republic on the difficulties of the artistic and craft professions" by Mr P. Dehaye (Director of Moneys and Medals).

However, these measures concern in large part those traditional artistic or craft professions or servicing activities which are disappearing or liable to disappear for lack of specialists and manpower.

The measures of promotion and marketing which are most urgent and essential to the creative professions in France will depend on the amount of finance made available to the Encouragement Fund.

For some months grants for establishment in rural areas or in new or renovated towns have been being paid to craftsmen, reducing the amount of finance they have had to find personally by half; these are in addition to bank loans at low rates of interest and guaranteed by the State covering 80% of the amount of the capital investment.

Since 1925 the general interests of the craft sector have been represented by the chambers of trade composed of craftsmen and their elected employees through their "permanent assembly".

United Kingdom

In the United Kingdom the government has become aware of the rebirth and vitality of artistic and craft activities and of the need to maintain and develop them. In 1971 it set up the Crafts Advisory Committee (CAC) to advise it as to the aid to be granted and the measures to be taken to support these activities.

The object of the Crafts Advisory Committee is to promote British crafts by all possible means, helping craftsmen to maintain and improve their quality, to sell their products and to make them better known to the public. The Committee administers the government subsidies allotted to crafts (£ 215 000 paid in 1974 by the arts branch of the Department of Education and Science to assist production and sales in England and Wales), while the Joint Crafts Committee administers its own funds for Scotland. The CAC gives substantial aid to the British Crafts Centre which has two retail sales networks for craft products (turnover in 1974: £ 50 000). It also publishes a list of craft shops and galleries in England and Wales. Besides the register of craftsmen the Crafts Advisory Committee has drawn up, with the help of the British Crafts Centre, a selective index of craftsmen consisting of colour slides of each work and a biography of the author, on the basis of a panel that varies each year; in 1975 this panel consisted of 302 craftsmen of different crafts.

Lastly, the Committee publishes a directory of names, addresses, telephone numbers and types of work of craftsmen of very high professional quality, which is updated every six months.

The Crafts Advisory Committee grants apprenticeship subsidies to workshops or studios which are in a position to take on apprentices. But this system of training for craft activities has greatly declined in recent years and it is mainly the art colleges that now train new craftsmen, a process that takes three or four years.

Italy

In Italy it is the intention of the authorities to maintain and develop artistic and craft activities. To this end measures have been taken in the social sphere and special arrangements made in the tax sphere. Subsidies have been introduced to promote sales abroad. The least developed regions are awarded orders by the public authorities and enjoy temporary tax concessions. In addition, craft trades in general enjoy medium-term credit facilities to enable them to set up or improve their workshops. The Central Crafts Fund has set up a guarantee fund. Under the system called the "craft guarantee co-operative" short-term seasonal loans may be granted to craftsmen.

Taking the view that craft activities, where working relationships are more human, are a factor for social stability, the government has given this sector the means of administering its own interests almost independently. Thus the Directorate-General for Crafts and Small Firms within the Ministry for Industry and Crafts only retains a role of supervision, verification and centralization of information. It gives its opinion on all legislative initiatives in the field of craft activities in Parliament and in regional laws. It is in charge of the State-created bodies such as ENAPI (1), the National Craft Fair in Florence and the Italian Fashion House.

But as of 1 January 1972 the 15 regions with ordinary status were given certain administrative powers, being authorized to commit expenditure and to initiate and execute measures of support, enabling them to take better account of the local and sectoral requirements of craft production. These regional authorities give much attention to artistic and creative activities, which are a significant source of income in Italy.

In the cities the regional authorities contribute towards the financing of infrastructures and earmark residential zones for development for craftsmen's workshops and shops.

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(1) Ente Nazionale dell'Artigianato per l'Italia

They organize technical education in craft schools and workshops, where modern working methods are taught.

They provide technical assistance to encourage the setting up of sales networks both at home and abroad. They provide joint services for craftsmen through multi-stage consortia, sometimes directed by their general co-ordinating consortium.

They publish catalogues by region, in several languages, commenting on the results of craft activities, in particular those of artistic and creative trades.

They lay down the participation criteria and the subsidies granted for national and international exhibitions.

They foster all forms of guarantee, particularly guarantee co-operatives.

In Italy there are four major groups of craftsmen's unions representing professional interests, the largest being the General Confederation of Italian Craftsmen. As well as these free trade union organizations, there is a legal organization of pyramid structure, the bases being the provincial craft commissions within the chambers of commerce and crafts and the summit being the Central Craft Committee.

The Netherlands

In the Netherlands the Ministry of Economic Affairs is responsible for encouraging the artistic and craft professions, but its action is indirect since it subsidizes a representative organization for the whole country, the Central Organization for Creative Crafts (COSA, Centraal Orgaan Voor Het Scheppend Ambacht), which was set up in 1948.

COSA holds a permanent exhibition of products of artist-craftsmen at Delft. It publishes an information periodical. It keeps a register of artist-craftsmen, has a collection of colour slides, organizes and takes part in national and international exhibitions, assists the exporting of products of artist-craftsmen and gives information and advice to artist-craftsmen, especially on commercial matters.

The Ministry of Culture, Recreation and Social Welfare is also concerned with the artistic and craft sector in that 1% of the cost of construction of schools and universities is devoted to the purchase of decorative works. Similarly, the Ministry of Housing and Planning is required to allocate 1.5% of the cost of construction of government buildings to the acquisition of works of art for the purpose of decorating these properties; the credits allocated may be used to purchase craft products.

The Ministry of Culture also subsidizes some exhibitions of work by artist-craftsmen, abroad as well as at home.

In 1975 government aid to artistic and craft activities amounted to approximately 500 000 guilders.

2. Marketing the products of artist-craftsmen in Belgium, Denmark, Ireland and Luxembourg

Belgium

According to the survey carried out by the section of the Economic and Social Institute of Small Firms and Trades concerned with the artistic and craft professions, the majority of craftsmen have the opportunity to work to order. Then there are exhibitions, which are a means of becoming known to the public and at the same time of selling work, and the workshop or studio itself, which is the normal meeting point for craftsman and buyer. Sale through retailers is not common. Most artist-craftsmen use several distribution channels. There is no professional organization solely for artist-craftsmen.

Denmark

The works of artist-craftsmen are sold:

a. by the network of specialist shops and stalls;

b. by co-operatives belonging to the artist-craftsmen (e.g. Den Permanente in Copenhagen; Sirenerne in Helsingør, etc);

c. at exhibitions;

d. directly in the craftsman's workshop or studio.

A substantial advance against the price of the product is normally paid to the artist-craftsman in the first two cases.

Ireland

Craftsmen use various different ways of distributing their work but there are no exhibitions at which works may be bought. The co-operatives which are in existence use their own shops or the normal sales networks. Some craftsmen, those who are best organized and have had some success, have their own shops.

For its part, the Ministry of Tourism seeks to bring together craftsmen and marketing networks. An organization called the Kilkenny Design Workshops helps craftsmen to promote and distribute their work and is envisaging a high-level marketing operation in Dublin.

The Crafts Council of Ireland co-ordinates all the groupings concerned with craft activities and in particular artistic and creative activities. It is responsible for all matters connected with crafts and helps the public authorities draw up policies for developing and assisting the crafts sector.

Luxembourg

Marketing of work takes place principally in shops and stalls but also at exhibitions organized periodically by the National Centre for the Promotion of Arts and Crafts. There is a plan for a permanent exhibition on a co-operative basis.

3. Comments on the professional organization of artist-craftsmen

In the countries where craftsmen have a legal professional organization - e.g. the chambers of trade in France or the chambers of crafts in Italy - these organizations are geared exclusively to the numerically largest crafts, which are never the artistic or creative crafts.

In order to have a voice in Community countries - and in spite of their spirit of independence - artist-craftsmen are compelled to belong to specific professional groupings or committees benefiting from State assistance and financial support but enjoying relative freedom of organization and action, such as the Central Organization for Creative Crafts (COSA) in the Netherlands, the Chamber of French Artistic and Craft Professions (MMAF) in France, the Association of German Artist-Craftsmen in the Federal Republic of Germany, the Crafts Advisory Committee (CAC) in England and Wales, and the Joint Crafts Committee in Scotland.

2 - Social context

a) Portrait of the artist-craftsman

Although it is difficult to pinpoint this social group, since it includes not only craftsmen but artists and also firms in the legally-defined craft sector, one can say that the artist-craftsman is a man who is branching out in an individual venture, creating his own "enterprise" - for he cannot tolerate the rules of a rigid system. His fundamental needs are freedom to create, to work, to sell and to live, and craft activity is often the best way in which this type of person can participate in the economic life of a country.

Although a great many chose this career when they were studying, some deliberately broke off a completely different professional career to launch themselves into this venture and acquired their training on the job.

Ill at ease in an industrial working environment and in urban life, the majority establish their homes and workshops in the country.

b) Number of craftsmen and craft undertakings

Belgium	2500 to 3000	(estimate by Société de Recherche Opérationnelle et d'Economie Appliquée - SORCA)
	1700	(entered in the register of the Economic and Social Institute of Small Firms and Trades)
France	3000 to 12 000	(official estimates)
United Kingdom	4100	(registered with the Crafts Advisory Committee)
Ireland	1100 to 1200	(estimate of the Crafts Council of Ireland)
	8000	(including rural and part-time craftsmen such as knitters and basket-makers)
Luxembourg	220	(Chamber of Trades)
Netherlands	750	(Entered in Commercial Register)

Although we have no statistics for Italy and the Federal Republic of Germany, we can nevertheless look at the movement in the number of craft firms in general in order to see the trend.

In Italy the number of firms has continually increased; over fifteen years, from 1958 to 1973, the annual growth was about 5%.

In the Federal Republic of Germany, by contrast, the number of firms has steadily diminished since the last war.

In order to understand these figures one must bear in mind that the legal definitions and status vary greatly from one country to another.

However - and although statistics do not yet confirm this - certain observations make it probable that the number of artist-craftsmen is on the increase.

c) Workers employed

For the craft sector labour is a more important factor than capital. It would therefore have been interesting to know whether craftsmen employ subordinate workers and, if so, the origin of this workforce - whether it originates from the craftsman's own family or from outside (employees, apprentices) and whether it is predominantly male or female. We were unable to find any statistics on this point.

In Italy 75% of the workers in craft firms as a whole are male.

In a more general way, the authorities in certain Community countries, like Italy and France, consider that craft firms offer a future outlet for placing labour which cannot find the characteristics and conditions peculiar to craft work in the industrial sector.

These incomplete and fragmentary statistics are not sufficient to permit useful comparisons to be made, such as:

a. the size of the population engaged in craft activities (craftsmen, members of their families, employees, apprentices) in relation to the working population as a whole. In France the craft sector in general represents 2 million persons, or 10% of the working population. In the Federal Republic of Germany 4 275 000 persons were engaged in craft activities at the end of 1975.

With the present state of our information, the absence of data - for some countries we do not even have approximate data - makes it impossible to make comparisons with regard to artistic and craft professions.

b. The size of the artistic and creative craft sector in relation to the craft sector in general, in numbers of craftsmen and numbers of firms.

c. The proportion of artist-craftsmen working on their own.

In France the figure is 40% for craftsmen in general and according to the Chamber of French Artists and Craft Professions 50% of creative workshops and studios belong to craftsmen working alone or with their spouse.

In Belgium the proportion was as high as 85%, according to the 1971 survey of artistic and craft activities.

In the Netherlands it is estimated that the majority of artist-craftsmen work on their own.

d. The average number of persons employed in a creative craft firm.

In France the rate is 2.7 for crafts in general. According to the Chamber of French Artistic and Craft Professions, 80% of creative workshops and studios employ less than five persons.

In the Federal Republic of Germany the average size of craft firms in general has risen: it was only 3.6 in 1949 but is now 7.9 employees.

d) Principal profession and number of professions carried on

It would be interesting, from the point of view of refining the analysis and getting a better knowledge of the craft world, to know the extent to which craftsmen pursue a single or several creative trades or whether their craft activity is a subsidiary occupation or indeed merely a pastime carried on in conjunction with another profession.

The 1971 survey on artist-craftsmen in Belgium revealed that over 60% of artist-craftsmen carry on more than one profession, these professions usually being connected - either by subject matter or by sector (e.g. pottery and sculpture). In addition, the survey showed that 56% of craftsmen are professionals who devote the major part of their time to the pursuit of a craft and that 25% of craftsmen combine their craft activity with the pursuit of a principal profession.

Of course one cannot generalize from the results of this survey, which was confined to Belgium, but the question could usefully be put to all the countries in the Community.

It should also be realized that a craft trade pursued as a second occupation or as a leisure activity can be a powerful remedy for the problems faced by our society of today, for example the increase in leisure time and the bringing forward of retirement age, the conditioning of work, and city life, which can be a source of mental and physical misery. Craftsmanship can "reveal the human being to himself, by giving him his gifts of imagination, his power to dream, his feeling for the senses, for the tactile, his love of matter, forms and colours, the pleasures of participating in the existence of natural forces, of which society has too often deprived him".(1)

e) Internal changes within the crafts sector

The development which one can assume to have taken place from statistics on the working population involved and the number of enterprises in existence cannot hide the fact that there have also been changes in the structure of the crafts sector. Not only is there a continuing renewal of firms through the creation of new ones and the disappearance of old, but some activities are contracting or declining owing to the development of techniques or changes in needs while others are expanding. Important changes are taking place in the actual content of activities owing to changes in the materials and methods used, the migration of customers and variations in the nature of consumer demand.

Although the craft or trade registers enable us to ascertain the changes represented by the creation or disappearance of craft firms, changes in activities by contrast are never officially declared.

In the United Kingdom it appears from the data that have been collected that the number of potters and to a lesser extent the number of craftsmen in glass (stained glass) has increased significantly, as has the number of textile craftsmen (knitting, in particular). On the other hand bookbinding, furniture-making and wrought iron working are on the decline.

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(1) André Parinaud, CREAR le mot de la foi (CREAR, the word of faith). (CREAR is a body set up in France with State assistance which gives creative people and the public at large an initiation into the plastic and applied arts.)

f) Geographical movement of craftsmen

As well as the change in the number of craftsmen, an alteration is also taking place in their distribution over the whole of each of the Member States in the Community.

In some countries movements of craftsmen follow movements of population, though with a certain time-lag; this is to be expected, since it is the population as a whole that forms their clientele.

Within a given region the density of craft firms in relation to the population is often lower in urban than in rural districts. Thus in France the density of craftsmen is lower in the north and distinctly higher in Provence-Côte d'Azur.

However, there has been a tendency recently for craftsmen to settle at the edges of conurbations.

3 - Cultural context

The creative person puts into the conception of his work cultural values transmitted by his environment and his own personality. The medium chosen, the methods used, the forms and colours selected, indeed even the price put upon the work, are all reflections of each craftsman's own culture.

Creativity is the essential feature of the products of craftsmen.

In general, it is not the aim of the creative craftsman to obtain the maximum possible profit from his work, for his products are designed above all for his own satisfaction.

The degree of the craftsman's personal participation in the making of his products varies according to whether these are produced as single works, in small batches or whether he simply designs for industry.

Crafts thus represent an activity of transforming materials where creativeness and culture are expressed through the medium of an object which in this way becomes personalized and differentiated.

But for the true craftsman tradition, which is the unceasing renewal of forms and materials, to survive, the creative mission of the craft professions must be encouraged and helped with appropriate economic and social measures in all the countries where they do not yet exist.

4 - Concerns of the creative craftsman

The measures demanded by craftsmen are either economic, in order to provide a better guarantee of freedom in their creative mission (financial and technical State aid and tax legislation which takes account of their special situation), or educational, in order to secure better training for craftsmen and education of the public, or commercial, in order to make their products better known (grouping for marketing purposes, exhibitions, labelling, etc).

But they also stress their desire to develop closer relations with architects, interior decorators and manufacturers, who often fail to recognize their possibilities.

In fact, a workshop or studio is a prodigious laboratory of ideas, most of which are technically feasible.

The creative craftsman first concentrates on experimenting with the use of new raw materials, new technical processes or special designs for architecture, town planning or industry. But often "industrial cribbing" takes place; collaboration between creative craftsman and industry is all too often confined to the latter "borrowing" the imaginative force of the former. The creative craftsman therefore needs to be protected against copying by manufacturers by simple and effective legislation which is easy for the craftsman, who often has no legal service or advice immediately accessible at his place of work, to make use of.

