

# October 2018: Candidate Cover Sheet

**Exam Paper:** FC4 Design and Copyright Law

**Candidate No:**

**Venue:**

**At the end of the examination:**

1. Count up the number of sheets you have used which you wish to be marked.
2. Use the boxes on each sheet of the answer script to number the sheets: '1 of 25', '2 of 25' etc.
3. If you have used extra sheets, please add your candidate number and the examination reference to these sheets too.
4. Do not staple the sheets, or use adhesive tape or treasury tags.
5. Write the number of sheets of paper you have put in this envelope here (do NOT include this cover sheet in your calculations).

<b>No. of Sheets</b>	
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6. Place the answer sheets that you wish to be marked in order in the white envelope provided with this sheet uppermost and the examination paper detail and your candidate details **showing through the envelope window**.
7. Seal the envelope and leave it on your desk face up.
8. Leave any spare answer script paper on your desk.
9. You may take the examination paper with you.

**For examiner's use only:**

	Section A								Section B				Total
	Qu 1	Qu 2	Qu 3	Qu 4	Qu 5	Qu 6	Qu 7	Qu 8	Qu 9	Qu 10	Qu 11	Qu 12	
<b>Marks available</b>	6	5	9	4	6	4	3	3	20	20	20	20	
<b>Marks awarded</b>													



## Foundation Certificate

### FC4 Design and Copyright Law

Wednesday 03 October 2018 14:00 to 17:00

#### INSTRUCTIONS TO CANDIDATES

1. You should attempt **ALL** questions in Section A and any **three** questions in Section B.
2. The marks for each question in Section A are shown next to the question. Each question in Section B carries **20** marks.
3. If more than the required three questions are answered in Section B only the first three presented will be marked.
4. The total number of marks available for this paper is 100.
5. Start each question (but not each part of each question) on a new sheet of paper.
6. Enter the question number in the appropriate box at the top of each sheet of paper.
7. Do not state your name anywhere in the answers.
8. Write clearly, as examiners cannot award marks to answer scripts that cannot be read.
9. The scripts will be photocopied for marking purposes.
  - a) Use only **blackink**.
  - b) Write on one side of the paper only.
  - c) Write within the printed margins.
  - d) Do not use highlighter pens on your answer script.
10. Instructions on what to do at the end of the examination are on the Candidate Cover Sheet.
11. Any candidate script removed from the examination room will not be marked.
12. This question paper consists of eight sheets, including this sheet.

**In this question paper the following abbreviations will be used:**

- **UDR:** Unregistered design right (UK)
- **CUD:** Community unregistered design
- **CDR:** Council Regulation (EC) No 6/2002 of 12 December 2001 on Community Designs
- **CDIR:** Commission Regulation (EC) No 2245/2002 of 21 October 2002 implementing Council Regulation EC No 6/2002 Council Regulation
- **CDPA:** Copyright, Designs and Patents Act 1988
- **RDA:** UK Registered Designs Act 1949
- **EUIPO:** European Union Intellectual Property Office

## **SECTION A**

### **Question 1**

With regard to *Article 50 CDR 'Deferment of publication'* and *Article 15 CDIR 'Deferment of publication'*:

- a) **describe the process for deferring publication of a Community registered design, including any relevant time limits, and**

**5 marks**

- b) **outline the procedure for remedying deficiencies in a publication request (i.e. for a design subject to deferment), including any relevant time limits.**

**1 mark**

**Total: 6 marks**

### **Question 2**

With reference to the CDPA, what acts can be done without infringing UDR?

**5 marks**

### **Question 3**

With regard to *Article 67 CDR 'Restitutio in integrum'*, consider the situation that the Community registered design lapsed for failure to pay a renewal fee. Restitutio is available as a remedy for the proprietor of the lapsed Community registered design.

**Explain the procedure for restitutio and the requirements the proprietor needs to satisfy before the EUIPO can issue a decision on reinstating the Community Registered Design.**

**9 marks**

#### Question 4

- a) Give three different filing strategies for obtaining registered design protection in the EU and US so an equivalent scope of protection is obtained in each territory. **3 marks**
- b) Give one advantage or disadvantage for one of the identified filing strategies. **1 mark**

**Total: 4 marks**

#### Question 5

With reference to *Section 213(3) CDPA 'Design right'*, in what aspects of an article does design right not subsist?

**6 marks**

#### Question 6

Including your reasoning, explain whether the following threats constitute actionable threats under *Section 26 RDA 'Remedy for groundless threats in infringement proceedings'* by the persons mentioned below.

**Assume a threat of bringing infringement proceedings has been made.**

- a) **A threat made to a manufacturer in relation to making a product.** **1 mark**
- b) **A threat made to a manufacturer in relation to selling a product.** **1 mark**
- c) **A threat made to a seller in relation to selling a product.** **1 mark**
- d) **A threat made to an importer in relation to preparing to import a product.** **1 mark**

**Total: 4 marks**

### Question 7

An application for a Community registered design was filed on 17 April 2018. An application for a UK national registered design was filed on the same date. Both are registered.

**Ignore office closed days, such as public holidays or weekend days.**

a) **When is the first renewal fee due, and when does the renewal grace period end, for:**

i) **the UK registration?**

**1 mark**

ii) **the Community registration?**

**1 mark**

b) **Give a reason why the proprietor might want or need both registrations in the UK.**

**1 mark**

**Total: 3 marks**

### Question 8

Explain how the rights of an exclusive licensee of a copyrighted work compare to the rights of a copyright owner.

