

## QUESTIONNAIRE ON GRAPHICAL USER INTERFACE (GUI), ICON AND TYPEFACE/TYPE FONT DESIGNS<sup>1,2</sup>

*prepared by the Secretariat*

1. At the thirty-fifth session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT), held in Geneva from April 25 to 27, 2016, an exchange of views took place on the proposal by the Delegations of the United States of America, Japan and Israel, contained in document SCT/35/6 and entitled "Industrial Design and Emerging Technologies: Similarities and Differences in the Protection of New Technological Designs". The Chair of SCT/35 requested the Secretariat to prepare a questionnaire, based on that document, to be addressed to all Member States of WIPO. He further requested the Secretariat to prepare a document containing the replies to that questionnaire, to be presented at the thirty-sixth session of the SCT, which will be held in Geneva from October 17 to 19, 2016.
2. The present *Questionnaire on Graphical User Interface (GUI), Icon and Typeface/Type Font Designs* was prepared by the Secretariat. The questionnaire is divided in four sections covering the range of issues discussed in document SCT/35/6. The purpose of the questionnaire is to collect information regarding the practice of Member States of WIPO in relation to the protection of graphical user interface, icon and typeface/type font designs.
3. So as to enable the Secretariat to prepare the requested document containing the replies of the Member States of WIPO to be discussed at the thirty-sixth session of the SCT, the completed questionnaire should be returned to WIPO by August 12, 2016, to the following addresses: e-mail: [sct.forum@wipo.int](mailto:sct.forum@wipo.int); surface mail: World Intellectual Property Organization (WIPO), 34, chemin des Colombettes, 1211 Geneva 20, Switzerland; or via facsimile: +41 22 338 87 45.

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<sup>1</sup> GUI and icon designs are identified as illustrative examples of "new technological designs" in document SCT/35/6.

<sup>2</sup> The terms "type font", "font", "type face" or other related terms may possess varied definitions and understandings from jurisdiction to jurisdiction. This questionnaire uses the term "typefaces/type fonts" broadly to refer to type fonts, typefaces or related designs and contexts which may be considered analogous to type fonts or typefaces regardless of whether the type font or typeface is created and utilized on computer display screens via electronic means (however, please note that the term does not refer to the computer program itself) or utilizes traditional mechanical printing mechanisms.

## BACKGROUND INFORMATION

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## I. SYSTEMS OF PROTECTION

### QUESTION 1 - Does your jurisdiction provide protection for:

GUIs	Icons	Typefaces/ Type fonts <sup>3</sup>
NO <input type="checkbox"/> YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/> YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/> YES <input checked="" type="checkbox"/>

Any comment:

**Spain:** See Art. 1(1)(b) of the Spanish Law No. 20/2003 of 7 July 2003 on the Legal Protection of Industrial Designs.

**India:** Only an exceptionally artistic typeface/type font are eligible for protection under Designs Act, 2000.

As far as GUIs are concerned, the Indian Designs Office has rejected applications for registration of GUIs primarily on the basis that GUIs do not meet the requirements of the definitions of 'article' and 'design' under Sections 2(a) and 2(d) of the Designs Act, 2000.

Although the classification of goods under the Designs Act, 2000 provides for Screen Displays and Icons under class 14-04, it is observed that there are no registrations granted to GUIs for the reasons stated above.

<sup>3</sup> Respondents are encouraged to treat this category broadly and to especially identify particulars relating to treatment of typefaces/type fonts, particularly when treatment, requirements, or applicability varies dependent on whether the typeface / type font is by electronic means, such as by computer programs, or traditional printing methods, wherever applicable in the questionnaire.

Therefore, GUIs may be protected as artistic works under the Copyright Act, 1957.

With regard to Icons, the same qualify for registration under the Designs Act, 2000 in class 14-04 (Screen Displays and Icons) although the Designs Office has refused such protection for the reasons of icons not meeting the requirements of definitions of 'article' and 'design' as mentioned above. In the past Icons have been granted registration by the Designs Office in class 14-99 (Miscellaneous) but this practice has been reconsidered and in our experience the Designs Office no longer accepts applications in this class either.

Given the above, we have applied for registrations of GUIs and Icons and the same have been granted registration not as GUIs/ Icons but as designs for specific articles such as mobile phones and restricting the registration to mobile phones alone.