But better than a mere defence against industry, there should be genuine collaboration between creators and manufacturers within the framework of a European legislation in which the major principles governing the protection of creative works, the rights of creators, and contracts of publication would be laid down. These principles would bring the relations between craftsmen and manufacturers back into balance, as was done through the French law of 1957 in which a body of general provisions was enacted in connexion with the contract of publication, regulating the principles governing the relations between artist and publisher.

The plastic forms and combinations renewed through the craftsman's small-scale production accustom the public to a new and bolder vision. Industry, ceasing to support "average taste", which is often close to bad taste, could propose designs of a high aesthetic standard which at the same time would be commercially viable. Examples of collaboration between artist-craftsman and industry are not lacking. One of the best known is that of the craftsman-sculptor Bertoia who, thanks to the confidence reposed in him and the technical facilities accorded him by the manufacturer Hans Knoll, created for Knoll the famous shell chair which had a worldwide success.

In the Scandinavian countries, where decorative art plays an important part in everyday life, experience with experimental workshops made available to artists and creative craftsmen (1) have proved that a certain form of mass-produced craft product could attract a wide public while retaining its profound qualities.

It would be in the interest of the industrial designers themselves not to be content with "being inspired by" ideas of creative craftsmen but to work in collaboration with them.

As Jacques Anquetil remarks (2), "So one could say that all the creative professions would thus occupy a hinge position between artist and industrial designer ... " This hinge position between development and tradition is summed up in this sentence of André Siegfried: "The most advanced technology continually draws fresh life from the springs of craftsmanship".

There thus emerges, at the end of this chapter, the need for effective protection for the works of the artist-craftsman and the obligation to renounce all legal distinctions or frontiers imposed by reference to mode of design, fabrication or purpose of the object or model. In fact, the desired collaboration, for the greater benefit of the public, between craftsman and industry passes creation from one to the other, making partners of all the participants in this enterprise (fabrication and marketing). The interests of the creative craftsman and of the manufacturer are then joined in the contract of publication, which can only be based on real and effective protection rights, taking effect as near as possible to the date of creation and applying to the normal sales of such industrial products.

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(1) In Denmark, Den Permanente; in Sweden, Ateliers Gustavsberg; in Norway, a craft workshop equipped by manufacturers.

(2) Bulletin of the Maison des Métiers d'Art Français, No 8 - July to September 1969.

So, at a time when the personalization of needs is beginning to take precedence over purely quantitative ideas, when for economic reasons products of long life and good quality are being advocated, when an attempt is being made to upgrade the status of manual work and the accent is on the quality of life (rather than on increasing the volume of the gross national product), the artistic and creative craftsman holds some trump cards that he can play with better chances of success than other sectors of the Community economy; it is a necessary precondition for this, however, that his works should enjoy the rights granted by the Treaty of Rome with regard to the free movement of goods, which will entail the simplification of administrative formalities hampering their free exchange and their uniform protection against theft, plagiarism and fraudulent copying over all Community territory.

These priority measures appear in the Commission's work programme under the heading of application of the Treaty to the cultural sector and concrete proposals are due to be drawn up in the near future. This is the objective which the second part of this study, dealing with the protection of the works of artist-craftsmen, has been designed to meet.

PART TWO

Protection of the works of craftsmen

Chapter V

Subject matter to be protected: applied arts and designs and models

In order to organize the protection of the artist-craftsman it is necessary first to deal with the concepts of "applied art" and "designs and models".

Although there are wide conceptual divergences about the frontiers dividing the various sorts of design, we shall attempt to describe and define these notions in relation to the notion of the artist-craftsman.

1 - The artist-craftsman and applied arts

a) Definition of applied arts

The term is not defined in any copyright legislation, although applied arts are specifically mentioned in all copyright laws among the works to be protected.

Listed among works of the mind, works of industrially applied art differ from graphic and plastic works in that they are not wholly "gratuitous", that is to say they do not express only the artist's message; they also have a utilitarian aspect.

The laws of France, Luxembourg and Germany speak of a "work of applied art" without further description while those of Belgium and Italy add the qualification "industrial". Dutch legislation speaks of "industrial designs and models" alongside works of applied art.

Only English and Irish legislation is precise. English law protects "works of artistic craftsmanship" and Irish law protects "artistic works attributable to craftsmen". As for Danish legislation, the description it gives is so detailed as to constitute

a definition in itself, speaking as it does of "original artistic works intended to serve as models for works of art with an industrial application or works of artistic craftsmanship, together with the objects produced with the aid of these models, whether made as a single object or in a larger number of copies".

b) Relationship with the artist-craftsman

There is no doubt that all these copyright laws expressly cover the works of craftsmen; these works, by their nature, fit perfectly into the category of artistic works, whereas it is more difficult to say a priori whether they also fall into the category of designs and models.

2 - Definition of designs and models

With regard to designs and models, the laws of the various countries are in agreement in including therein all ornamental creations of form executed on a flat surface (designs) or in three dimensions (models).

But once we get beyond this very general concept the divergences reappear: should protection be limited solely to industrial designs and models, i.e. should attention be given only to the purposes or use of the created work? Does ornamental character differ from artistic character? Is it necessary to take account not only of the precise outline of the object but also of its colour, type and external appearance?

Although the majority of Community countries, with the exception of France which rigorously applies the principle of the unity of art, give protection only under the heading of designs and models to created works of an industrial character, each country has applied a demarcation which modifies the very notion of designs and models - which cannot, therefore, be homogeneous for the whole of the Community. Legislation, or in its absence legal theory or case law, have taken up positions on what should be understood by "industrial", particularly since it is very difficult to say where art starts and finishes as far as utilitarian objects are concerned.

a) Laws of the Community countries

France

The French notion of designs and models is as wide as possible: it covers any arrangement of lines or colours capable of producing an aesthetic effect whatever the means of execution, and any apparent external effect capable of creating a visual impression. Thus designs obtained by weaving, printing, embroidery, lace-work, pleating, and external effects obtained by the weave of fabrics are protected even if applied to an everyday object. This interpretation is very favourable to craftsmen.

However, although there only has to be an intellectual act of creation, this must have a concrete nature, there must be specific form - and this excludes abstract ideas as well as types, styles and fashions.

Federal Republic of Germany

The Federal German notion of designs and models is not unlike that of French law: it includes designs proper (graphic combinations or combinations of colours on flat surfaces) and shapes intended for industrial reproduction ("industrial" in the broad sense, i.e. including craft products) and aesthetic reproduction ("aesthetic" in the sense of capable of impressing the sense of taste - in contrast to utilitarian models which are concerned with the technical or utilitarian effect of an object).

The industrial objects which may be protected under the heading of designs and models do not necessarily have to have a utilitarian purpose: it is sufficient for them to have only an ornamental purpose. In the final analysis, the requirement that the object should have an industrial nature is not very important.

On the other hand, German legislation is stricter than French on the subject of external appearance: this must be indicated by precise lines or outlines.

But, as in France, both original designs or models (applicable to an industrial object) and designs or models which have taken shape in industrial objects executed from the original are protected.

Italy

A precise definition of "ornamental" designs and models is given in the legislation (1):

"every new design or model which is such as to confer on a given industrial product a special ornamentation, either by form or by a particular combination of lines, colours or other elements".

Despite certain similarities (protection attaches only to the external appearance or shape of the product; the work created must be concrete and directly perceptible by the public; the ornamental aspect is understood in the broad sense, covering simple geometric lines, combinations of colours and special effects, even in the matter of fabrics), the attitude taken by Italian law is extremely narrow because, firstly, works of applied art are excluded from the realm of ornamental designs and models since the artistic element can be detached from the industrial product with which it is associated and, secondly, all designs dictated by functional needs can be protected only as utilitarian designs.

The ornamental design or model implies a certain aesthetic value but this should not be confused with artistic value. The aesthetic element is at a lower level, but its existence must be appreciated.

Benelux

Article 1 of the uniform law gives a concise definition of designs and models:

"The novel aspect of a product with a utilitarian function may be protected as a design or model".

It should be noted that the legislators have intentionally dropped the qualification "industrial" in connexion with designs and models to show that they intend to protect all creations of forms, including those of craftsmen, whatever the method of fabrication, provided they relate to utilitarian objects.

Moreover, this definition refers to the concrete nature which the work must possess.

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(1) Article 5 (1) of the decree of 25 August 1940.

Here it is not the design or model, in itself capable of being used for all applications (conceptions of applied art) that is protected but the actual appearance of the product in two or three dimensions (apparent design, external appearance, models) to the exclusion of ideas, types, style or fashion.

Designs can be protected only if they contribute to changing the appearance of a given object, giving it a particular and novel appearance.

Finally, the object must have some utilitarian function in the broad sense; however, this condition limits protection and excludes purely ornamental objects (they are covered by the copyright law only to the extent that they contain an artistic element).

This should be distinguished from the utilitarian model, in that forms or shapes indispensable to obtaining of a technical effect are formally excluded.

United Kingdom

The designs protected by the Registered Designs Act of 1949 are "features of shape, configuration, pattern or ornament applied to an article by any industrial process or means, being features which, in the finished article, appeal to and are judged solely by the eye".

This term does not include "a method or principle of construction or features of shape or configuration which are dictated solely by the function [of the article]".

It is expressly stated that to be registrable the design must be applicable to a manufactured article or set of articles.

In addition, a Board of Trade regulation has expressly excluded from registration designs relating to the following articles:

" a. works of sculpture other than moulds or models intended to be reproduced by an industrial process;

b. wall plaques and medals;

c. printed matter with a mainly literary or artistic character, including book covers, calendars, certificates, coupons, dress-making patterns, geographical maps, plans, postcards, postage stamps, advertisements, commercial forms, tickets, etc."

b) International conventions

Neither the Berne Convention, which mentions "works of applied art" in Article 2 (1) and (5) together with designs and models, nor the Universal Copyright Convention have defined the works protected by their provisions. Nor has the Paris Convention (on industrial property), which mentions only designs and models (Article 1 (2)).

This means, of course, that no differentiation is made in these texts between works of applied art and designs and models.

As in 1925 and 1934, the delegates who revised the Hague Agreement on the international registration of designs in 1960 forbore to give a definition of the designs admissible to benefit from international registration, no doubt fearing that they would be unable to overcome the diversity of national conceptions.

3 - Relationship between the artist-craftsman and designs and models

Apart from its precise legal use where it covers an area close to that of artistic creation, "applied art" is a term which does not always cover the same concept.

Whereas in France it embraces all industrial designs and models without distinction, in other countries it leads to discrimination between ornamental works: in such cases the only works regarded as applied art are those possessing a sufficiently marked artistic character to be classed as artistic property. Designs and models as such, on the other hand, are excluded by reason of their specifically industrial nature and fall into a separate category.

The notion of applied art is interpreted differently in different countries and is therefore not a homogeneous concept.

"Applied art" and "decorative art", terms which were in vogue at the beginning of the present century, run counter to the industrial aesthetic which had its origin in the Bauhaus and especially in one of its most developed forms, functionalism.

These movements believed that all decoration was wrong since in their view the most rational form was also the most beautiful. In industrial design the conception of a new design is understood as the search for internal and external coherence to make it a "technical being" whose cultural content is indissolubly bound up with its technical content.

The expression "applied design" in connexion with an industrial article or "applied art" in connexion with industry is based on the view that the task of the designer is to apply a design to an already existing product. But this view has now been rejected by industrial designers, who consider that "the creation of the design or model implies to a large extent an overall judgment of the form of the article from the technical, aesthetic and commercial point of view without it being possible to distinguish from this any special application of the design to a product" (1).

Designs and models indisputably cover the field of industrial design.

However, the definition of designs and models given in the United Kingdom suggests that a system as rigid as this must be based on out-dated considerations. As J.W. Miles pointed out in 1949 (2): "Art in industry has become very important and will become more and more so in future. Unless one uses a highly artificial legal concept, it is not possible to separate pure art from industrially applied art and the application of this theoretical separation principle has never been satisfactory in practice. In some industries, for example ceramics, the artificial nature of this legal principle can be easily seen. In that industry the manufacturer is very often an artist as well and his work is both industrial and artistic.

It is necessary to act in accordance with what exists in the industrial world of today and recast the law to make it serve industry instead of forcing industry to accommodate itself to a law that is ineffective and based on a principle that is almost impossible to put into practice."

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(1) Professor Ljungmann - Report on behalf of the Nordic Group to the meeting in Salzburg of the Executive Committee of AIPPI (Association Internationale pour la Protection de la Propriété Industrielle) - Yearbook 1964 II, page 91.

(2) J.W. Miles, "The Protection of Industrially Applied Works of Art in British Law", Industrial Property 1949, page 148.

Moreover, it does not seem absolutely necessary at this stage to establish a precise demarcation or to define the subject matter to be protected other than by reference to the notion of the activities of the artist-craftsman.

It will be readily understood that the creator of a work of pure art will have an interest in claiming the specific protection accorded to designs and models if a reproduction of a painting of his is used to decorate a wallpaper, a fabric or a tapestry. Similarly, a craftsman designing and making vases or jewellery may receive an offer from a manufacturer to mass-produce the article and will then wish to benefit from the specific legislation.

To this extent and for this purpose, it would seem logical to treat this artist and this craftsman as though they had created and executed a design or model intended right from the beginning for the decoration of utilitarian objects.

Although there is no doubt that the artist-craftsman producing applied art is well protected by copyright legislation, it may be asked to what extent the protection of industrial designs and models, which covers mainly the field of industrial design, may also affect the artist-craftsman. This question arises again if applied arts are also protected by the specific legislation on designs and models; it will be examined in Chapter VII.

4 - Avoiding confusion between the artist-craftsman, the interior decorator and the industrial designer

Within the field of work described by the terms "applied art" and "industrial design" there are corresponding creative professions such as interior decorator, model-designer, designer, interior designer and industrial designer.

To avoid possible confusion with the artist-craftsman, whose legal, economic and social position we have tried to place in the first part of this study, we shall define the role and function of each of the creative categories listed above.

a) Interior decorators and interior designers

The profession of interior decorator belongs to the applied arts. The interior decorator plans and executes (or directs the execution of) everything to do with décor, whether it be for the theatre, the cinema, the interior architecture of houses, flats, commercial properties or public buildings. Not only is he a creator, an expert on techniques and materials; he must also be able to translate the wishes of his clients into reality.

The interior designer chooses furniture, colour schemes, materials and objects, in fact everything connected with the environment for living going beyond pure ornament, in a necessary collaboration with the architect, who is the principal. This entails thorough familiarity with trades and materials, since there has to be co-ordination of the activities of a great many different tradesmen if even the most modest scheme is to be executed.

Possession of a particular craft skill may be the starting-point for subsequent entry into a commercial firm of interior decorators and furnishers, to work first as a member of a team and later as a decorator or designer, or alternatively for entry into an architectural practice as an assistant designer.

b) Model-designers, designers and industrial designers

The objects produced by manufacturing industry not only meet utilitarian functions but may also have aesthetic qualities. In the case of the industrially manufactured article everything is decided at the outset at the design stage, whereas in the case of the hand-made, craftsman-produced article the design may change in the course of execution.

The designer is not concerned, in creating his design, with purely functional aspects: these are the affair of the engineer. The designer is concerned solely with the arrangement and shape of the component elements in space and time, in other words with their configuration.

For this reason the designer is situated at a cross-roads: he receives the work of the engineer, who supplies him with the purely functional details, and must pass it on in a state in which it will meet the needs of the users, the customers, and - since we are speaking of mass-production - this must be done through the medium of specialists in marketing and publicity. Lastly, he depends on the head of the firm who lays down the policy to be pursued.

Industrial design thus presupposes forms that are shorn of all ornamentation and meet the demands of standardization. This calls for economy of materials and methods, an object that is convenient to use, unity of appearance and function, and a search for the best shape.

But the differences between the designer and the craftsman should not be exaggerated.