**3 marks**

## SECTION B

### Question 9

Jill is an artist who paints unique space-themed paintings of imaginary alien landscapes. For several years she worked at a studio to produce a large number of paintings that were sold by the studio, for which she received a proportion of the amount they sold for. After developing and improving, she started work from her home and now sells her home-created paintings online.

- a) Write notes advising Jill of copyright she owns in relation to the above.**

**5 marks**

She was recently speaking with Joe, a very wealthy investor, who is interested in helping Jill commercialise her work. Joe has offered to pay Jill well for providing prints of her paintings to numerous art outlets throughout the UK. Jill is very interested as she would like to take early retirement, but is unsure what rights she will retain or give away.

- b) Write notes advising Jill of her options in relation to rights she would retain or give away when working with Joe to commercialise any copyright she may own.**

**7 marks**

Jill enters into an agreement with Joe and he provides prints of some of Jill's works to various retail outlets. When out shopping one day, Jill is surprised to see some space-age landscape prints that are reminiscent of her own paintings and signed by one of her ex-colleagues who used to work with her at the studio. Jill storms angrily into Joe's office.

- c) Ignoring any remedies that may be obtainable, discuss what unauthorised acts may have taken place, what action can be taken, and against whom. Discuss how Joe may take action.**

**8 marks**

**Total: 20 marks**

### Question 10

Abigail is a commercial handywoman and entrepreneur. A number of years ago she devised an electronic scoreboard displaying her top ten customers. She could not think of a use for the electronic scoreboard and kept it secret. Later, she made a similar electronic display on the request of one of her clients, Tara. Tara is the owner of a very popular shop in England. Tara used Abigail's display, as supplied by Abigail and without further modification, to show her top ten selling items. Tara found that sales of the items listed on the display increased. Tara now has five stores nationwide, all using the same display.

Tara held a launch party for her latest store, and publicised it widely. Nicky, the owner of a music store, approached Tara angrily at the launch. Nicky told Tara that she should not be using the display because Nicky has a UK registered design for a display that shows the top ten music chart. Nicky sends Tara an aggressive letter accusing her of infringing her rights.

**Considering only registered design rights:**

- a) **Discuss on what grounds Nicky might have a cause of action against Tara.**  
5 marks

Tara tells you she has nothing to worry about because she has been using the display for a long time.

- b) **Assuming Nicky's registration covers Tara's display, explain under what circumstances prior use rights mean that the display design will not infringe Nicky's rights.**  
5 marks

Tara tells you she had no idea about Nicky's designs as she legally obtained her designs from Abigail.

- c) **Advise Tara whether or not she has any defences to infringement.**  
4 marks
- d) **Advise Tara under which circumstances she has, or has not, committed any criminal acts.**  
4 marks

Tara tells you she was upset by the tone of Nicky's letter.

- e) **Write notes for a meeting on what actions Tara might be able to take against Nicky.**  
2 marks

**Total: 20 marks**

### Question 11

Roisin files an application to register an original design in the Republic of Ireland on 9 April 2018. She contacts you wanting to extend protection for the design throughout Europe. She already filed a new Community multiple design application for three product designs, including the original design, on 10 September 2018. Roisin struggled with filing the online application, and she was not sure she had handled the design drawings correctly, but, in a panic, she managed to file something and presumed it had been properly submitted.

Roisin then receives a notification from the EUIPO saying the representations for the first design could not be viewed; it appears the files may have been corrupt. The notification also indicates that Roisin paid the wrong fee for the second and third designs. Roisin contacts you for help. Roisin tells you she requires all three designs to be registered in the EU.

- a) Explain what effect the errors have on Roisin's multiple application and any actions Roisin needs to take to ensure the application proceeds to registration. In your answer include any relevant deadlines and any action the EUIPO will take.**

**7 marks**

Roisin also says she cannot see any mention of her earlier Irish design, although she assumed the EUIPO would conduct all necessary checks and know all about it, and given she paid these official fees she presumes this will sort itself out.

- b) Advise Roisin on any priority issues in connection with the earlier Irish design, including any relevant actions (stating deadlines) Roisin needs to take using the existing applications.**

**9 marks**

Roisin tells you she was keen to obtain a broad scope of protection and ensured this by selecting a different classification for each of the three designs.

- c) Advise Roisin on the possible problems with such a strategy and any actions to be taken?**

**4 marks**

**Total: 20 marks**



## Question 12

**In answering the questions below, ignore any registered rights and trade marks.**

Taylor is a British writer and publisher, and keen on protecting her ideas to prevent others copying them. She found that she seems to make certain 'buzzwords' popular by using them in her publications. These buzzwords are existing words that she has used in previously unrelated contexts and that she thinks will catch on, but she is keen to prevent anyone else using them. She often uses the words in speech bubbles, and also in combination with a drawn little stick man figure that has become her insignia.

**a) Advise Taylor on copyright she may own in the UK.**

**5 marks**

**b) Advise Taylor on design rights she may own in the UK.**

**4 marks**

Kate is also a writer and publisher, and one of Taylor's competitors. Kate sees Taylor's designs and decides she would like to use a stick woman figure to identify her work, and so she creates her own and makes little stick figure bookmarks that she sells with her books. Taylor sees the stick figure bookmarks, and is annoyed because she thinks it is too close to her own image. Kate insists that Taylor has no case against her because stick figures have been widely used in various forms for a long time and she believes she is free to use her image.

**c) Explain whether Kate is infringing, including whether she has any defences to infringement.**

**11 marks**

**Total: 20 marks**