Typefaces and type fonts are registrable under the Designs Act, 2000 under class 18-03.

**UK:** The UK complied with EC Directive 98/71 by introducing the Designs Regulations 2001, which amended the Registered Designs Act 1949 (the "Act"). Consequently, the definitions of "design" and "product" were broadened in order to cover certain GUIs, icons and typefaces.

The Registrar will accept fonts and typefaces providing they are stylised. The visual appearance of computer icons and screen saver graphics, and the visual layout of software and web pages are not precluded from protection per se. The appearance of such forms of digital content can be accepted for registration provided they meet all other requirements of the Act.

*Please answer question 2 if GUIs, icons or typefaces/type fonts are protected in your jurisdiction.*

**QUESTION 2 - Protection for GUIs, icons, typefaces/type fonts is provided in your jurisdiction under one or several of the following laws:**

*Please tick the appropriate box(es)*

	<b>GUIs</b>	<b>Icons</b>	<b>Typefaces/ Type fonts</b>
Design patent law	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Registered industrial design law	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Unregistered industrial design law	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Copyright law	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trademark law	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Unfair competition law	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other – Please specify	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Any comment:

**Spain:** In theory, article 10 of Spanish Law No. 22/1987 of 11 November 1987 on Intellectual Property could provide copyright protection for GUIs, icons, typefaces/type fonts. Actually, pursuant to Article 10 the subject-matter of copyright are all original works, whether applied or not. Nevertheless, in practice only “artistic icons”, “artistic typefaces”, etc. with a medium-high artistic level could qualify for copyright protection. The problem is to determine when the product

shape has such a medium-high artistic level. Very few objective guidelines can be found in the case law.

**India:** Copyright Act, 1957 governs and protects GUIs in India while typeface/ type fonts are protected under the Designs Act, 2000.

**UK:** Please note that designs are registered in the UK using registered industrial design law. There is no design patent law in the UK.

Please also note that UK unregistered design law in the UK does not provide protection for GUIs, icons or typefaces/type fonts. However, whilst the UK is still in the EU, the EU unregistered industrial design law provides protection for GUIs, icons and typefaces/type fonts.

For both copyright law and trade mark law, whether any particular GUI, icon or typeface/type font qualifies for protection will depend on whether it passes the usual thresholds for protection under those laws.

A defence to copyright infringement exists where typefaces are used in the ordinary course of printing – see section 54 of the Act.

**QUESTION 3 – To the extent that GUIs, icons or typefaces/type fonts may be eligible for overlapping protection in your jurisdiction via multiple intellectual property rights, such as copyright and a design right (including design patent, registered design or unregistered design), what is the extent of such overlapping rights?**

*Please tick the appropriate box(es)*

	GUIs	Icons	Typefaces/ Type fonts
Full copyright and design overlap	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Full copyright and design overlap but reduced term of copyright	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Copyright overlap only for designs that possess a level of artistic creativity that is of a certain level	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Copyright protection excluded where the product is intended for production in more than a specific amount of units	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other – Please specify	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Any comment:

**Spain:** In theory, as provided by article 190 of the Spanish Industrial Property Code (Royal Decree-Law of 26 July 1929) and article 10.1.e of Law No. 22/1987 of 11 November 1987 on Intellectual Property, GUIs, icons or typefaces/type fonts may be protected by both a design right and a copyright.

Nevertheless, as already pointed out above, in practice only “artistic icons”, “artistic typefaces”, etc. with a medium-high artistic level could be entitled to copyright protection. The problem is to determine when the product shape has such a medium-high artistic level. Very few objective guidelines can be found in the case law.

**India:** Graphical user interfaces in India are governed only by Copyright Act, 1957.

For icons and Typefaces/Type fonts: As per Section 2 (a) of the Designs Act, 2000, “article” means any article of manufacture and any substance, artificial, or partly artificial and partly natural; and includes any part of an article capable of being made and sold separately.