Thus in Italy a type of design that has been very successful over the past fifteen years, thanks to the country's economic and industrial growth, has been the achievement of architects and designers working in the manner of artists. They sign all the designs they produce and when they make a "de-luxe" design, produced in limited numbers and sold at a high price, which is a source of prestige more than anything else to the manufacturer in comparison with his mass-produced designs, this design is much more like an art object than it is like a manufactured object, mass-produced mechanically. Today there is even a type of "anti-design", which consists in the fabrication of "anti-objects", which are of no use and which act as a criticism of mass-production and the functional object. This is the case with the furniture designed by Mendini and made by the Cassina furniture company, which is exhibited and sold in an art gallery in Milan.

The "de-luxe design" and the "anti-design" are closer to the concerns of the artist-craftsman than of the industrial designer.

Without undertaking an exhaustive examination of the comparative law on designs and models and artistic property in the nine EEC Member States, we shall examine the doctrinal positions of each which affect the fundamental principles of the protection of the works of artist-craftsmen.

In all Community countries the products of artist-craftsmen fall into the category of applied arts and are protected under this heading by copyright law and the international conventions on literary and artistic property. We shall examine under what precise conditions this takes place in the following chapter (Chapter VI).

After that we shall examine the extent to which such works may also be protected under the heading of designs and models, which will entail a study of the relationship between copyright legislation and specific legislation on designs and models (Chapter VII).

We shall then review the fundamental conditions for any protection in this sphere, namely originality and novelty (Chapter VIII), the necessity for prior registration (Chapter IX), and the duration and scope of protection (Chapter X).

Finally, we shall study the types of international protection available to the artist-craftsman (Chapter XI).

Chapter VI

Protection of works of artist-craftsmen by copyright law

1 - Applied arts and national copyright laws

In the Federal Republic of Germany, Article 2 of the copyright law of 9 September 1965 lists the types of work protected, which include:

4) ..... works .... of applied art.

In Belgium, the law of 22 March 1886 on copyright contains a Section 4 entitled "Copyright on plastic works" which stipulates in Article 21 that "the industrially applied work of art shall be subject to the provisions of the present law in the same way as the work of art reproduced by industrial processes".

In Denmark the law of 31 May 1961 on copyright in literary and artistic works expressly designates, in Article 1, "applied arts" among the artistic works enjoying copyright protection.

France, in its law of 11 March 1957 on literary and artistic property, expressly mentions, in Article 3, "applied arts" among works of the mind benefiting from the provisions of the law, without discrimination or restriction of any kind.

In Ireland the law of 20 May 1927 (amended in 1928, 1929 and 1957), which deals with the protection of authors' rights in its Article 177, states that the expression "artistic work" shall cover "artistic works attributable to craftsmen".

But the same law contains provisions relating to registered designs.

Article 172 governs the overlapping of different parts of the law on copyright and designs and models.

In Italy Article 1 of the copyright law enacted by royal decree of 22 April 1941 lists the types of work protected, which include in particular works of art "with industrial application, provided that their artistic value can be distinguished from the industrial nature of the product with which they are associated".

In Luxembourg Article 1 of the copyright law of 29 March 1972 states that the term "artistic work" shall cover "works of applied art".

In Article 4 the length of time works of applied art enjoy protection is fixed as 50 years from the time of their execution.

Article 20 states again that the industrially applied work of art shall be subject to the provisions of the present law.

In the Netherlands the copyright law of 23 September 1912, most recently amended by the law of 27 October 1972, lists in Section 3, "Works protected by copyright", Article 10, under the works protected by the law:
..... 10) works of applied art and industrial designs and models.

In the United Kingdom the Copyright Act of 5 November 1956 states in Section 3 which is entitled "Copyright in artistic works" that the term "artistic work" also includes "works of artistic craftsmanship".

So we find that the laws of most of the Member States of the Community expressly mention works of applied art among works capable of being protected by copyright (Germany, Belgium, Denmark, France, Italy, Luxembourg, the Netherlands) or, more directly, works of craftsmanship (Denmark, Ireland, the United Kingdom). Some countries' laws also mention industrial designs and models (the Netherlands and, to a certain extent, Belgium, Denmark and Ireland). Works of applied art are protected by copyright under the same conditions as other works of the mind, except in Italy where there is a proviso: their artistic value must be distinct from the industrial nature of the product with which they are associated; and in Luxembourg, where the duration of protection is limited to a period of 50 years commencing from the date of execution.

2 - Fundamental principles of protection of works by copyright

The right to protection comes into being with the creation of the work, not with its registration. Under copyright law the work is protected from the moment it is created without necessity for the formality of registration. The fact that a work has been created and the date of creation are established by all the means of proof of common law. Only the author is in a position to disclose his work and to make it public.

a) Duration of protection

Copyright subsists for the whole of the author's lifetime and for 50 years after his death for the benefit of his heirs and assigns. In Germany the period has been extended to 70 years.

In Luxembourg (Article 4), for "industrially applied works of art", the duration of protection is 50 years, but from the time of execution, which reduces the duration in relation to the common system of copyright.

b) Moral rights

The effects of copyright law cover not only pecuniary rights but also the "moral rights" of the author. As far as works of applied art are concerned, these rights consist mainly in respect for the work created and for the name of the author. They are not limited in time and are not alienable or transferable.

c) Persons protected

The property rights in a work belong to the author of the work, a natural person.

They may be recognized as belonging to a legal person for whom the author executed his work or to whom he assigned it after creation.

The right of reproduction is transferable, alienable and transmissible by succession in whole or in part.

d) Conditions of protection

Copyright laws grant the author an exclusive right only on condition that he has created an original work.

Originality is the result of intellectual and personal effort, in contrast to novelty which is a question of fact.

Neither the purpose of a work nor its use can be a bar to its protection.

However, some legislations, such as the Dutch, add the condition of novelty.

These conditions are applied more strictly or less so according to country.

e) Infringement

Copyright laws forbid any multiplication or reproduction of a work without the author's consent.

Only the author or copyright holder may reproduce a work or authorize its reproduction.

The corollary of the exclusive right of reproduction is the right to proceed against the third parties mainly responsible for the infringement.

Infringement presupposes damage to the author's rights.

Whether such damage is deemed to have been inflicted will depend to a large extent on the sovereign discretion of the courts.

Only total or partial reproduction of the work is forbidden; imitation of the type or genre is not.

Judging resemblance is a particularly difficult matter in the realm of forms.

Criteria on infringement vary from country to country and sometimes from court to court. But the criterion of confusion is often used in this connexion. It is not sufficient to alter a detail in a work to avoid an action for infringement.

The author whose copyright has been infringed may take action in the civil courts and obtain damages. He may also take the matter up in the criminal courts.

3 - Advantages and difficulties in protection of the works of artist-craftsmen by copyright

The advantages of the system of protection through copyright law are considerable: they are the result of the simplicity of implementation of protection, since no formalities have to be gone through, and of strictness of principles, an original work giving its creator a monopoly of exploitation forbidding any reproduction without his permission during his lifetime and for 50 years after his death.

But in practice not much use is made of copyright protection by craftsmen, often for lack of time or knowledge or because they have insufficient legal or financial resources.

The nature of certain activities means that a considerable number of designs are turned out, inspired by a fashion or a style lasting sometimes only for a single season. Because of this incessant renewal and the extremely short time during which these designs can be exploited, copying and imitation do not cause real damage, particularly since some designs are concomitant and come from the same creative teams.

Imitations are often numerous, difficult to prove and not such as to constitute infringement.

For craftsmen legal proceedings are complicated, difficult to set in motion and costly, not to mention the inevitable slowness in the workings of the law.

For this reason one cannot overestimate the need to encourage professional associations of craftsmen which alone are in a position, through the pooling of resources, to defend their members more effectively and to institute proceedings on matters of principle if need be.

In addition, encouragement should be given to professional or inter-professional arbitration committees which are in a position to deal with disputes rapidly and to settle differences amicably. If the dispute cannot be settled, these bodies can then bring the matter before the courts with full knowledge of the facts.

At Community level, differences in the principles of protection and in the laws greatly complicate the situation for craftsmen and it is clear that harmonized provisions on applied art and on crafts in each country's copyright laws would help to facilitate and increase the protection of works of artist-craftsmen in the Community as a whole and thus encourage trade between Member States. For craftsmen are very hesitant about exporting to other Community countries, not sure of being able to defend themselves successfully against theft and copying of their works, since each country, apart from the principles imposed by the international conventions, reserves the right to have special provisions which will be interpreted and applied freely by that country's courts.

Moreover, when the infringement is committed by manufacturers who may take over the ideas and experiments of artist-craftsmen in application of the provisions of specific legislation on designs and models, we are up against the more general problem of the relationship between these laws, which were drafted under the aspect of industrial property, and copyright laws.

So any harmonization of the provisions of copyright law relating to artist-craftsmen and applied art implies complete concordance with the specific laws on designs and models and, a fortiori, with any Community harmonization or legislation that may be implemented in this field of industrial property.

4 - Should the specific laws on industrial designs and models be repealed?

Belgian experience, gained from the system preceding (1) the Benelux law on designs and models which came into force on 1 January 1975, had proved that by making all designs and models and all forms subject to copyright law, with optional registration and taking the French thesis of the unity of art to its extreme, i.e. by repealing all specific legislation on designs and models, one arrived at an impasse. One can even consider that it is the artist who is damaged by this extreme extension of copyright.

It is the same with the Dutch experience before the introduction of the Benelux law on designs and models; here there was no specific legislation on designs and models. The copyright law (23 September 1912) protected only an insufficient number of designs and models.

In fact, the two systems founded on principles derived from two systems of protection and thought, artistic property and industrial property, meet two different needs. Where there is no specific law on designs and models, the remark of V. de Sanctis is amply justified: "The protection afforded by copyright is inappropriate for quantities of mass-produced works which are more technical than artistic in character and whose author is often not known".

This situation even leads to a breach of the principles of copyright or the conditions of protection for works of pure art.

In Belgium, in order to comply with the law of 1935 and give copyright protection to all designs and models, their artistic character was no longer distinguished and not even the "fragment of art" demanded by the previous system was required.

In the Netherlands the courts had to decide whether plastic works contained the necessary artistic element and they often called experts to help them. The principle that emerged was that the creator had to have executed a work the creation and execution of which presupposed the possession of a skill superior to the normal technical skills of a professional. One can imagine the complications caused by such principles.

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(1) Royal decree of 29 January 1935, confirmed by the law of 4 May 1936

Some provisions of the laws on designs and models are more favourable than those of copyright law. For example, registration confers on the holder a presumption of ownership.

Consequently it is in the interest of the author that the two sets of laws should be maintained in parallel, "for the principle of the unity of art has precisely the consequence of enabling those involved to make use of both systems, to combine the rules of one and the rules of the other which are the most advantageous to them" (1).

It will therefore be interesting to examine how each country has arranged the relationship between the two alternative protection systems.

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(1) Professor Desbois, Le Droit d'Auteur en France (Copyright in France). Dalloz 1966

Chapter VII

Relationship between the copyright system of protection and the industrial property system of protection (designs and models)

1 - Countries where there is no overlap: Italy

Italy, which has both special laws on literary and artistic property and a specific system of protection for designs and models, is one of the only countries in the Community where there is no overlapping of the two protection systems owing to the strictly dualist conception of art.

1/ The copyright law of 22 April 1941 expressly protects industrially applied works of art but only to the extent that their artistic value can be distinguished from the industrial character of the product with which they are associated (Article 2 (4)). The artistic work must be able to preserve its value in relation to the industrial character of the object in which it is incorporated. This thus implies the existence of divisibility between the work of art and the material elements of the industrial product. If the artistic element is inherent in the object to such an extent that it cannot be envisaged in isolation, the work can enjoy the protection only of the specific law on designs and models.

2/ The royal decree of 25 August 1940 relating to "patents of industrial designs" protects both ornamental designs of an industrial character and utilitarian designs, in other words everything which, affecting the form or appearance of objects, is capable of influencing the value of an industrial product, either from the functional point of view by improving convenience in use or from the aesthetic point of view by making the object more pleasant to look at.

The utilitarian design, which is to some extent a second class of invention, influences and draws in its wake ornamental designs and models by reason of the similar protection system to which the legislators have made them subject. It should be pointed out that applications may be filed for both forms of protection (simultaneous application) in cases where various elements (technical and ornamental) coexist within the same object, but in two separate titles (cumulation by addition).

3/ System of no overlap

But these systems of protection remain strictly separate. The system of no overlap in its strictest interpretation is formally enshrined in the law itself (Article 5 (2) of the decree of 25 August 1940).

There is rigid compartmentalization and in no case may the two sets of legislation overlap or be superimposed one on another.

This system is based on the fundamental distinction between ornamental designs and models on the one hand and industrially applied works of art on the other, the demarcation line being determined by the criterion laid down by the legislators themselves: the possibility of dissociating the creative value of the design from the industrial product to which it is applied.

4/ The criterion of "dissociation" and the difficulty of applying it in practice

For the ornamentation incorporated in a utilitarian object to qualify for the designation "artistic", there must be artistic autonomy. If this is not present, the embellished object remains in the more modest category of ornamental design or model.

As examples, the wood-carver's or the potter's works are cited; these may retain their autonomous value as artistic works even though applied to objects of everyday use.

This criterion would seem to be fairer than that of industrial purpose or of simple mechanical reproduction. Legal theory and case law have interpreted the criterion of dissociation in a purely conceptual sense, paying attention only to the possibility, in an ideal state, of conceiving of the work independently of the material elements to which it is linked, without taking account of the higher or lower artistic level of the work.

Unfortunately - and many commentators have pointed this out, even in Italy itself - the principle thus established, despite its clarity and precision, is difficult, and often uncertain to apply. In the majority of cases the autonomy of the artistic work is not as self-evident as in the case of the carved candlestick or the famous Benvenuto Cellini salt-cellar.

This criterion inevitably leads to a subjective judgment, that is to say to an examination of the value of the artistic creation of the figurative work. For once "dissociability" has been admitted in ideal conditions, it must be admitted generally. Thus in reality it is the judgment of the degree of artistic value of the work that in the end determines "dissociability".

Under these circumstances, case law can proceed only by trial and error, to the detriment of a coherent system of protection for created forms.

A legislative recasting of this system has been suggested on several occasions. Some authors have recommended complete abandonment of this complex and inapplicable distinction in favour, usually, of one based on the predominance of the industrial character of the work (by intended purpose or by method of fabrication), with a change in protection from the moment the work changes character. This is similar to the British idea.

2 - Countries where the overlap of legislation is total: France

France, which is another country with a separate statute covering literary and artistic property and a specific system of protection for designs and models, is the only Community country with a really wide overlap between the two sectors.

1/ The law of 11 March 1957 on literary and artistic property gives express protection to works of applied art (Article 3) with no restriction or new condition in relation to other works of the mind.

2/ The law of 14 July 1909, protecting designs and models, itself stipulates, in Article 1, that there shall be the possibility of an overlap in protection.

3/ The law of 12 March 1952

To take account of the constraints affecting seasonal designs in the dress-making and fashion sector, a special law was enacted to reinforce existing protection.

The ephemeral character of these designs makes the system of compulsory registration particularly inappropriate. And deliberate copying of fashion designs had become systematic, so that the designers were suffering considerable damage.

However, this law applies only to the dress-making and accessories industries (dress-making, furs, underwear, embroidery, fashion, footwear, gloves, leather work, products of accessory makers and boot-makers, novelty fabrics) which frequently change the form of their products and whose work is therefore seasonal in character and also artistic, in other words it is regarded in jurisprudence as original and novel, disregarding imitations resulting from the common inspiration characterizing the designs following the fashion trends during a season. There is no requirement to register and special rules have been laid down to suppress infringement, which is more widely defined.

The law of 1952 is a supplementing law which strengthens the protection already provided by the laws of 1909 and 1957 and is superimposed on these laws without eliminating them.

4/ The system of total overlap and its advantages

Under French law the author of a design or model or of a work of applied art may either invoke several forms of protection at the same time or, if he prefers, may invoke one or other of the systems on its own. This is overlap in its widest interpretation; the same work may benefit from the advantages of each statute.

In France this system is based on a certain ideological conception of art (the theme of the unity of art) to which French law has always been very attached; it also has some not inconsiderable practical advantages.

a) Lack of registration

It corrects the possibly excessive strictness as to the obligation for prior registration to which the application of the 1909 law is subject, whereas the 1957 law provides for no prior formality of this kind. In the absence of registration, the author retains all his rights in the field of artistic property.

b) Duration of protection

There is a considerable advantage in the field of artistic property in the matter of the duration of protection (author's lifetime and 50 years thereafter). After registration has expired, the designer or his heirs may always invoke copyright law.

c) Procedure of seizure of infringing copies

Copyright law may always be invoked to use the procedure of seizure of infringing copies by simple demand and without judicial intervention.

d) Penalties for infringement

The principal penalty is thus more severe, overall, in the field of artistic property than in that of designs and models.

e) Rights of surviving spouse

There are particularly favourable provisions to the benefit of a surviving spouse in the copyright law.

