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Circular designs - is (European) design law fit for the environmental crisis?

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The pandemic brought the world to a standstill, highlighting the deficiencies and inadequacies of the tools we use to organise the world correctly, i.e., achieve socially desirable ends. It also made us feel first-hand the inevitability and destructive force of climate change. There is much to be done at every single point of human activity. Design plays a unique role in this respect, as “the ultimate job of design is to transform man's environment and tools and, by extension, man himself”¹.

In recent years there has been a turn in business toward a circular economy and circular design for the sake of addressing global challenges, including climate change, increasing amounts of plastic and other types of waste, the pollution of land zones and oceans, deforestation and the loss of biodiversity. Given that the rationale of intellectual property law has always been to promote the public good, it seems appropriate against this background to raise the question whether design law is fit for promoting circular design, meaning design that meets the requirements of a circular economy?

The EU *sui generis* design regime was a response to the needs of the last decades of the 20th century, dominated by overproduction, saturated markets and exuberant consumerism. The EU design protection law is focused on design as a means for securing distinction and differentiation of products, meant to reach the customer with an increasing number of new products, which feature small changes and a short market life. Its primary aim is to stimulate creativity in designs and development of new products and to reward investment in the creative effort to produce the individual face of products on the market². Is this the kind of design the world still needs in the 21st century? As announced by Ursula Von der Leyen, Europe needs the New European Bauhaus that connects the European Green Deal to our living spaces and experiences – i.e. enriching, sustainable, inclusive design.

The pending EU legislation on circular economy heavily impacts product design. Will existing industrial design laws stand in the way of implementing the circular economy transition with the urgency dictated by the climate crisis? Several of its norms may raise red flags in this regard, including the degree of functionality permitted by design law, the treatment of component parts, duration of protection, registration requirements and exhaustion.

This article seeks to contribute to scholarship relating to the compatibility of circular economy policies with design law. The first part will consider the policy goals of the circular economy legislation as they relate to industrial design. It will consider the role of product design in an economy that strives to de-emphasize consumption in terms of quantity and instead focuses on product use and features. The second part will evaluate [selected] existing design law norms in terms of whether they promote or impede circular economy policy goals and examine how they can be modified in the spirit of these goals.

¹ V. Papanek, *Design for the Real World*, 1984, p. 28.

² Recital 7 CDR.