## II. APPLICATION FOR A DESIGN PATENT/INDUSTRIAL DESIGN REGISTRATION

*Please answer the following questions if GUIs, icons or typefaces/type fonts are protected in your jurisdiction by a design patent or an industrial design registration.*

**QUESTION 4 - How may a GUI, icon, typeface/type font be represented in an application for a design patent/industrial design registration in your jurisdiction?**

*Please tick the appropriate box(es)*

	<b>GUIs</b>	<b>Icons</b>	<b>Typefaces/ Type fonts</b>
Photographs (black and white)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Photographs (color)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Drawings, including technical drawings	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other graphic representations – <i>Please specify</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Any other format which enables the applicant to accurately represent the design (e.g., video type file) – <i>Please specify</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Any comment:	<p><b>India:</b> For icons and typeface/ type fonts, the new Classification of Goods introduced the class-14-04, in the prevailing Design Rules, 2001 which was dedicated to articles belonging to: "Screen Displays and Icons". The new classification recognized visual images, graphical user interfaces (GUI) or icons shown on an image display of a tablet computer and Smartphone is to be registrable under Design Law.</p> <p>The manner of representation selected above for GUIs and Icons is based on the registrations granted for Icons in the past and also registrations obtained by us not as GUIs and Icons but as designs for specific articles like mobile phones.</p> <p>However, we will have to wait for the Indian Designs Office to issue specific guidelines, if and when they allow registration of Icons and GUIs under class 14-04.</p> <p><b>UK:</b> The applicant may choose to present a design using whichever illustration 'format' he or she considers to be the most effective and accurate means of representing the design. In addition to the formats mentioned above, computer generated images are also commonplace. The precise format chosen will usually be affected by the scope of protection sought (e.g. if colour photographs are used the colour/s will form part of the design registration).</p>		

**QUESTION 5 - Are additional or special requirements applicable to a GUI and/or icon which is animated (moving images design, transformation, transition, change of colors, or any other animation)?**

GUIs	Icons
NO <input type="checkbox"/> YES <input type="checkbox"/> N/A <input type="checkbox"/>	NO <input type="checkbox"/> YES <input type="checkbox"/> N/A <input type="checkbox"/>

Any comment:

**Spain:** In accordance with the Common Practice (CP6), in principle, all views of an animated icon and graphical user interface need to be visually related, which means that they must have features in common. It is the applicant's responsibility to order the views in such a way as to give a clear perception of the movement/progression.

**India:** Given that applications for registration of GUIs and Icons under the Designs Act, 2000 are not accepted at present in India, animated GUIs and Icons also may be rejected on the same basis. Secondly, we have not come across any design applications filed or granted for animated GUIs or icons in the past.

*Please answer question 6 if, in your jurisdiction, there are additional or special requirements applicable to a GUI and/or icon which is animated. If not, please proceed to question 7 and subsequent questions.*

**QUESTION 6 - What are the additional or special requirements applicable to a GUI and/or icon which is animated?**

*Please tick the appropriate box(es)*

	<b>GUIs</b>	<b>Icons</b>
Series of static images showing a sequence	<input type="checkbox"/>	<input type="checkbox"/>
Video type file	<input type="checkbox"/>	<input type="checkbox"/>
Description	<input type="checkbox"/>	<input type="checkbox"/>
Statement of novelty	<input type="checkbox"/>	<input type="checkbox"/>
Other requirement(s) – <i>Please specify</i>	<input type="checkbox"/>	<input type="checkbox"/>

Any comment:

**India:** Given that applications for registration of GUIs and Icons under the Designs Act, 2000 are not accepted at present in India, animated GUIs and Icons also may be rejected on the same basis. Secondly, we have not come across any design applications filed or granted for animated GUIs or icons in the past.

**UK:** 'Snapshots' can be used to represent animated sequences, and the UK IPO's practice guidance specifically mentions GUIs as something that can be represented in this way. Up to seven views can be used to show a single animated design at different points in time, and in a clearly defined progression. Any and all views presented must have features in common.

**QUESTION 7 - Can a GUI and/or icon be patented/registered as such (i.e., independently of the product that incorporates it or in relation to which it is to be used, e.g., smartphone, tablet computer, computer screen)?**

GUIs	Icons
NO <input type="checkbox"/> YES <input type="checkbox"/> N/A <input type="checkbox"/>	NO <input type="checkbox"/> YES <input type="checkbox"/> N/A <input type="checkbox"/>

Any comment:

**Spain:** Indication of product is for classification purposes only.

**India:** As mentioned above, at present GUIs or Icons are not accepted for registration under the Designs Act, 2000 independently.