5/ Application and criticisms of the theory of the unity of art

The realization that it is impossible to separate industrial art from art proper and that the line dividing these two areas could not be drawn with sufficient precision gave rise to the thesis of the

unity of art which was to become deeply entrenched in the French system.

To determine what is artistic and what is not entails, in any case, making a value judgment. The artistic nature of a work can be determined only through an aesthetic impression. And nothing could be more subjective than each person's receptiveness to the shape and appearance of external objects.

It is therefore necessary that the persons affected should be protected from the whims of the courts. For this, they must know their rights in advance and know as exactly as possible what is prohibited and what is permitted.

Although some commentators have found the theory of the unity of art debatable at the legal level, they have ultimately accepted it for practical reasons.

The system has become established because it is the one closest to practical reality. "It is the only logical attitude, given the impossibility of drawing the line between pure art and industrially applied art objectively and in the light of valid criteria," states Madam Perot-Morel.

French jurisprudence has accepted and followed this traditional principle without reservation and applies copyright law without distinction to all creations of form. Some commentators have considered this solution too absolute and not realistic. Interpretation of the two texts should not necessarily imply that the field of application of the two laws is absolutely identical. In particular, the criteria used are not the same: the law of 1909 uses the criterion of novelty whereas that of 1957 calls for aesthetic originality if a work is to qualify for protection.

We shall study these conditions as to the object's content in the next chapter but, even if there are some theoretical differences of application between the two laws, they do not really breach the thesis of the unity of the arts because the differences tend to dissolve as a result of the interpretation of novelty relating to designs and models given by current jurisprudence.

In any case it should not be forgotten that the system introduced by the law of 1909 for designs and models was intended as a special complementary system to enable them to benefit, because of their commercial purpose, from certain methods of proof which did not exist for artistic works, namely registration, which creates a presumption of ownership and which is superimposed on the common law system of artistic property.

The principle of the unity of art does not, moreover, presuppose a perfect coincidence between the systems of protection.

Although there may be abuses - and the principal one seems to be the excessively wide scope of the legislation, resulting in protection for each and every creation of form - and uncertainties, such as the field of application and the exact concordance of the two laws, there is agreement in recognizing that the system of total overlap which French law has adopted and maintains has the advantage of simplicity. It has the merit of avoiding, for distinguishing between different categories of creations of forms, criteria which are often dangerous in their subjectivity and in the possibility they give of freakish or arbitrary judgments particularly when it comes to finding the artistic element of a work.

3 - Countries where there is partially overlapping protection

A/ Federal Republic of Germany

Germany protects "applied arts" by copyright law, but these do not necessarily include designs and models (Geschmacksmuster) which are protected by specific legislation.

Thus there are likely to be tricky problems of demarcation as a result of the rather vague criteria adopted in this country.

1/ The law of 11 January 1876 on copyright in connexion with designs and models protects Geschmacksmuster, i.e. designs and models intended to be embodied in industrial objects and capable of producing an aesthetic effect by form or by colour. But when the purpose of the form is purely utilitarian and independent of any aesthetic effect (inseparability of the form and the result), protection can be obtained only through the legislation on utilitarian designs (laws of 1936, 1953 and 1961).

2/ The law of 9 September 1965 on copyright expressly protects industrially applied works of art as well as all other works which are intellectual and personal creations.

restrictive direction, putting the emphasis on the strictness that must be applied to the assessment of the artistic degree. To the idea of the independence of the artistic element detached from the utilitarian function, case law has added a reference to the view of the man with average artistic gifts and reasonable familiarity with artistic matters. The current trend seems to be for ever-increasing restrictiveness in judging works of applied art; as a result, art works benefiting from the overlap are in a minority.

B/ United Kingdom

Until 1968 British law excluded all possibility of simultaneous protection under copyright law and industrial property law; before the Copyright Act of 1911 there had been almost complete overlapping, but this was reduced by the Registered Designs Act of 1949.

British law provided a typical example of the system of no overlap in its most absolute form, based on the rigid criterion of the number of copies produced.

The Copyright Act 1956, expressly laid down the principle that the different types of protection should not overlap, by excluding any design capable of being registered when it was the subject of an industrial application and was reproduced in more than 50 copies by an industrial process.

1/ The Copyright Act of 5 November 1956, apart from protecting paintings, sculptures, drawings, photographs and works of architecture, also protects works of artistic craftsmanship, i.e. designs and works of applied art and of craftsmanship.

2/ The Registered Designs Act of 16 December 1949 protects "features of shape, configuration, pattern or ornament applied to an article by any industrial process or means, being features which in the finished article appeal to and are judged solely by the eye".

To be registrable the design must be applicable to a manufactured article or set of articles. The designs applicable to certain articles are expressly excluded from registration.

Until 1968 a design registered in this way could not be protected under copyright law whatever its artistic character. Registration as a design made any copyright protection void.

3/ The Design Copyright Act of 25 October 1968 amended the Copyright Act with retroactive effect because it applies not only to new designs but also to designs in existence at 25 October 1968.

It specifies that in future a design which is also an "artistic work", whether or not registered as a design, may also benefit from the protection given by copyright law but for a maximum period of 15 years from the date on which the articles to which the design has been applied are first sold, let for hire, or offered for sale or hire.

However, if the design corresponding to the artistic work and protected as such by copyright is applied in an industrial manner or reproduced by an industrial process (i.e. reproduced in more than 50 copies) or manufactured by the yard or by the unit other than by manual fabrication at any location whatsoever in the world, after 15 years from the date of sale or letting for hire of these articles the owner of the copyright cannot take action against third parties using and manufacturing the design although this would have been an act of infringement during the currency of the protection period of 15 years.

4/ Examination of the new direction taken

Until the time of the amendments to the rigid system of no overlap, designs could initially be protected by copyright but as soon as they were reproduced in a given number of copies (fixed at 50) they enjoyed the benefit only of the specific law on designs. Admittedly, this arbitrary system applied only to the industrial exploitation of the work designed. Protection of the design or model, as a work of art, subsisted in conformity with copyright law.

The new law of 1968 does away with this disadvantage by introducing an overlap. However, it is limited in time to a period equal to that for the specific protection of designs and models, i.e. 15 years. But the starting-point for protection is not the same: it is (compulsory) registration in the case of designs and models but sale, letting for hire or offer for sale or hire in the case of copyright.

Moreover, a limitation is placed upon copyright in that copying is allowed for all works of art the design for which is applied in an industrial manner to articles which have been sold, let for hire or offered for sale or hire for more than 15 years. However, this last disadvantage diminishes for industrial products reproducing this design which have a relatively short life.

C/ Benelux

Excessively wide protection in Belgium, ill-suited to the needs of modern industry, and a lack of specific protection which resulted in practice in favouring copying (wrongly considered a factor for economic progress) in Luxembourg and the Netherlands caused these countries to bring their laws together under the umbrella of Benelux and to establish a specific joint law on designs and models.

We shall study this legislation with interest; it is the most recent legislation in this field, it was the subject of a great deal of detailed study, and is the only example of a compromise between three Member States in the Community whose views were often divergent, ranging from excessive protectionism to a complete lack of protection. They have produced the first uniform regional law on designs and models; uniformity of interpretation will be implemented by the Benelux Court of Justice.

1/ The Belgian copyright law of 22 March 1886, the Dutch copyright law of 23 September 1912 and the Luxembourg law of 29 March 1972 expressly protect works of applied art. The system of specific protection for utilitarian designs instituted by the uniform Benelux law, as we shall see later, gives designs exhibiting a marked artistic character a partially-overlapping protection through each of the national copyright statutes.

2/ The uniform Benelux law on designs and models

The Benelux Convention on designs and models was signed in Brussels on 25 October 1966.

Between complete overlapping as practised in France and the rejection of any possibility of overlapping as applied in Italy, Benelux steers a middle course allowing partial overlap of protection by copyright law and industrial property law but under certain special conditions: in accordance with present international trends it gives a uniform minimal protection to industrial designs through specific legislation and limits the overlapping protection through copyright to designs exhibiting a marked artistic character - which should not be confused with the "artistic degree" or the "adequate artistic level" of German law.

The uniform law protects as a design or model the "novel appearance of a product with a utilitarian function".

3/ Conditions imposed if there is to be overlapping of the laws on artistic property and industrial property

a) Marked artistic character

The system of overlap, though well established, is limited. Works of industrial art are not a priori excluded from artistic property but they can lay claim to it only if they reveal an adequately artistic character.

In the case of Belgium, this requirement is justified by the necessity to get away from the lax interpretation which had been produced since 1935 by the neglect of the artistic aspect in favour of a search for a "fragment of art, poor and puny though it might be" to obtain copyright protection for any design whatsoever.

In the case of the Netherlands, the absence of specific protection for industrial designs and models had led judges to interpret the notion of artistic character more and more widely and even to do without it, retaining only the notion of originality.

The Dutch version of the uniform law speaks of clear and obvious artistic character. This condition must therefore be interpreted as follows: there must be real artistic character; this is different from the German system which speaks of degrees in artistic work. Designs without a distinctly artistic character or with nothing artistic about them cannot enjoy the benefits of artistic property.

Although the aim has been to limit divergences in the interpretation of the uniform law as far as possible, it is inevitable, since this condition has been made, that judges will seek to be stricter in assessing the artistic character that the design must have if it is to enjoy copyright protection. To benefit from the latter law the designs must be not only aesthetic but also artistic.

The unity of interpretation achieved by the Benelux Court of Justice will, it is true, enable the joint law to circumvent the national supreme courts and any divergence they may have on this point.

b) Special declaration of extension of protection by copyright

Registered designs which have a marked artistic character and therefore enjoy the benefit of the specific legislation on designs and models must, at the end of the protection period conferred by registration, be the subject of a special declaration to the Benelux Office, thus informing third parties that longer protection by copyright is being invoked by the owner of the registered design. If this is not done, the copyright expires at the same time as the protection of a design or model with a marked artistic character expires or is cancelled.

Failure to make the declaration causes the extinguishment of the copyright only on the design, not on the work of art incorporated into the utilitarian product.

This obligation to make a declaration applies only to registered models, since the model with a marked artistic character may benefit from copyright protection directly and without formalities.

To prevent the work of art being applied to a utilitarian object without the author's consent, the special declaration is obligatory only if both rights belong to the same person.

4/ Comments on the system of overlap proposed in the Benelux legislation

Faced with the divergence of the current national solutions, which range from the unity of art to prohibition of overlap, Benelux has chosen a middle way, namely partial overlap of protection systems, giving copyright protection only to designs and models exhibiting a marked artistic character.

Since no criterion for assessment has been laid down by the law, it will again be necessary to rely on the judges. Will they not have to set themselves up as artistic arbiters? Of course they are already accustomed to drawing clear and precise legal concepts from the facts, with the help of experts. Nevertheless, case law will inevitably have to draw the line between works which can be considered to have a marked artistic character and those which cannot. This gives promise of some heavy legal battles in future which will impassion judges, lawyers, experts and professors of law. But will they succeed in establishing criteria and concepts sufficiently simple and applicable to reduce the uncertainty attaching to works of this kind? However that may be, an author will have to decide whether in fact his work does exhibit this character or whether, only being able to benefit from the lesser legislative protection offered to designs and models, he is obliged to register his work in order to protect it. For, if he makes an error of judgment and wrongly assumes that his work falls into the category enjoying an overlap of protection, enabling him to dispense with all formalities, he will find himself without any protection if he fails to get the courts to recognize the "marked artistic character" of the work. What is more serious is the threat of action by an economically stronger opponent who would exploit the hazards and risks attaching to legal action to obtain by threat what he could not obtain otherwise.

To avoid such risks, and in all doubtful cases, it would be sufficient for there to be systematic registration, as designs or models, of all works meeting the conditions laid down by the specific legislation.

Where they did not exhibit the "marked artistic character", the works would in any case be protected by the specific legislation for 15 years and, after that time, it would be enough to make the special declaration of extension of protection through copyright to obtain a longer period of protection, hoping that third parties would not contest the "marked artistic character" of the work.

Those who design a small number of models or who have the resources to register systematically, may do so. The remainder, particularly the craftsmen, will not do so.

Sharp criticisms have been made by, in particular, the defenders of Dutch copyright law who have stated that the artistic degree of a work of art has never been adduced for the purpose of securing protection as artistic property and that it was superfluous to demand a marked artistic character. The Dutch Parliament even adopted an amendment to the national copyright law in 1972 to give continuous copyright protection to designs that did not have a marked artistic character within the meaning of the uniform law.

There is no doubt that this is a rearguard action, for it is clear that the Treaty takes precedence over national law. In fact, the Benelux law on designs and models unifies the condition of marked artistic character in the three national copyright laws so that they also protect designs and models, as is stated in the preamble. Although there is unification of the national laws as to their conditions of application, the uniform law leaves them to determine the effects and the scope of protection.

Similarly, it has been pointed out that the enjoyment and exercise of an artistic property right is subject to no formalities, in accordance with Article 4 (2) of the Berne Convention, and that consequently the requirement to make a declaration in order to benefit from copyright is contrary to the international conventions in force. However, the Berne Convention itself stipulates that the conditions of protection of works of applied art by copyright are governed by the national statutes; the declaration of extension may be considered as being one such condition.

5/ Analysis of the criteria for assessing "marked artistic character"

As we have seen, no criterion is laid down by law for assessing the marked artistic character of a design or model. It is difficult, if not impossible, to define art; linked with culture, it is in perpetual evolution.

The problem thus becomes one of defining the limits between the fields of protection of applied art and the industrial design. But drawing frontiers implies the existence of a no-man's-land larger or smaller according to the principles adopted for identifying what is

"applied art" and therefore protected by copyright and what is "a design or model" and therefore protected by the specific legislation on industrial property.

In the course of this chapter we have examined various criteria used in the statutes of the EEC Member States.

The criterion of the industrial purpose of the work or of mere mechanical reproduction is particularly unfair and arbitrary and should be rejected a priori.

The criterion of "dissociability" or artistic autonomy used in Italian legislation is difficult to apply and uncertain, the distinction between the work of art and the industrial character of the object in which it is incorporated being complex and impracticable.

The application in Germany of the criterion on the "adequate artistic level" to which case law has added a reference to "common conceptions existing in artistic matters" has been sharply criticized. Should public opinion be heeded in judging the artistic degree of a work? As Troller stresses, this criterion has no sense and can only result in a conservative attitude. This is why case law has evolved in the direction of referring to the judgment of the man with average gifts in the artistic field but who is sufficiently familiar with artistic matters. Judges thus end up by referring to an imaginary person chosen from a circle of equally imaginary persons.

Should one consider that the authors of the Benelux law simply wished "marked artistic character" to mean that to the extent that art is applied to products which have a utilitarian function there should be a possibility of double protection without there being any necessity to reach a high artistic level? Should designs, to be protected by copyright, be not only aesthetic but also artistic? Following Haardt's definition of artistic character, for a creative worker to exhibit an artistic effect or to satisfy the aesthetic sense, does this not mean at any rate delighting the sense of beauty and creating something harmonious?

Only the application of this new criterion and the decisions of the Benelux Court of Justice will enable these questions to be settled. But it is likely that in the future, legal doctrine, by its divergences of interpretation, will underline the inevitable difficulties resulting from the establishment of such vague frontiers between applied art and designs and models.

4 - Necessity of double protection for the artist-craftsman

What Madame Perot-Morel has written about designs and models - "situated at the crossroads between art and industry, these created works which are commonly referred to by the generic name of designs and models suffer from a hybrid status which places them between different legal categories" - could equally well be said of the works of the artist-craftsman.

The duality of the craftsman's works, which we have tried to illustrate in the first part of this study, by their very nature make it impossible to effect any separation or division between the artistic, aesthetic and utilitarian parts.

