

# Digital designs and legislative challenges in the EU

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(GNIPA)

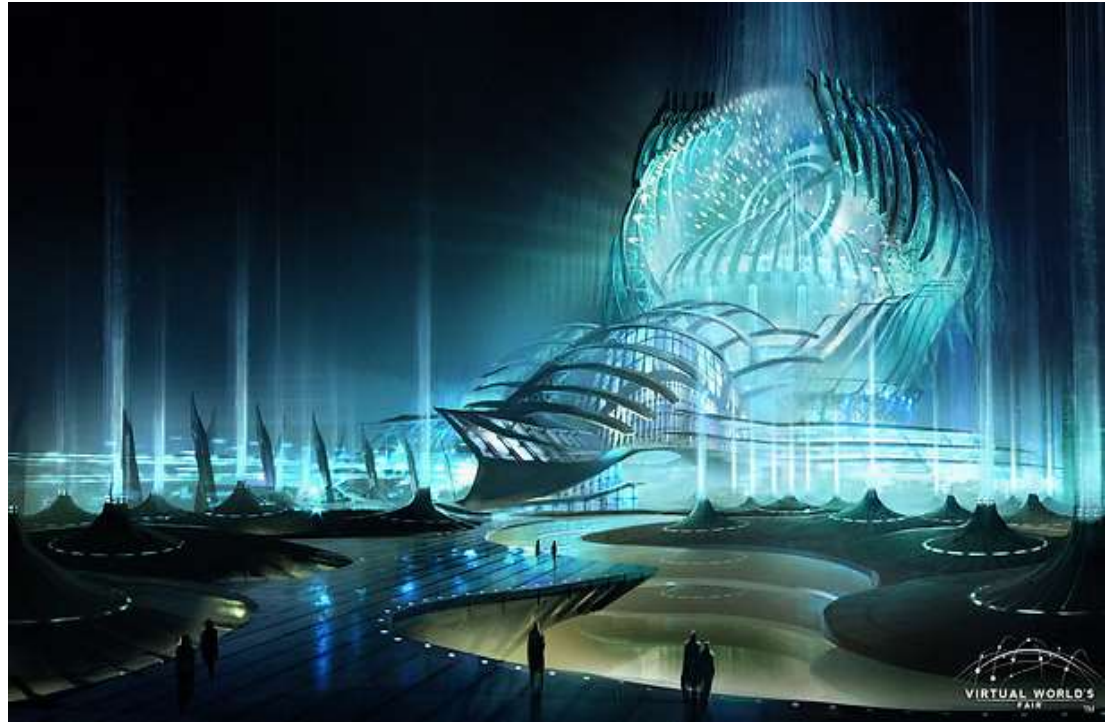
## Defining protection of new designs

### New designs

Do they fit current design and product definitions?



RCD 005611548-0013 Class: 14.04 Animated graphical user interfaces



<https://www.theverge.com/2015/10/26/9615024/landmark-virtual-reality-worlds-fair-pavilion-of-me>

## Defining the protectability of animation

What is **animation**, **movement** and **transition** in designs and where are the limits?



<https://www.theverge.com/2015/10/26/9615024/landmark-virtual-reality-worlds-fair-pavilion-of-me>

## Proposed design definition (Art. 2 recast DD)

↓ 98/71/EC (adapted)

⇒ new

(3~~ee~~) 'design' means the appearance of the whole or a part of a product resulting from the features ~~of~~, in particular, the lines, contours, colours, shape, texture, ~~and/or~~ materials of the product itself and/or its ~~ornamentation~~ ~~⊗~~ decoration ~~⊗~~ ⇒, including the movement, transition or any other sort of animation of those features ⇐ ;

## Dematerialisation of designs

### New Designs

What do they really protect?

- Virtual products
- Other non-material products
- No products at all?
- Design and product relationship
- Visibility requirement



RCD 2376806-0003 Class 32.00 Patterns for surfaces



RCD 5282019-0019, 10-01 Digital clocks

## Proposed product definition (Art. 2 recast DD)

(4b) ‘product’ means any industrial or handcraft item ~~⊗~~ other than computer programs ~~⊗~~,  $\Leftrightarrow$  regardless of whether it is embodied in a physical object or materialises in a digital form  $\Leftrightarrow$ , including *inter alia*:

(a) ~~parts intended to be assembled into a complex product~~, packaging,  $\Leftrightarrow$  sets of articles,  $\Leftrightarrow$  get-up,  $\Leftrightarrow$  spatial arrangement of items intended to form, in particular, an interior environment,  $\Leftrightarrow$  ~~⊗~~ and parts intended to be assembled into a complex product; ~~⊗~~

(b) graphic  $\Leftrightarrow$  works or  $\Leftrightarrow$  symbols  $\Leftrightarrow$ , logos, surface patterns,  $\Leftrightarrow$  ~~and~~ typographic typefaces,  $\Leftrightarrow$  and graphical user interfaces  $\Leftrightarrow$  ~~but excluding computer programs~~;

## Defining the protectability of spaces

### New Designs

What do they really protect?