*Please answer question 8 if, in your jurisdiction, a GUI and/or icon can be patented/registered as such. If not, please proceed to question 9 and subsequent questions.*

**QUESTION 8 – If a GUI and/or icon can be patented/registered as such in your jurisdiction, how must it be represented in an application for a design patent/industrial design registration?**

*Please tick the appropriate box(es)*

	<b>GUIs</b>	<b>Icons</b>
Representation of the GUI or icon alone, <b>without</b> the product that incorporates it or in relation to which it is to be used	<input type="checkbox"/>	<input type="checkbox"/>
Representation of the GUI or icon in solid lines + the product that incorporates it or in relation to which it is to be used in dotted or broken lines	<input type="checkbox"/>	<input type="checkbox"/>
Representation of the GUI or icon in solid lines + the product that incorporates it or in relation to which it is to be used in solid lines + a description disclaiming the product	<input type="checkbox"/>	<input type="checkbox"/>
Other form(s) of representation – <i>Please specify</i>	<input type="checkbox"/>	<input type="checkbox"/>
Any comment:	<p><b>UK:</b> The UK IPO's guidance states that you can either show or explain: which parts of an illustration you want to protect - this is called a 'limitation'; or the parts of an illustration you don't want to protect - this is called a 'disclaimer'. You can do this by 'greying out' or circling parts of the illustration, or by adding a line of text.</p>	

**QUESTION 9 - Must letters, numerals, words or symbols<sup>4</sup> contained in a GUI and/or icon be disclaimed?**

GUIs	Icons
NO <input type="checkbox"/> YES <input type="checkbox"/> N/A <input type="checkbox"/> <i>If YES, please specify how the letters, numerals, words or symbols must be disclaimed</i>	NO <input type="checkbox"/> YES <input type="checkbox"/> N/A <input type="checkbox"/> <i>If YES, please specify how the letters, numerals, words or symbols must be disclaimed</i>
Any comment:  <b>India:</b> We have not come across any specific requirement regarding disclaiming letters, numerals, words or symbols in GUIs / Icons in the Designs Act, 2000 or in past registrations.  <b>Switzerland:</b> It is recommended to disclaim letters, numerals, words and such symbols in order to obtain the best possible scope of protection.  <b>UK:</b> Any letters, numerals, words or symbols that appear in the GUI and/or icon but which are not disclaimed will form part of the registration.	

<sup>4</sup> Such as representative symbols for communication (e.g., telephone and mail symbols). See document SCT/35/6, page 6.

**QUESTION 10 - Is a GUI and/or icon excluded from protection if it appears only temporarily when a program is loaded?**

GUIs	Icons
NO <input type="checkbox"/> YES <input type="checkbox"/> N/A <input type="checkbox"/>	NO <input type="checkbox"/> YES <input type="checkbox"/> N/A <input type="checkbox"/>

Any comment:

**India:** While refusing one of the design applications for GUI made by Amazon in India, one of the reasons given by the Indian Designs Office apart from non-compliance with the requirements of the Designs Act, 2000 was that a GUI is not permanent and appears only when the device was switched on.

**QUESTION 11 - Can typefaces/type fonts be registered as a set?**

NO <input type="checkbox"/> YES <input type="checkbox"/> N/A <input type="checkbox"/>
Any comment:

**QUESTION 12 - With respect to typefaces/type fonts, are there any requirements to provide representation for the entire series of characters (such as the whole alphabet) or for an illustrative group of the entire series of characters in the typeface/type font?**

NO  YES  N/A

Any comment:

**Spain:** Where the application concerns a design consisting of a typographic typeface, the representation of the design must consist of a string of all the letters of the alphabet, upper case and lower case, and of all the Arabic numerals, as well as of a text of five lines produced using that typeface, all in 16-pitch font.

**UK:** In order to protect the entire series either the full series should be represented together (in which case the design will consist of the full series together as depicted) or each individual element should be protected separately.