At the end of the chapter defining the artist-craftsman and his products (Chapter III) we stated that the craftsman sought to reconcile spiritual and functional needs and that between the mass-production of the industrial designer and the single work of the artist there was a place for the small-scale production of the craftsman, which should be encouraged for economic reasons (the small firm is a considerable employer of labour) and was desirable for social reasons (the quality of life and revival of the regions).

Thus by his calling the artist-craftsman is a natural link between industry and art and the necessary crossing-point between the two opposite banks of industrial property and artistic property.

If the field of industrially applied art did not exist, copyright would have no connexion with industrial property and the separation of the two might be complete.

Admittedly, the attraction of designs into the field of application of copyright or into that of industrial property has been influenced by the development of art and industry, but law is a normative science which necessarily reflects social and economic developments.

As Messrs Braun and Evrard aver, "the world is not static. In the past hundred years, particularly, the vision which artists have of art has without doubt developed even more than the technical world in which they will never cease to express themselves".

This is why the criteria for dividing work coming under copyright law from work coming under industrial property law are ineffective.

The activities of the artist-craftsman make it even more difficult to separate the field of applied art from that of industrial designs and consequently to separate the systems of protection associated with them.

It is therefore indispensable for the better protection of the works of the artist-craftsman that the overlap of laws in each of the Community countries should be properly organized. Will this entail changing the conditions as to form and content as well as the effects of such a system of protection? This question will be examined in the chapters that follow.

RELATIONSHIP BETWEEN COPYRIGHT
AND INDUSTRIAL PROPERTY
(Overlap)

	Copyright legislation	Industrial property legislation	Relationship between the two sets of legislation
Federal Republic of Germany	Law of 9 September 1965	Law of 11 January 1876	Partial overlap between works of applied art and designs and models dependent on the artistic degree of the latter
Belgium Netherlands Luxembourg	Law of 22 March 1886 Law of 23 September 1912 Law of 29 March 1972	Uniform Benelux Law. The agreement was signed in Brussels on 25 October 1966 and came into force on 1 January 1975	Partial overlap between works of applied art and designs and models with marked artistic character
Denmark	Law of 31 May 1961	Law of 27 May 1970	Partial overlap
France	Law of 11 March 1957	Law of 14 July 1909 Law of 12 March 1952 (clothing and accessories industry)	Total overlap Unity of art
United Kingdom	Copyright Act of 5 November 1956	16 December 1949 Registered Designs Act Law of 25 October 1968	Overlap limited in time (15 years)
Ireland	Law of 20 May 1927 (amended in 1928, 1929 and 1957)		No overlap
Italy	Law of 22 April 1941	Royal decree of 25 August 1940	No overlap. Criterion of "dissociation". Segregation between works of applied art and ornamental designs and models

Chapter VIII

Conditions for protection: content

1 - Novelty in industrial property law and originality in copyright law

Novelty, in industrial property law, has an objective content because it relates to antecedent events evidenced by patents and trade marks.

Originality, the condition for protection by copyright, has on the other hand a subjective content connected with the personal stamp which an author has impressed upon his work.

The following distinctions have been prepared by Mathély (1):

"A design or model is novel when its constituent elements did not exist before."

"A design or model is original when its constituent elements are the result of a creative effort by the author." Now all protection of designs or models or applied arts presupposes the taking of an attitude and the making of a choice on this question. For these concepts are the fundamental conditions for protection and justify the exclusive rights given by the law to creators for the exploitation of their works.

2 - National legislation on designs and models in connexion with the fundamental condition for protection

a) Novelty and originality in Germany

The law of 11 January 1876 on designs and models requires that these should be novel and original, without defining those requirements. As a result of the absence of a definition, commentators have given differing interpretations and this has only increased the embarrassment and uncertainty of judges.

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(1) Summary report for the Berlin congress of AIPPI (Association Internationale pour la Protection de la Propriété Industrielle), 1963

Judges have tended to adopt the notion of objective novelty in distinguishing the design or model from those which existed previously but to give it only a relative character, that is to say to limit it both territorially (to countries forming part of the same sphere of civilization) and professionally (to the commercial or business sectors involved).

Commentators, on the other hand, seem to incline towards the principle of subjective novelty, alluding to the imagination of the author who must not borrow his work from identical forms with which he is already familiar.

As for originality, this, as in French law, is the result of individual creative activity reflecting the personal effort of the author.

Case law, in assessing originality, often refers to the novel aesthetic effect, accepting that this is any novel effect capable of impressing the average buyer. But it insists that there must be creative effort, which is judged abstractly in accordance with the normal capabilities of a man of average gifts in artistic matters. The work must be truly creative but a very high degree of creative effort is not required.

In short, the concepts of originality and subjective novelty may become confused, the first embracing the second; for it is obvious that an author can create only what he has not known before.

To sum up, German law attaches more importance to originality, even if this notion is unhomogeneous and imprecise, than to a concrete search for antecedents.

- Disclosure in connexion with the law of 11 January 1876

All putting into circulation (which does not necessarily imply sale), publicity or effective use before registration destroys the novelty of the design or model from which the products are fabricated or executed.

b) Novelty in Benelux

The uniform law imposes a mandatory condition of novelty and defines its meaning and scope. The law has resolutely chosen the objective view of novelty because of the difficulties met with in agreeing on the notion of originality, which is far less precise and more difficult of interpretation.

But the uniform law states the two categories of objective circumstances which may defeat novelty:

1/ The existence of well-known antecedents

Antecedence may be deemed to be present not only when a design or model is identical but also if it has secondary differences. Any resemblance capable of creating confusion must be considered evidence of antecedence.

But, apart from this strict interpretation, novelty is relative in time (50 years preceding the date of registration) and in space because limited territorially to the Benelux countries and professionally to interested quarters (same type of industry or commerce). Above all, for antecedence to exist, the antecedent must be well known; this is purely a question of fact, to be assessed by the judge.

2/ Antecedents existing as a result of prior registration

Any registration on Benelux territory or any international registration, having been the subject of publication at any time, is capable of destroying novelty.

c) Novelty and originality in France - law of 1909 on designs and models

The text of the specific law of 1909 speaks expressly of novelty, understood in an objective manner, that is to say there must be no antecedents; this is what makes this system not reciprocal with copyright, which, as Professor Desbois stresses, considers only the personal character of execution.

In addition, novelty is absolute in the sense that the antecedents capable of being a bar to protection are not limited in time and space.

- 1957 copyright law

Novelty proper, in the sense of lack of any antecedents, is irrelevant for the purposes of artistic property. Only the personal character of execution may be considered. The mere fact of creation is sufficient to justify protection. For copyright purposes, originality is reduced to mere personal execution by the author.

- Legal theory

Nevertheless, most commentators acknowledge that in fact a design or model is never an entirely new creation, because the author is almost always inspired, whether consciously or unconsciously, by what exists already and by his environment, and does not rely solely on his imagination. The notion of novelty then takes on a relative character which tends to approach, if not to be identical with, the subjective condition of originality in copyright law.

It is then a question of determining whether the author has conferred upon the object a special appearance, whether there has been sufficient creative effort, and that makes this condition dependent largely on the judge's assessment of the facts.

- Case law

Although consistent views are not always readily discernible, there is a tendency for judges in France to give the concept of novelty such a relative interpretation that it almost merges with the concept of originality and it is from the latter notion that they deduce the true novelty of the object. Moreover, many judgments and decisions employ the two terms interchangeably.

With such an enlargement of the conception of novelty, one would expect the protection of designs and models to coincide exactly with that of copyright. But despite this liberalism and the principle of the unity of art, case law continues to accord a wider scope to the law of 1957.

Even if the notion of "novelty-originality" is stricter than under copyright law, since it calls not only for personal execution but also for a certain interpretation of the subject giving it its own special appearance, it nevertheless remains subjective, because there is no detailed comparison with antecedents but rather an assessment according to a general impression, which alone is capable of revealing the individuality of a work.

- Disclosure in connexion with the law of 1909 on designs and models

This is the explanation of why, in French law, disclosure is no bar to the registration of the object. Even if he has publicly exploited a model, the author is not thereby deprived of the right to register it later.

d) Novelty and originality in the United Kingdom

To enjoy protection under the statute of 1949 the design must be new, that is to say it must not be the same as, nor have secondary characteristics in common with, an article of any kind that has already been registered, published or made available to the public in the United Kingdom; thus it can only be original and there is no condition as to artistic value.

Nevertheless, novelty has a relative character, for it is sufficient for the design, on visual examination, to give an overall impression of novelty which a creative person could notice. It is enough for a work to be partly new or original for it to qualify for protection.

A recent court decision has established new criteria for assessing novelty. The design must be of attractive visual appearance from the point of view of a buyer. It is a question of comparing the basic form of the object which fulfils a given functional purpose and the characteristics which give it a different appearance. If the buyer's choice is guided solely by the practical aspect and the purpose which the object is intended to serve, the characteristics of the form of the object do not have visual attractiveness and cannot therefore be the subject of protection.

If the owner of the copyright of a work of art wishes to register the corresponding design, he must observe the conditions laid down in the law on designs, particularly with regard to novelty.

Disclosure of the design by publication before registration makes it invalid. Publication means making public or making available to the public by means of publication, public lecture, exhibition, disclosure to a third party who is not bound to secrecy, except where there has been a breach of good faith or action has been taken without the consent of the owner.

Those are the principles of the 1949 statute. But section 44 of the act of 1956 amends sections 6 and 8 of the 1949 legislation. Publication of a work before application has been made to register it does not have the effect of preventing registration unless there has already been, beforehand, industrial application of the work accompanied by the putting on sale of the articles manufactured.

e) Novelty and originality in Italy

The decree of 25 August 1940 on ornamental designs and models imposes the condition of novelty alone, but does not define it. Since this text refers to patent law for everything that is not dealt with precisely in the specific legislation, novelty must be considered to be objective and absolute in time and space.

But legal theory rapidly came down in favour of diluting these principles which had been dictated by the nature of the objects to be protected. Commentators took the view that objective novelty should be assessed in a relative manner.

Case law requires only a very relative novelty which is judged in the overall appearance of the designs or models in question. Novelty is sufficient if it consists in a form that differs from the aesthetic forms already applied to the products and exploited industrially. This has reached the point where, as in France, the courts seek to determine whether the design displays a novel and characteristic individuality.

This leads one to consider that alongside the condition of novelty Italian case law applies the condition of originality as an essential condition for protection.

In many decisions the two notions merge into one and the same concept.

It is a consequence of the general structure of these rules that any disclosure, that is to say any exploitation of the design or model and even any use capable of bringing it to the notice of the public, with no spatial limitation, effected before the design or model is registered makes registration void.

3 - Necessity of the condition of originality for the artist-craftsman

Thus the national legislations arrive at widely differing positions.

One may consider, with Fürler, that the concepts of originality and novelty are two different aspects of the same phenomenon: novelty is negative, there must be no imitation; originality is positive, there must be creation.

Professor Ulmer wonders whether the choice of the condition for protection should not be linked with the more general question of ascertaining whether the protection of designs and models is by nature more akin to the protection of technical creations such as patents and utilitarian designs within the framework of industrial property or to the protection of artistic creations within the framework of copyright.

Unlike the case of technical creations, the idea of progress in beauty, aesthetics, taste or artistic value should not be involved in connexion with designs or models or in the applied arts, for the imagination or originality to which a form bears witness is the sole element which is important and decisive for the creative effort.

If it is a question of forbidding or preventing, as in the case of technical protection, the condition of objective novelty is necessary.

If it is a question only of combating imitation, as in the case of copyright, it is enough to use subjective novelty, which will often merge with originality, as the criterion.

This seems to be the case with designs and models and, a fortiori, with applied art.

The analysis which we have made of the different Community legislations shows, moreover, that the principles are often identical from the theoretical point of view and refer to the notion of a novelty that is objective and absolute in time and space.

But in all the countries these strict principles very soon become diluted in response to the demands and peculiarities of creations of form.

Thus one sees that the concept of novelty cannot be applied to a design or model in the same way as to inventions: its interpretation is more subtle, because creators of forms are all inspired to a greater or lesser extent by things already in existence and the creation of a form is in itself more complex and difficult to define than a technical invention. It is for this reason that in Italy, Germany, France and in some measure in the United Kingdom legal theory and case law have turned towards a subjective novelty which is often similar to, or even merges with, originality.

The precise and objective solutions of the Benelux system are, it is true, in distinct contrast to the liberal and general provisions in force in the legal systems of the other countries. However, strict temporal and spatial limits have been fixed for taking antecedents into consideration. Moreover, this legislation is recent, not having come into force until 1 January 1975 and, as we have seen, experience shows that case law tends to dilute the theoretical principles and turn towards the concept of subjective novelty. The authors of the Benelux law considered that each country should be free to withhold the benefit of the law to works lacking novelty (considered in the light of antecedent works) or lacking originality (considered in the light of creative effort).

We have noted all through this chapter that the notion of originality could be interpreted either in a narrower sense than novelty, where it implies not only a difference from antecedent objects but also an element reflecting the creative effort, or in a wider sense than novelty, where the object may resemble antecedent objects provided that it contains a characteristic of originality understood in a subjective manner.

If it seems necessary that, in spite of these comments (which demonstrate the vagueness of the concepts, the variations in legal theory and the hesitations of the judges), the specific legislation on designs and models should take into consideration the concept of novelty at the same time as that of originality, it is on the other hand essential that for the artist-craftsman the notion of originality should be the sole concept used, because of the very nature of the works produced by him which are the expression of their author's personality. The latter should be in a position to take inspiration freely from existing forms, for it is the overall appearance and not the details of the elements of his creation that gives the public an aesthetic or artistic impression.

Conditions as to content imposed by the laws on designs and models

	Statute	Conditions as to content imposed		
		by statute	in legal theory	by case law
Federal Republic of Germany	Law of 11 January 1876	Novelty and originality	Subjective novelty, and originality	Objective novelty, but of relative character
Benelux	Uniform law which came into force on 1 January 1975	Limited objective novelty (antecedents, prior ideas and registrations)		
France	Law of 1909	Absolute objective novelty	Relative novelty, and originality	Subjective novelty, and originality
United Kingdom	Law of 1949	Relative novelty, or originality		
Italy	Decree of 25 August 1940	Absolute objective novelty	Objective novelty assessed in a relative manner	Relative novelty, and originality

Chapter IX

Conditions for protection: form

1 - Notions applied in connexion with industrial property

A/ National legislations

1/ Registration

All the countries with specific legislation on designs and models demand the formality of filing or registration, this being regarded as the most practical and reliable method of obtaining incontrovertible proof of the date of creation and hence of antecedence.

Registration is compulsory in all nine EEC Member States.

But the nature and role of registration vary from country to country.

a. Declaratory registration

Registration cannot give rise to the rights if it is purely declaratory and if the author's exclusive rights are the result of the sole fact of creation.

Thus France refuses to make the arising of the rights dependent on a mere formality.

The declaratory system merely creates a presumption of ownership on the part of the first person registering, a rebuttable presumption that may be overturned by contrary proof.

But, since only registration gives the author exclusive rights, enabling him to enforce the monopoly attaching to what has been registered, the author cannot fully benefit from his rights before registration has been published because he cannot proceed against infringements for prior actions.

b. Attributive registration

The other EEC Member States have adopted the system under which registration is attributive, i.e. confers ownership.

2/ Disclosure of the design or model before registration

Under the declaratory system, in which registration is merely a formality without effect on the coming into being of the rights, no actions prior to registration, such as publicity, manufacture, offer for sale, etc, cause any of the rights given by the specific law to lapse. This is the situation in France.

It is not so in the other countries, where registration confers the rights.

The Federal Republic of Germany formally stipulates that any disclosure prior to registration of the products manufactured from the designs and models (publicity or use, commercial sale or other release, and even mere transmission to third parties) prevents registration having any effect.

The same applies in Italy, where the notion of disclosure is interpreted analogously to the notion of patents for inventions and covers use, public exploitation and even publication.

In the Benelux countries the uniform law is especially clear in this connexion and lays down the conditions for taking acts of prior publication into account; one category of such acts is prior publication by repute, which may arise from disclosure of the design in interested quarters by several means (e.g. publication in periodicals and newspapers, exhibitions, offers for sale and sale, acts performed by the owner himself or by a third party).

Similarly, in the United Kingdom, the concept of disclosure means publication in documentary form or making the article itself available to the public (placing on sale, letting for hire, exhibiting) whether by the author or by a third party except in the case of breach of good faith.