- Protecting spaces
  - ‘Get-ups’
  - Physical and Virtual spaces
  - Interiors and Exteriors



## Proposed product definition (Art. 2 recast DD)

~~(4b)~~ 'product' means any industrial or handicraft item ~~⊗~~ other than computer programs ~~⊗~~,  $\Rightarrow$  regardless of whether it is embodied in a physical object or materialises in a digital form  $\Leftarrow$ , including *inter alia*:

(a) ~~parts intended to be assembled into a complex product~~, packaging,  $\Rightarrow$  sets of articles,  $\Leftarrow$  get-up,  $\Rightarrow$  spatial arrangement of items intended to form, in particular, an interior environment,  $\Leftarrow$  ~~⊗~~ and parts intended to be assembled into a complex product; ~~⊗~~

(b) graphic  $\Rightarrow$  works or  $\Leftarrow$  symbols  $\Rightarrow$ , logos, surface patterns,  $\Leftarrow$  ~~and~~ typographic typefaces,  $\Rightarrow$  and graphical user interfaces  $\Leftarrow$  ~~but excluding~~ ~~computer programs~~;



## Defining the object of protection (Art. 18a AR/Art. 15 recast DD)

*'Article 18a*

### **Object of protection**

Protection shall be conferred for those features of the appearance of a registered EU design which are shown visibly in the application for registration.<sup>2</sup>;

## „Filing date’ design representation requirement

### Clarity

### Amending Regulation and recast Design Directive

(Art. 36(1) AR/Art. 25(1) recast DD)



## ‘Formal’ design representation requirements

### Recast Design Directive

(Art. 26 + Recital 38 recast DD)

- Design can be represented by **any form** of visual reproduction
- Views can be static, dynamic or **animated**
- Any means allowed:
  - drawings
  - photographs
  - **videos**
  - computer imaging
- One or more **aspect or other types of views**
- Views, disclaimers must be **consistent** and **background** must be **neutral**

## **,Formal' design representation requirements**

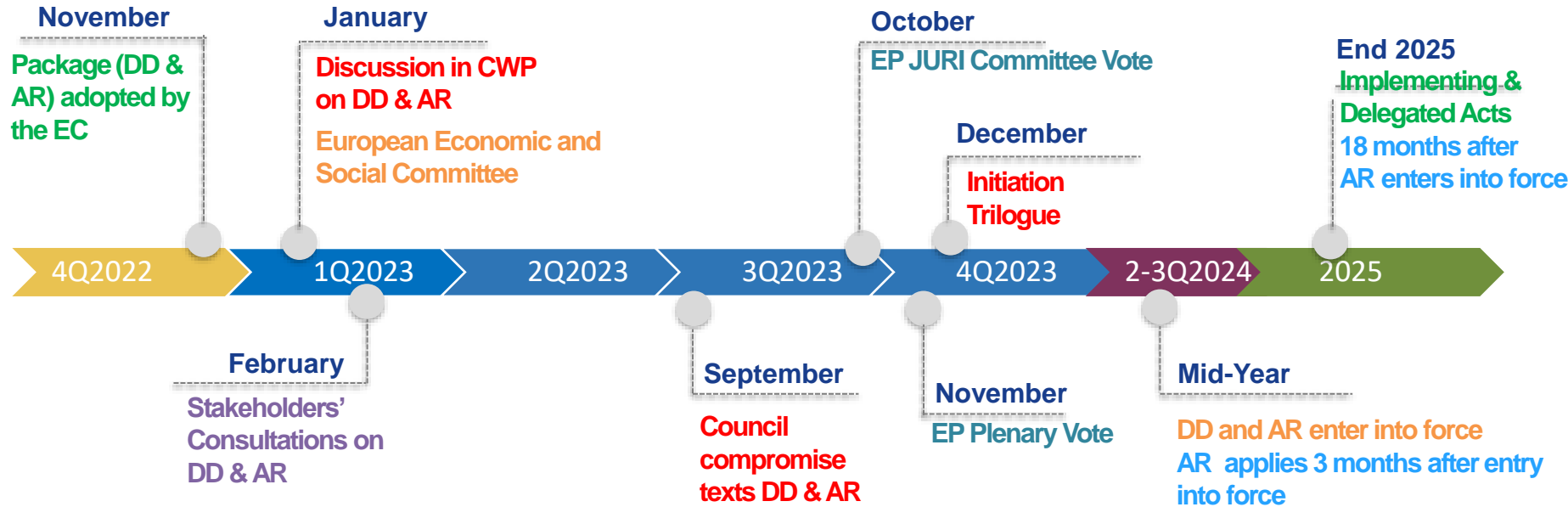
### **Recast Design Directive**

(Art. 26(8) + Recital 38 recast DD)

### **Imperative to cooperate on the common standards and means**

- Convergence of practices shall define:
  - Types and numbers of views
  - Types of visual disclaimers
  - Technical specifications of means
  - Formats and size of electronic files

# Timeline of the legislative process



## POST ENACTMENT

- ✓ Transposition of the DD in the MS
- ✓ Codification of the EUDR & IDRs

## Challenges for the future

- Harmonise representation requirements
- Impact on Hague Rules
- Design Law Treaty
- Positioning designs in the family of IP rights





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