### III. EXAMINATION OF THE APPLICATION

**QUESTION 13 – To the extent that your IP office carries out a substantive examination of an application for a design patent/an industrial design registration, what eligibility criteria are examined with respect to GUIs, icons or typefaces/type fonts?**

*Please tick the appropriate box(es)*

	GUIs	Icons	Typefaces/ Type fonts
Novelty	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Originality	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Individual character	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Creative difficulty	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Non-obviousness	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Public order / morality	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other(s) – Please specify	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Any comment:

**Spain:** SPTO does not conduct any substantive examination before registration.

**Switzerland:** Swiss Design Law does not foresee a substantive examination.

**UK:** There is no substantive examination of UK registered design applications.

**QUESTION 14 - Are the eligibility criteria for GUIs, icons or typefaces/type fonts different from those applied to other industrial designs?**

GUIs	Icons	Typefaces/ Type fonts
NO <input type="checkbox"/> YES <input type="checkbox"/> N/A <input type="checkbox"/> <i>If YES, please specify</i>	NO <input type="checkbox"/> YES <input type="checkbox"/> N/A <input type="checkbox"/> <i>If YES, please specify</i>	NO <input type="checkbox"/> YES <input type="checkbox"/> N/A <input type="checkbox"/> <i>If YES, please specify</i>
Any comment:		

**QUESTION 15 - Do you have any further remarks on the examination of GUIs, icons or typefaces/type fonts carried out by your IP office?**

Remarks:

**India:** In Indian IP offices, certain icons have been registered under Designs Act, 2000 while GUI is considered a part of the Copyright Act, 1957. A detailed examination is carried out to distinguish between the two Intellectual Properties.

**UK:** According to the UK IPO's guidance, GUIs are most effectively represented in a UK design application via a single self-contained 'screen shot' of the static interface layout intended for protection.

#### IV. SCOPE AND DURATION OF PROTECTION

**QUESTION 16 - Is the scope of protection of GUI, icon or typeface/type font designs limited by the classification of the industrial design?**

GUIs	Icons	Typefaces/ Type fonts
NO <input type="checkbox"/> YES <input type="checkbox"/> N/A <input type="checkbox"/>	NO <input type="checkbox"/> YES <input type="checkbox"/> N/A <input type="checkbox"/>	NO <input type="checkbox"/> YES <input type="checkbox"/> N/A <input type="checkbox"/>

Any comment:

**UK:** In the UK, the Locarno system is used to designate the area to which the products belong. However, the design right is not limited to that classification.

**QUESTION 17 - Is a GUI and/or icon protected in relation to one product (e.g., a smartphone) also protected against its use in relation to another product (e.g., the display of a car)?**

GUIs	Icons
NO <input type="checkbox"/> YES <input type="checkbox"/> N/A <input type="checkbox"/>	NO <input type="checkbox"/> YES <input type="checkbox"/> N/A <input type="checkbox"/>

Any comment:

**India:** The new Classification of Goods introduced class 14-04, in the prevailing Design Rules, 2001 which was dedicated to articles belonging to: "Screen Displays and Icons".

The new classification recognized visual images, graphical user interfaces (GUI) or icons shown on an image display of a tablet computer and Smartphone to be registrable under Design Law.

**QUESTION 18 - Is the duration of protection of GUI, icon or typeface/type font designs the same as the duration of protection of other industrial designs?**

GUIs	Icons	Typefaces/ Type fonts
NO <input type="checkbox"/> YES <input type="checkbox"/> N/A <input type="checkbox"/> <i>If NO, please specify</i>	NO <input type="checkbox"/> YES <input type="checkbox"/> N/A <input type="checkbox"/> <i>If NO, please specify</i>	NO <input type="checkbox"/> YES <input type="checkbox"/> N/A <input type="checkbox"/> <i>If NO, please specify</i>

Any comment:

**India:** The duration of protection of GUI is governed by the Copyright Act, 1957 and extends to the lifetime of the author + 60 years. Icons and screen displays have been registered under Designs Act, 2000 titled "Miscellaneous". The duration of protection of typefaces/type fonts is governed by Designs Act, 2000 and extends to a period of 10 years.

GUIs may be protected under the Copyright Act, 1957 for a period of 60 years following the year in which the author or last of the author(s), if there are more than one author, die/ dies.

**Germany:** Yes. There is one exception for Typographic typefaces regarding the renewal fees (Art. 61 (5) Design Act):

(5) In derogation of section 28 (1), first sentence, renewal fees shall be payable only from the eleventh year of the term of protection to maintain the term of protection for the typefaces referred to in subsection (1).

**UK:** In the UK the right in a registered design lasts for five years from the date of registration, up to a maximum of 25 years.