In Ireland the design or model must not have been published before registration.

In Denmark a design or model must not have been known before publication, that is to say must not have been "made accessible to the public through reproduction, exhibition, offer for sale or in any other way".

3/ Prior examination

a. Of the content

The laws of most Community countries do not provide for prior examination of the content of the designs and models. The United Kingdom is an exception; here the Patent Office may make investigations to determine whether the design or model is new or original within the category of articles to which it is applied and in relation to the claims of novelty submitted by the author.

If the examiner's objections as notified to the applicant are not withdrawn after an amicable intervention, the applicant may appeal.

The same rule applies in Ireland, where the prior examination relates to novelty.

b. Of the form

In Germany, France, the Benelux countries and Denmark the government has certain powers to verify external physical formalities such as the lodging of registration or the written declaration which accompanies registration.

In Italy the Central Patent Office has fairly wide powers of verification which relate not only to external formalities but also to the actual object being registered. Nevertheless, inspection is in principle intended to be limited to the formal aspect of the application.

4/ Obligation to exploit

The laws of Italy, the United Kingdom and Ireland provide that the designs and models which are the subject of the exclusive rights must actually be used if registration is to be valid.

In Italy, as in the case of patents for inventions, registration must be followed by actual exploitation in the year following the date of the application, otherwise the rights quite simply lapse. Judges have been strict in upholding this principle.

In the United Kingdom the compulsory licence (a less severe system which penalizes failure to exploit industrial property rights only at international level, in accordance with the Paris Convention) is granted by the Patent Office to any interested third party if the design entails a use which has not been specified sufficiently for the whole of the United Kingdom at the time of registration. But the holder of the rights is always allowed a reasonable time to bring his registered design into use.

A similar system is in force in Denmark.

In France, Germany and the Benelux countries, by contrast, there is no condition of use or obligation to exploit.

5/ Publicity or secrecy of registration

There have always been two opposing tendencies on this question, which is of prime importance for industry.

a. Countries favouring secrecy of registration

France has by tradition favoured secrecy for registration. Secrecy applies to the content of registration and is temporary and optional: it may be maintained for a total period of 25 years but the person registering has the option at any time of expressly demanding publicity either during the first period of five years or the subsequent period of 20 years.

But French law stipulates that in the absence of publicity the registration may not be upheld against third parties. For this reason an owner must ask for registration to be published before he can take proceedings for infringement.

In any case, in connexion with actions prior to any publicity the burden of proof that the infringer has been in bad faith lies with the person registering whereas, in connexion with subsequent actions, bad faith is assumed.

This secret registration thus has no importance except to establish the date of priority of a design without fear of contradiction.

The Federal Republic of Germany also offers the possibility of choosing between the secret or public form of registration.

But there are two differences: firstly, secret registration is possible only for a much shorter period, since registrations must, compulsorily, be opened three years after the application for registration and, secondly, its scope is wider than in French law since the person registering, despite the secrecy, is protected against infringement and may institute proceedings against infringers.

b. Countries favouring publicity for registration

In Italy the principle of publicity is absolute and everything is done to ensure that it is fully effective three months after delivery of the certificate of registration. The application for registration must be accompanied by a diagram and description of the design concluding with a summary of the designer's claims in order to demonstrate more clearly all the characteristics to which he intends to lay claim.

The uniform Benelux law makes immediate publication of registrations obligatory. However, the person registering may, at the time of registration, request postponement for one year. He may put an end to this postponement period at any time.

The same applies in the United Kingdom. Details are published as soon as registration has been approved; but there is no possibility of postponing publication, except for designs and models of objects relating to national defence, the publication of which the Patent Office may refuse to approve, also fabric designs, which are kept secret for three years, and wallpaper and lace designs, which are kept secret for two years.

In Denmark complete registration applications which fulfil the conditions imposed by law are published by the government in order to solicit possible objections from third parties.

B/ International conventions

Examination of the national legislations shows the difficulties and complications facing creative workers in the European Community alone when they try to protect their work.

1/ International Convention for the Protection of Industrial Property (the Paris Convention)

Under Article 2 the Convention lays down the principle that nationals of Union countries are to enjoy the same advantages in other Union countries that the nationals of those other countries enjoy in their own country; this means that any national from a country belonging to the Union set up by the Convention may register a design or model in one of the other member countries under the same conditions as nationals of that country.

Moreover, Article 4 provides that nationals of Union countries have a right of priority lasting for a period of six months from the date of registration in their own country of origin for registering in another Union country (on condition that they expressly claim this priority period at the time of registration).

All the Community countries are members of the Union set up by the Paris Convention.

2/ Hague Agreement

Considerable progress was made in 1925 when the Hague Agreement introduced the possibility of a single international registration and thus eliminated the drawbacks and expense occasioned by multiple registrations in each country.

Signed on 6 November 1925 and amended by the London Conference of 2 June 1934, the Hague Agreement established a single registration having effect in all member countries and administered directly by the international body, BIRPI (1), in Geneva. There was no no need even to effect prior registration in the country of origin.

Publicity is provided by entry of the application in a special register which is communicated only to governments. It is required to be accepted as sufficient by all the contracting countries.

But the Agreement is purely a procedural one, regulating the formalities of registration. It does not constitute a uniform international law on designs and models.

Its effects are very limited: international registration, which does no more than centralize the formalities, is purely declaratory and has the same effects in the contracting countries as though the designs and models had been directly registered there on the date of international registration. This registration also benefits from the "priority period" of six months introduced by the Paris Convention.

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(1) United International Bureaux for the Protection of Intellectual Property, of Geneva, which in 1967 became the World Intellectual Property Organization (WIPO).

Of the Community countries, France and Germany are signatories to the Hague Agreement. Belgium and the Netherlands withdrew on 31 December 1974 because of the entry into force of the uniform Benelux law on 1 January 1975.

Although it was amended on 28 November 1960 (1), to bring in certain modifications (registration formalities and regulations governing international applications) and make it accessible to a larger number of countries, the "new Hague Agreement" has not yet come into force owing to the failure of four countries who were not signatories to the first Agreement to ratify it. Italy, Luxembourg and France are the only Community countries to have acceded to the new Agreement.

The major modifications relate to secrecy, which is abandoned (option of postponing publication for twelve months), and territorial limitation of international registration (the person registering names the countries in which he intends registration to have an effect).

2 - Notions used in copyright law

Protection of original artistic works is provided by the individual countries' copyright laws and by the Berne Convention from the moment such works are created and independently of any formality or registration whatsoever.

This simple and easily-implemented principle gives the copyright system of protection a considerable advantage; the author's only obligation is to furnish proof of the date the work was created by any means possible (invoice, publicity, exhibition catalogue, stamped register, etc, i.e. by the common-law modes of proof) in the event of contestation.

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(1) The amended Hague Act of 28 November 1960 was signed by, inter alia, the Federal Republic of Germany, Belgium, France, Italy, Luxembourg and the Netherlands.

3 - The craftsman and compulsory registration

The volume of designs registered remains fairly small, often bearing no relation to the aggregate volume of designs produced by all economic sectors. Its size varies considerably from country to country and from economic sector to economic sector.

Registrations under the Hague Agreement have been rather low, despite the modest level of fees charged. Indeed it was the cash difficulties of the designs and models registration section of the international bureau which led to its reorganization in 1960.

The number of registrations effected is certainly no measure of the mass of new work which is continually being created in the artistic and craft professions.

It is true that the common-law modes of proof are often inadequate, hazardous or debatable and it is necessary, in order to establish the antecedence and novelty of a creation of form, particularly if it is intended for industrial use, to keep more reliable evidence than is the case with artistic property.

However, registration cannot be considered a suitable solution for all creations of forms. Designs and models are transitory creations, unceasingly renewed at the whim of fashion and need, each work having fairly little intrinsic economic value. This is clearly very different from the case of patents and trade marks, with which analogies are too frequently drawn. Creative workers are often put off by the length of time, the formalities and the expense entailed by all registration procedures. This is true of the majority of artist-craftsmen, whose resources are often modest and whose ability to obtain the right information and take action are often limited.

Even in the industrial sector, notes Madame Perot-Morel (1), "designs and models follow each other at such a rate that registration becomes a tiresome formality that tends to be neglected".

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(1) Les Principes de Protection des Dessins et Modèles dans les Pays due Marché Commun (Principles of protection of designs and models in the countries of the Common Market).

As J.L. Duchemin (1) points out, each day sees the creation of "thousands of designs and models of which only an infinitesimal quantity will eventually be used".

This explains why the number of registrations is insignificant compared with the total number of designs created.

Whilst constituting an appreciable advantage as far as proof is concerned, registration of designs and models would seem to be a heavy imposition for the majority of craftsmen working on their own with slender resources in view of the fact that the aim of the high-class craftsman is to constantly renew his designs.

If registration has not been effected - owing to negligence or ignorance of the law - the creative worker should not be deprived of all means of defence against dishonest copying.

The copyright principles which absolve the craftsman from the need to go through any formalities before gaining protection are essential and fundamental.

4 - Conditions as to form necessary if the works of artist-craftsmen are to be protected as designs and models within the framework of a specific law

It is not our task in this study to draft proposals for the harmonization of specific laws on designs and models but, where the craftsman's creative work ought to be protected not only by copyright (as we have just demonstrated) but also by specific legislation on designs and models, it is necessary to state an opinion on the principles which should underlie a possible single registration system for all Community countries, whether or not within the framework of a uniform law specific to designs and models.

Although the bulk of the craftsman's designs are protected satisfactorily by copyright and, as a result, profit from this system's lack of formalities, some of this work, it may be imagined, might with equal profit enjoy the specific protection accorded to designs and models in general because they are used in the industrial sector.

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(1) "La protection des modèles d'art appliqué à l'industrie" (The protection of industrially-applied art designs), RIDA, 1953, page 91.

Since, despite its inconveniences, registration is obligatory under this system, the craftsman would have to register. However, in order to be applicable to craftsmen, such registration would have to take account of the necessity for an overlap between the two protection systems (see Chapter VII) and of the special characteristics of applied art.

Registration may be attributive of rights since the craftsman in any case enjoys the protection of copyright without the need for formalities, and does so from the moment of creation. But on the other hand to make non-disclosure of the design before registration a condition would amount in practice to removing any possibility the craftsman has of registering if it is to be done after creation and exploitation of the work.

Since the craftsman cannot usually start such registration procedures until his work has proved to be successful and of interest to manufacturers and distributors, he will never be able to register under these conditions.

It is for this reason that only the French system of declaratory registration without lapse for events antecedent to registration is really suited to the practical needs of the artist-craftsman.

Because it would make the procedure more cumbersome and increase the associated expense, prior examination of novelty could not reasonably be applied to artist-craftsmen, as is done incidentally by most EEC Member States for all designs and models in general.

The difficulties of organizing a national or international office for the examination of patents are well known. One can easily imagine the complexity of a similar office for designs and models, where any systematic search would be hampered by the mass of designs in continual renewal, sometimes with very slight variations or minute new details. Any similarity to the practice used for patents and trade marks would meet with insurmountable difficulties. It is therefore out of the question that any registration or legislation common to the countries of the Community could adopt the idea of prior examination for all industrial designs and models as such.

Again, because of the overlapping of protection systems, any search for antecedents would have to be restricted to works registered and published under the specific legislation, designs and models - like applied art - enjoying copyright protection not being the subject of any registration or, consequently, of any publication.

Nor is it conceivable that exploitation should be made a condition, because of the considerable number of craft works which are created but not exploited, this being a basic feature of craft activities and an attribute of all creative work in the artistic field. As we have pointed out, craft activities are a "research laboratory" for shapes and combinations of line and colour. It would be quite unjust to impose a rule of compulsory exploitation which, being inapplicable by definition, would encourage systematic plundering of designs.

The Italian system, which penalizes non-exploitation by making protection rights lapse, is no longer in line with the Paris Convention.

The conflict between laws in the different countries as to whether registration should be published or kept secret means that this choice calls in question the very foundation of the institution of registration.

Representatives of some economic sectors have asserted that immediate and systematic publication of registrations would result in systematic plundering of new designs because instituting proceedings for infringement is often difficult or illusory. It would be necessary first to be sure of the commercial success of the registered design or model before running that risk. That is why craftsmen would prefer to do without protection altogether rather than assist their competitors.

It all depends on the point of view from which one examines the question, for the supporters of publication, by contrast, assert the necessity for third parties to be able to find out about existing designs in order to arm themselves against the risk of involuntary infringement, which is always a possibility in this field.

The solution proposed in the new Hague Agreement of 1960 (which is not yet in force) and taken up by the Benelux countries would seem to be the best one: the principle is that there should be public registration, but giving the person registering the option of postponing publication for one year; during that period he may if he so wishes apply to have his registration published immediately or to withdraw his registration. This solution has been approved by several countries, including Italy. To overcome a few remaining misgivings, it would no doubt be wise to provide that certain specified industrial sectors should by way of exception be allowed longer periods.

This solution, together with exceptions, ought to be the one adopted by artist-craftsmen. Firstly, enjoying copyright protection, they would adopt the registration system provided by specific legislation with full knowledge of the facts and because it suited their precise and immediate interests. Secondly, their designs could already have enjoyed exploitation under the cover of copyright protection.

Conditions as to form (registration)

Specific legislation and designs and models

	Nature of compulsory registration	Possibility of disclosure before registration	Prior examination of content (novelty)	Obligation to exploit	Penalty for non-exploitation	Possibility of secret registration - (maximum duration)
Federal Republic of Germany	Attributive	No	No	No	-	3 years
Belgium) Netherlands) Benelux Luxembourg)	Attributive	No	No	No	-	1 year
Denmark	Attributive	No	No	No	-	
France	Declaratory	Yes	No	No	-	25 years
United Kingdom	Attributive	No	Yes	Yes	Legal licence	Exception for fabrics (3 years), wallpapers and lace (2 years)
Ireland	Attributive	No	Yes	Yes	Legal licence	
Italy	Attributive	No	No	Yes	Lapse of rights	
International registration under Hague Agreement 1925, revised 1934	Declaratory	(reference to national legislations)				
New Hague Agreement 1960 (not in force)	Declaratory	(reference to national legislations)				1 year

Chapter X

Effects of protection

Duration of protection

A/ Under industrial property legislation

The table below, which sets out the various periods of protection, shows the choice that the majority of countries have made: a maximum duration of 15 years. Only two Member States of the Community have opted for extremes: Italy, with its very short term of four years with no possibility of renewal; and France, with its very long term of 50 years, made up of an initial period of five years followed by a first renewal for 20 years or, alternatively, an initial period of 25 years, followed in either case by a final renewal for a maximum period of 25 years if requested.

B/ Under copyright legislation

The protection of the author's "patrimonial rights" lasts for the whole of his lifetime and for 50 years after his death, to the benefit of his heirs or assigns. The Federal Republic of Germany alone has extended this "post mortem auctoris" period, having increased it to 70 years in 1965.

Thus the artist-craftsman enjoys much longer protection for applied art under copyright law than under industrial property law in all countries of the Community. Luxembourg is an exception: in that country Article 4 of the copyright law of 29 March 1972 establishes a shorter time-limit for works of applied art, the period being 50 years from the date of execution.

C/ Choice to be made by the artistic and creative craftsman

In the search for the widest possible protection for the works of the artist-craftsman the obvious solution is the longest period, that provided by copyright.

However, the hybrid nature of these works, situated at the cross-roads of art and industry, both gratuitous and utilitarian, being the personal message of their creator but capable of being reproduced by him in his role of manufacturer in several copies, ought not to give rise to a period of protection as long as that granted to paintings, sculpture, drawings and architecture.

To keep up with public taste, the external appearance of utilitarian products must be changed frequently. The constant search for new forms, which is the mark of the true craft profession, presupposes the rapid disappearance of existing designs in favour of new ones. With a few exceptions, there is no evidence of a need for a period of protection as long as that granted by copyright; the following arguments relating to the point of view of the artist-craftsman should be borne in mind:

a. The duration of protection should be sufficiently long to enable the design to be worked and to be profited from. But many craft designs are ephemeral.

b. Since the craftsman's work often consists in adapting existing designs, there is a need to stimulate creative work without holding back economic development.

c. In the general economic interest it is necessary to limit the number of monopolies of exploitation; excessively long protection is detrimental to the interests of consumers.

d. The effort put in by the creative craftsman and the costs of exploitation are, at most, comparable to the effort and expense associated with designs and models, which are protected for 15 years in the majority of Community countries.

It is the last argument which seems decisive to us. The sharpest criticisms of the system of overlapping copyright and industrial property laws stress that, firstly, the object of protection does not merit such a monopoly, which is not called for by any economic reason and, secondly, creators of designs, like those of applied arts, are inclined, because of the very long duration of protection, to place themselves under the protection of copyright even if their work does not seem a priori to fulfil all the conditions laid down by copyright law, seeking to obtain "at the least expense", without formalities (and without prior registration) the longest monopoly.

Because of the considerable differences between the duration of protection under copyright law and under industrial property law, there is an imbalance which is harmful to any overlap system, although such a system is indispensable for the protection of the artist-craftsman.

The Luxembourg copyright legislation, which is the most recent in existence since it dates from 1972, shows us the way to take: we must reduce the length of protection accorded to the applied arts, making it start from the date of execution of the work. Furthermore, and to do away with any disequilibrium in this area, the shorter period chosen for the applied arts must be equivalent to that granted by the specific legislation on designs and models.

The relationship between the two systems would be transformed; the system of copyright would continue to be important:

1. for the artist-craftsman whose work is nearest that of the artist (single works or small batches) and who lacks resources, since his work will be protected with no formalities required, unlike better-known craftsmen and those operating on a larger scale whose work is or is likely to be exploited industrially;

2. for craft firms working for mass-production who would be in a position by registering to benefit from the whole of the industrial protection system without losing the advantages of copyright.

The search for precise definitions and demarcations between the sphere of applied arts and that of designs and models would lose much of its importance; the problems would then be shifted to the frontier between pure and applied art. This is already the case in Luxembourg. It seems to us easier to demarcate and separate the sphere of utilitarian forms and industrial designs from that of works of art.

Again it is necessary to choose a duration acceptable to both sides. The industrial property system appears to favour 15 years. Italy, after the new Hague Agreement of 1960 had been proposed, seemed to be disposed to change its internal legislation to bring the duration up to 15 years there too. In France a study by a commission to revise the law of 1909 seemed to indicate an inclination to reduce protection to 25 years. Luxembourg is the only country to have adopted, in its copyright law, protection for the applied arts limited to 50 years dating from the execution of the work. In doing so it has been the first to use the possibilities offered by Article 7 (4) of the Berne Convention which states that "it shall be a matter for legislation in the countries of the Union to determine the term of protection" of works of applied art insofar as they are protected as artistic works. But the Berne Convention stipulates that "this term shall last at least until the end of a period of twenty-five years from the making of such a work".

It seems, therefore, that agreement could be reached on a minimum duration of 25 years, which could be adopted by the copyright laws as well as by the laws on designs and models.

We do not doubt that such a measure would require considerable efforts on the part of the champions of copyright and industrial property, for they would have to abandon many prejudices and casts of mind, not to mention acquired advantages. But this would be the price for establishing a simple and effective system of protection for all creations of forms whatever their origin or their purpose.

Legislation on designs and models: Duration of protection

	Maximum duration	Initial duration	Possible renewals			
			First	Second	Third	Fourth
Federal Republic of Germany	15 years	1 to 3 years	Then successive unequal periods, allowing the duration to be prolonged to 15 years			
Benelux	15 years	5 years	5 years	5 years		
Denmark	15 years	3 years	3 years	3 years	3 years	3 years
France	50 years	5 years or 25 years	20 years 25 years	25 years		
United Kingdom	15 years	5 years	5 years	5 years		
Ireland	15 years	5 years	5 years	5 years		
Italy	4 years	4 years	No renewal possible			

Chapter XI

International protection of the works of the artist-craftsman

As Mr Arminjon noted in his Treaties on Comparative Law, "the rights relating to a work of thought or a work of art which is diffused beyond frontiers cannot be effectively protected unless this protection is supranational in character; national legislations, even those most liberal towards foreign authors, cannot adequately provide such protection".

Now the double attraction to which the works of the artist-craftsman are subject - industrial property or artistic property - also occurs at international level.

In fact there is no homogeneity about this international status: it is classified under one or other of these headings according to the attitude of the country in question and its position on the question of the overlap or non-overlap of protection systems.

1 - Protection under the heading of artistic property

A/ Berne Convention for the Protection of Literary and Artistic Works

This was signed on 9 September 1886 and was revised in 1908, 1928, 1948, 1967 and 1971.

All Community countries are parties to it: the Federal Republic of Germany, Belgium, France, Italy and the United Kingdom since 1887; Luxembourg since 1888; Denmark since 1903; the Netherlands since 1912 and Ireland since 1927.

Works of applied art were mentioned for the first time at the Berlin revision conference of 1908, but it was the Brussels conference of 1948 which first stipulated how such works were to be treated.

Article 2 lists works of applied art among the works protected by the Convention.

Consequently the absolute principle that nationals of Union countries are to enjoy the same advantages in other Union countries that the nationals of those other countries enjoy in their own country is valid for the applied arts. The copyright owned by a foreigner who is a national of one of the countries belonging to the Union is protected in exactly the same way as the copyright of a national.

However, the Brussels conference considerably diluted this principle (Article 2 (5)):
"it shall be a matter for legislation in the countries of the Union to determine the extent of the application of their laws to works of applied art and industrial designs and models as well as the conditions under which such works, designs and models shall be protected".

Thus each country is free to adopt the mode of protection best suited to it: works of applied art (and designs and models) may be protected by copyright, by industrial property legislation or by both at the same time. So the widest variety of legislation and the greatest uncertainty subsists at international level.

Moreover, the rule of the competence of the law of the territory (i.e. the law of the country in which protection is applied for) in the event of conflict between laws ought also to apply to works of applied art. It is not the law of the country of origin of the work which governs copyright once and for all but the law of the country in which the work is used. A work may therefore be subject to as many legal systems as countries in which it is exploited or in which protection is applied for.

Here too the Brussels conference, to take account of the interests of the most liberal legislations which protect all designs and models without distinction as artistic property - therefore without registration and for a very long time, as in France - applied a restriction (Article 2 (5)):
"works protected in the country of origin solely as designs and models shall be entitled in another country of the Union only to such special protection as is granted in that country to designs and models".

This amounted to a reintroduction, to a certain extent, of the system of legislative reciprocity, since the countries that admit industrial designs and models to the more flexible and informal protection

of copyright may refuse this protection to foreign designs and models which are only protected in their own country as designs and models.

Thus France may refuse Italian designs and models the benefits of the law of 1957 because, in Italy, they are protected only as "design patents".

The Stockholm revision conference of 1967 introduced an exception to this last restriction (Article 2 (7)):
"however, if no such special protection is granted in that country, such works shall be protected as artistic works".

So if there is no specific protection of works protected solely as designs and models in their country of origin in the country in which protection is sought, these works will have to protected by copyright law.

This was in fact the result of an Italian initiative which was adopted by the conference to correct the injustices suffered by Italian nationals in Belgium and the Netherlands where the only protection was through copyright and this was refused to them because at home they only enjoyed the benefit of the specific legislation.

The new Benelux law on designs and models has considerably reduced the importance of this exception.

Furthermore, the Stockholm conference amended Article 7 (3) of the Brussels text which had adopted the shortest duration of protection and established a minimum duration of 25 years (Article 7 (4)):
"It shall be a matter for legislation in the countries of the Union to determine the term of protection of ... works of applied art insofar as they are protected as artistic works; however, this term shall last at least until the end of a period of twenty-five years from the making of such a work".

B/ Universal Copyright Convention of Geneva (1952)

As the minimum protection provided by this Convention is shorter than that provided by the Berne Convention, we shall not examine it in detail.

The works of the artist-craftsman thus enjoy only a fairly limited degree of protection as works of applied art.

Moreover, it is necessary that the work in question should be considered an artistic work both in the country of origin and in the country in which protection is applied for and that it should qualify for protection in each of these countries under the heading of artistic property.

Therefore works of applied art are excluded from protection under this Convention in countries which protect them solely under the heading of industrial property by specific legislation.

2 - Protection under the heading of industrial property

The Paris Convention and the Hague Agreement are relevant to the works of the artist-craftsman to the extent that such works can be considered to be designs or models capable of being protected under the heading of industrial property.

A/ Paris Convention

Signed in 1883, the Paris Convention established the International Union for the Protection of Industrial Property; Belgium, France, Italy, the Netherlands and the United Kingdom acceded to the Convention in 1884, Denmark in 1894, /the Federal Republic of/ Germany in 1903, Luxembourg in 1922 and Ireland in 1925.

It has been revised many times: in 1900, 1911, 1925, 1934, 1958 and 1967.

The Paris Convention is a multilateral international treaty, expressing the common desire of the signatories to try to establish international protection of the rights of industrial property.

Industrial designs and models featured among the objects protected by the Convention (Article 1). But it was not until the revision conference of Lisbon (1958) that the obligation to protect industrial designs and models in all Union countries was expressly stipulated (Article 5 quinquies). Since the Benelux law on designs and models came into force this obligation has been fulfilled as far as the countries of the European Community are concerned.

The principles established by this Convention are:

- Nationals of Union countries to enjoy the same advantages in other Union countries that the nationals of those other countries enjoy in their own country (Article 2).

- Nationals of countries outside the Union who are domiciled or who have real and effective industrial or commercial establishments in the territory of one of the countries of the Union to be treated in the same manner as nationals of the countries of the Union (Article 3).

- Nationals of Union countries enjoy a six-month priority period from the date of registration in their country of origin provided that they claim this period at the moment of registration with a view to effecting another in another Union country (Article 4, A and C).

- Rights do not lapse for failure to exploit (Article 5, B).

- There is no need to register the design or model for the right to be recognized (Article 5, D).

- Temporary protection is accorded to designs and models exhibited at official or officially-recognized international exhibitions (Article 11).

This treatment by the Union thus introduces uniform standards of internal law within the Union since it assures the beneficiaries a minimum of protection in all countries in the Union whatever the level of internal national protection.

B/ The Hague Agreement

This Agreement was signed in 1925 and amended by the London conference of 1934.

The Federal Republic of Germany and France are the only Community countries still participating, Belgium and Holland having withdrawn when the Benelux law on designs and models came into force.

The Agreement is purely procedural, regulating the formalities of registration; we have already examined it in Chapter IX (page 112).

Although revised in 1960, the "New Agreement" has not yet entered into force because not enough countries have ratified it. It seems to have little chance of coming into force in the near future.

As can be imagined, the Hague Agreement has little importance within the Community under these circumstances (1). Despite the practical importance of the Agreement and the considerable effort at procedural simplification that it represents, the question of the real unification of the national legislations still remains to be solved.

3 - Comparison between the Berne Convention and the Paris Convention in connexion with the protection of the artist-craftsman

All the Member States of the Community belong to both Conventions.

Does the Paris Convention, with regard to the works of artist-craftsmen and insofar as these works may be considered to be designs and models, duplicate the Berne Convention?

In fact it is in the interest of the artist-craftsman to invoke the Berne Convention in preference to the Paris Convention. For the Berne Convention does not confine itself, as does the Paris Convention, to stating major principles, but establishes a minimum level of uniformity between rules on protection in each of the Union states, both in the sphere of "patrimonial rights", exclusive rights to authorize reproduction (Article 9 (1) of the Stockholm text), adaptations, arrangements and other alterations to works (Article 12), and of "moral rights" (Article 6 bis): even if the author has assigned his patrimonial rights he retains during his lifetime the right to claim authorship of his works and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honour or reputation.

Under the Stockholm text (Article 6 bis (2)), these rights are maintained after the death of the author at least until the extinction of the patrimonial rights and are exercisable by the persons or institutions authorized by the legislation of the country where protection is claimed.

Finally, a minimum agreed duration is introduced by the Stockholm text (Article 7 (4)) and fixed at 25 years. The countries may, of course, grant a longer period of protection in their national laws if they so wish.

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(1) The revised Hague Agreement of 28 November 1960 has been signed by six EEC Member States: the Federal Republic of Germany, Belgium, France, Italy, Luxembourg and the Netherlands.

Thus the works of the artist-craftsman, because of their individuality and certain of their special characteristics which make them more akin to artistic works, are better protected under the copyright system.

To the extent that they are capable of being regarded as designs and models they encounter the same difficulties. The protection of designs and models within the framework of the international conventions is a source of complexity. This is merely a reflexion of the fundamental divergences between countries on the nature of the protection and the choice between the copyright aspect and the industrial property aspect. Mere examination of the current legislation of the Community countries is sufficient to provide striking proof of this. The international conventions can only illustrate the impossibility of establishing common foundations in this matter, all protection being in fact conditioned by the freedom and diversity of the national laws.

Chapter XII

Suggestions for better protection of the works of artist-craftsmen

To conclude the various aspects and problems connected with the protection of the works of the artist-craftsman - aspects and problems that have been examined in the foregoing chapters - we can now set out the measures that should be taken to provide these works with better protection.

We shall first analyse the international studies already undertaken to this end.

1 - Results of international studies undertaken with a view to providing better protection for designs and models

Among the studies carried out in recent years one should mention those of:

a. The group of experts meeting in Paris in April 1959.

By joint agreement between the International Union of Paris for the Protection of Industrial Property (1), the International Union of Berne for the Protection of Literary and Artistic Works (2) and the Inter-Governmental Committee of the Universal Copyright Convention of Geneva (2), this group of experts was convened to study the possibilities for better international protection of industrial designs and models by comparing the principles relating to the protection of works of art with those relating to the protection of designs and models.

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(1) In accordance with the resolution of the Lisbon revision conference (1958)

(2) In accordance with the resolution of August 1958 passed in Geneva.

b. The sub-committee set up in 1960 within the co-ordinating committee (1) of officials from departments responsible for industrial property in the Member States of the EEC and commissioned, in particular, to study a preliminary draft agreement on a European law on designs and models. It carried out an initial programme of synthesis, including the report by Professor Roscioni, which constituted a first approach to the problem but was not followed up.

c. International associations such as the International Association for the Protection of Industrial Property (AIPPI) and recommendations by its Tokyo congress (1966), the International Literary and Artistic Association (ILAA) and resolutions passed at its Stockholm congress (1965).

It is also interesting to note the draft standard law on designs prepared by the Institute of Comparative Law in Milan with the help of national committees of experts meeting in 1964, 1965 and 1968.

All these studies will be examined from three main angles:

1/ Is it necessary that there should be a specific protection system for industrial designs and models and, if so, what should its relationship with copyright be?

2/ What should be the object of such protection and how should "designs and models" be defined?

3/ What methods should a specific protection system for designs and models use?

4/ What should be its effects (duration and scope)?

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(1) Chaired by Mr Finiss, director of the National Institute of Industrial Property (France).

1/ Specific protection system for industrial designs and models and its relationship with copyright

The experts convened in 1959 under the aegis of UNESCO concluded that it was necessary to establish a specific protection system for industrial designs and models and AIPPI, at its Tokyo congress of 1966, and the Institute of Comparative Law of Milan also reached the same conclusion. The question then arose of determining the sphere to be allotted to this special legislation in relation to copyright: should there be strict separation of works coming under the copyright provisions from those governed by the legislation on designs and models? Although unanimity was not reached, it seemed to a great many experts that there was no difficulty about admitting the principle of double protection. Agreement was reached on the principle that national legislations should be given the right to provide overlapping protection through copyright. This right was admitted under the same conditions by AIPPI although it was recognized that this system of double protection was not entirely satisfactory and had the disadvantage of leaving third parties in uncertainty after protection by the special system had expired. But no more satisfactory formula could be found.

On this last point it should be noted that since then the new uniform Benelux law on designs and models has attempted to find a solution: at the end of the period of protection conferred by registration, and to the extent that they have a marked artistic character, the designs must be the subject of a special declaration of prolongation to the Benelux authorities, thus informing third parties that longer protection through copyright is being invoked by the person who has registered. Subject to the reservations expressed in Chapter VII (p. 92), in particular about the "marked artistic character" requirement, this solution may be considered satisfactory. Those who are compelled to take this action will have already accepted the principle of the formalities of registration fifteen years earlier; they will therefore have had time to judge the interest aroused by their work. Through the formality of prolongation they may demonstrate their wish to maintain their protection, and this is equivalent to a procedure of renewing registration, but this time it will be in order to obtain the protection of copyright. The absence or existence of a declaration enables third parties to have exact information on their rights in relation to the creator of the design.

The ILAA, at its congress in 1965, found that the distinction between works of applied art and designs or models was not clear since no

satisfactory distinguishing criterion had been proposed (1). It acknowledged that in consequence protection by copyright could

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(1) The Institute of Comparative Law of Milan admits that the criterion based on the possibility of ideally being able to separate the design or model from the material object to which it is applied, although logical, does not always enable designs and models to be distinguished from works of the mind.

be reserved only for works of applied art. It thus confirmed its traditional preference for overlapping protection.

2/ Object of protection and definition of designs and models

The AIPPI proposed the following text:

"There may be protected as an industrial design or model the appearance of an industrial object, and that appearance may be the result of a combination of lines or colours or may be the result of the shape of the object itself or its decoration".

Thus the fact that the forms capable of being protected are applied to an industrial object and give it an ornamental character is emphasized. Moreover, not only the design in the widest sense but also the industrial object in which that design is incorporated are protected.

As for the UNESCO experts, they give the protection sui generis of designs and models a very wide field of application: "any object with a utilitarian purpose provided that its form or appearance has an ornamental character", which covers all works whether they be industrial designs or models or works of applied art.

The ILAA, moving in the same direction, came out against the restriction of protection in certain national legislations which limited the field of application to industrial designs alone.

3/ Methods of specific protection of designs and models

The experts commented in 1959 that according to the method adopted, copyright or industrial property, one was compelled to take a different view of novelty. Although the majority of experts considered that the subjective notion of originality should be used, it was decided to allow national legislations the right to demand true novelty as a condition for protection.

Although the copyright-law conception seems to have prevailed over the strictly objective conception of novelty held by industrial property law, the AIPPI (1), in stating that no clear distinction could be made between the two notions, agreed that one or other conditions should be allowed to be demanded. In addition, designs or models dictated exclusively by a technical necessity should be excluded from protection; functional characteristics could be protected only by a patent.

The UNESCO experts, like those of AIPPI, confirm the necessity for registration if the benefit of the special protection system is to be enjoyed, with a double register - for open or secret specifications. UNESCO favours a system of single registration, doing away with the need to register in every country; AIPPI wants secret registration limited to a maximum duration of one year.

4/ Effects of specific protection (duration and scope)

The UNESCO and AIPPI experts stated that they were in favour of a minimum protection period of ten years.

ILAA favoured a period of 25 years.

As for the scope of protection, the UNESCO experts demanded that the reproduction of objects identical to the protected objects without authorization should be forbidden, while AIPPI expressed itself in favour not only of protection against slavish copying but also against simple imitation and "improper reproduction by whatever means".

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(1) Tokyo congress of 1966:

"Protection by the above-mentioned special system could be refused to a design or model:

a. which corresponds to a previous design or model or which entails no creative effort in relation to the same;

b. or which is exclusively dictated by a technical necessity".

2 - The Treaty of Rome and intellectual property

The objectives of the Treaty of Rome and industrial property rights seem at first sight incompatible since the latter, by the monopoly positions they engender, incontestably constitute impediments to competition and the free movement of wealth.

In fact, industrial property rights are formally outside the field of application of the Treaty.

Has the Treaty completely abandoned all control of intellectual property to the sovereignty of the national legislations? How can this situation be reconciled with the rules on competition contained in Articles 85 and 86 of the Treaty? One cannot at any rate ignore the divergences between the national legislations on the protection of designs and applied art or the resultant profound inequalities between the Member States of the Community.

This freedom given to the Member States ought not to be allowed, by abuse, to lead to restraint of trade between States.

Grave difficulties result from the coexistence of differing national legislations in a sphere which necessarily affects freedom of trade and competition and hence realization of the objectives of the Treaty.

This is why the necessity for adapting industrial property law to the objectives of the Treaty in the direction of establishing a supranational law and creating a European title for patents and trade marks valid throughout Community territory immediately became apparent.

If the field of designs and models has not yet become the immediate concern of the Community, this is because it was necessary first to deal with the problems that were most pressing from the economic point of view.

The delay in drafting a European law on designs and models may also be due to the difficult nature of the subject matter, to the fear of being unable to reconcile the fundamental differences and to the conflicts of principle which we have largely pointed out and examined in the preceding chapters.

Finally, the intermingling of the principles of artistic property and industrial property, aggravated by the impossibility of precisely formulating the object to be protected, complicates the problem - this is particularly so with regard to artist-craftsmen - and discourages some people, leading them to think that any attempt to harmonize national legislation is destined in advance to failure.

However, a new event has occurred in Europe with the entry into force on 1 January 1975 of the uniform Benelux law on designs and models which was the result of bringing together a country which had hitherto granted an excessively wide degree of protection ill-suited to the needs of modern industry, namely Belgium, and two others which had hitherto granted only an excessively narrow degree of protection too favourable to copying - wrongly considered a factor for economic progress - namely Luxembourg and the Netherlands.

The Benelux law creates a precedent: it provides an example of a modern law which taken as a whole is satisfactory, apart from the difficulty of applying the "marked artistic character" requirement - as we have already pointed out in Chapter VII - and it could be a useful guide to those drafting future Community legislation.

But although it is probable that this matter is not of equal importance to all countries in the Community, the fact remains that the appropriateness of - and the need for - a uniform system are felt strongly in the artistic crafts sector; here even the best organized have long been discouraged by the legal complexities and intricacies and have considered any work sold abroad totally "lost".

Many craftsmen, when exhibiting or selling outside their own country, think that their work cannot be defended effectively against copying and illicit imitation because of the present legal complications and the resultant expense. The majority have no information about ways of protecting their work and are resigned to thinking that this situation of impotence is inevitable and peculiar to their profession. The remainder, where they have tried to organize systematic or even limited protection for some of their work, find out the difficulties of application of the various national laws and rapidly become discouraged.

One of the priority tasks which the Commission of the European Communities has set itself in the cultural sector is the approximation of copyright legislation.

Among the "cultural workers", for whom it is intended that mobility should be encouraged by eliminating administrative, legal and social obstacles, by promoting free trade in the goods they produce and by simplifying the administrative formalities, are the artist-craftsmen.

The moment has arrived, now that this study is nearly at an end, to suggest the most appropriate measures for approximating the laws of the Member States in the direction of progress, not forgetting that these measures must take place at two levels: that of copyright law and that of the relationship of copyright law to the specific legislation on designs and models and this because of the very wide area of protection covered by the activities of the artist-craftsman, as we have tried to show in the foregoing chapters.

3 - Suggestions for an approximation of the laws on copyright and with a view to future harmonization of the laws on designs and models

a) Protection of the artist-craftsman calls for an overlap between the laws on copyright and those on designs and models.

The object produced by the craftsman is useful, for it must usually satisfy a given need. In this it differs from the work of art which is gratuitous and has no other end but itself.

But the craftsman is bound by certain facts and certain constraints. He is at the same time engaged in a creative act and may create a "work of applied art". The useful does not drive out the beautiful. Art exists independently of its purpose. The craftsman is a creator, like the painter or the sculptor, but he exercises his talent on utilitarian objects.

The craft object has a second feature: it may be produced in more than one copy. But this has only a relative importance, for reproducibility is not an intrinsic characteristic: it is merely the result of success. On the face of it, reproduction dilutes the originality of the object. But in fact works of art such as engravings lend themselves to reproduction without losing their originality.

Neither of these two features sets the craft object fundamentally apart from the work of art. As applied art, it enjoys the full and normal prerogatives of copyright.

However, each of these two features, utility and suitability for reproduction, also makes the craft object equally resemble industrial forms.

There is a third feature which can make the craft object entirely an industrial model: this is the possibility of industrial manufacture.

So long as the craftsman re-makes the same object with his hands in several copies, he is making a work of art. His copies, often imperfect, always reflect a part of himself.

If the craftsman is replaced by a machine, the same distinction that exists between the model and the mechanical reproductions of the model is then created. The craftsman, after the event, is in exactly the same situation as the creator of the model or the industrial designer who have the specific legislation on designs and models to protect them.

This is why the object to be protected in the craft sector is that of applied art and also that of designs and models, which are imprecise or obsolete concepts but in law designate two categories of creations of form corresponding to two different systems of legal protection.

The first category, applied art, entirely covers the traditional activities of the artist-craftsman and the national and international copyright laws give such work satisfactory protection in principle.

The second category, designs and models, corresponds to a different system of protection conceived from the point of view of industrial property. To pose the question of the protection of the works of the artist-craftsman by this specific legislation is in fact to solve the vast and difficult problem of the relations between two different conceptions of the protection of forms:

a. the straightforward and informal principles of copyright;

b. protection organized on the basis of registration and within precise limits, as in the case of industrial property.

At Community level, as we have shown, the distinction between works of applied art and designs and models is blurred and imprecise. As a result, craft works which enjoy the protection of copyright in all countries may also, depending on which country is involved, fall within the ambit of the specific law on designs and models. Thus there are differences in protection according to nationality and according to the place in the Community where the work was created, and this justifies Community action to approximate the laws.

In daily life, who bothers to distinguish between applied arts and designs and models? Is anyone except a lawyer interested in such distinctions?

The important question is certainly not to refine the criteria separating creations of form into two protection systems, for they should both be protected in the same way.

All distinctions between pure art, applied art, and designs and models, furthermore, are based on prejudices, on conventional ideas about the relationship between art and industry, and are not based on the realities and ideas of our own time.

Is it not necessary, therefore, to have but a single law which would organize protection for all creations of form, whether craft or industrial?

We have rejected the possibility of protecting all creations of form by copyright (Chapter VI, page 77). All recent international studies conclude that there is a need for a specific law on designs and models (para. 1 above, page 134). The activities of the artist-craftsman alone are enough to justify the necessity for - and the advantages of - protection through copyright principles.

It is therefore a matter of solving the problems raised by the coexistence of two necessary laws.

This means for certain countries separating creations of forms into two categories, each one coming under a particular law. For to prevent an overlapping application of the two laws which both relate to creators of forms, criteria have been established which distribute the works between these two laws. The distinguishing criteria are often necessarily arbitrary, witness those of industrial purpose and author's intention in the UK before 1956 or that of separability in Italy today. It is an attempt to divide what is indivisible and it increases uncertainty and unfairness.

Many created works remain poised between the two laws: either the legislators tip the scales by means of regulations so that the article in question falls into the field of application of one law or the other, or the law of the market prevails, the creative worker being usually the worst placed, the worst informed and the least assisted party, unable to resist economic pressures or to have the law applied to his advantage by the courts.

With the exception of Italy, and without adopting the extreme position of France, the other countries have chosen the principle of limited overlap under certain conditions: the Federal Republic of Germany and Ireland a long time ago, the UK in 1968 and the Benelux countries in 1975.

Within the Community the trend is towards the possibility of applying the two laws simultaneously but under certain restrictive conditions. The coexistence of the two laws can therefore only be examined in this perspective.

b) The basic protection provided by copyright should be standardized in the Community

We have stressed at length the important and real advantages of the protection of the craftsman's work by copyright (Chapter VI), the conditions as to content (Chapter VIII) and form (Chapter IX) being the most favourable, without forgetting the effects of protection (its duration and scope) (Chapter X).

Although these provisions flowing from the general principles of copyright are to be found in the laws of all Community countries, we have found that their application and interpretation show differences from one country to another.

Moreover, some provisions relating to the "moral" and "patrimonial" rights of authors cannot be applied in the case of applied arts. This is the case with provisions which are based on a desire to give extended protection to works of the mind and in particular to works of "pure" art, for example the right to have second thoughts, the right to make disclosure, certain provisions relating to the publishing contract, the right of preference, and so on.

In each of the copyright laws of the Member States of the Community uniform provisions specific to the applied arts would be enacted, entailing the formal exclusion of certain elements of moral and patrimonial rights peculiar to authors of graphic and plastic works. In this way a more equitable balance with industrial property would be re-established. The rights of personality would be reduced to the essentials: respect for the name of the author and respect for his work.

Elsewhere (Chapter VII) we have insisted on the need for artist-craftsmen to enjoy two systems of protection: copyright and industrial property. For the proper application of this principle of overlap of laws it is essential that there should be no fundamental disequilibrium capable of distorting its operation.

For this reason we consider that a duration of protection which is uniform and reduced to 25 years, with possibility of division into several periods, should be instituted for works of applied art. It would take effect from the date of execution of the work.

As in the law of Luxembourg, and with the individual provisions suggested above, a reduced duration relating to the applied arts would be fixed uniformly in the copyright laws of each country in the Community.

Of course, this shortened duration would be harmonized with the duration which would be fixed in a future harmonization of Community legislation on designs and models.

c) This standardized protection must be compatible with the specific laws on industrial designs and models and, especially, with future European legislation on industrial designs and models.

The differences between the two systems as to the basic protection (conditions as to content), novelty or originality, exist only in principle, practice having mitigated theory by turning towards the concept of subjective novelty, which is close to that of originality. Only the Benelux system differs from the general and liberal provisions of the laws in force, but it entered into application only recently and contains strict limits to taking into consideration antecedents in time and space.

Consequently, there are not really any differences between copyright law and industrial property law on this subject.

The same does not apply to conditions as to form. Here, obligatory registration is the starting-point for all protection as industrial property and this is exactly the opposite to copyright, protection under which has never been subject to the slightest formality of any kind.

The two systems must coexist, as registration is necessary in the specific legislation. But so that the works of the artist-craftsman are able, if appropriate, to be protected by the specific legislation, it is necessary that registration should be declaratory, which is more favourable to the author's interests since it makes the effects of protection reach back to the date of execution of the work. But it is obviously necessary that third parties in good faith should be able to continue exploitation of the design which was started before registration or before the date of public exploitation.

Consequently, in order that it should be accessible to the artist-craftsman, registration will have to be declaratory of rights, not lapsing on account of acts of disclosure prior to registration, without prior examination, with no obligation to exploit, and with the possibility of postponing publication of registration for one year (longer period for certain industrial sectors).

Thus acts of infringement within the framework of the specific legislation which occur before publication of the design or model should not give rise to damages.

The two systems cannot and should not coexist under these conditions, the author being required under copyright law to provide proof of the date of creation by any means available, which is not always easy, whereas under the specific legislation it is sufficient if he registers, which gives him a presumption of ownership and proof of the date of creation. These two possibilities correspond to two modes of creation of forms, the craftsman finding it impossible in practice to register everything, the industrial designer or the creative department in a company registering only designs that are clearly usable and profitable.

Registration is useful for industry and for anyone wishing to benefit, from the time of the creation or exploitation of the design, from a means of incontestably proving the date of creation and the ownership. But the copyright system is necessary for all those who cannot immediately register their work, either because their resources are insufficient, because they turn out a great number of works, or because they do not exploit their works straight away.

As for the effects of protection, the imbalance is obvious and favours copyright. We think it is essential that the periods of protection should be harmonized as much as possible and that the considerable differences that exist at present should be reduced. Nothing can really justify a difference in the period of protection of applied arts on the one hand and designs and models on the other.

It is true that the majority of Member States of the Community have adopted a period of 15 years for the protection of designs and models and that the Berne Convention has fixed 25 years as the minimum period for the protection of applied arts. In these circumstances it will be difficult to find a solution acceptable to all and an identical period common to all creations of forms. But concessions from both sides are indispensable, since all share the same objective, namely simplifying and harmonizing all the present laws of the Community to put them at the service of the creative worker and to promote trade in the Community's "cultural goods".

The law on the protection of the shape and appearance of objects merely reflects, as we have shown in this study, the different movements in the development of art and industry or in the ideas that are held about them in certain countries, which is why there is so much wavering between the fields of application of copyright law and industrial property law in the matter of protection. It is time to be aware of the new realities which have made the arbitrary separation between art and industry unreal, have made these subtle distinctions between different creations of forms unnecessary, and have made the contrasting of artistic, aesthetic and utilitarian objectives unimportant.

The craft sector is the best possible example for demonstrating that the two systems of protection are necessary but that they must be approximated and harmonized.

If this is done, the artist-craftsman will be able finally to operate properly on the European territory which offers him new opportunities which he will then be able to seize in a new spirit. In this way the craft professions will be in a position to participate fully in the European dimension of culture.