

Copyright Protection of Design for Useful Articles: Better in U.S. or EU/UK



Our Speakers



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U.S. and EU/UK Copyrightability Frameworks

U.S. Standard for Copyrightability of a Design of a Useful Article

- “An artistic feature of the design of a useful article is eligible for copyright protection if the feature (1) can be perceived as a two- or three-dimensional work of art separate from the useful article, and (2) would qualify as a protectable pictorial, graphic, or sculptural work either on its own or fixed in some other tangible medium of expression if imagined separately from the useful article.” *Star Athletica v. Varsity Brands, Inc.* (S. Ct. 2017)
 - Must not replicate the design of the useful article itself



Design 299A

Design 299B

U.S. Standard for Copyrightability of a Design of a Useful Article

- “A work must be original to the author.” *Feist Publications, Inc. v. Rural Tel. Serv. Co.* (S. Ct. 1991)
 - Independently created, and
 - Possesses at least some minimal degree of creativity
 - Selection and coordination of Rural’s subscribers and their town and telephone number, and the alphabetical arrangement of Rural’s subscribers by surname in a directory not sufficiently creative
 - “age-old practice” and inevitable

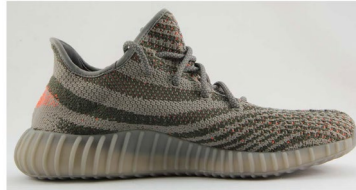
Examples of U.S. Standard Applied

- Copyrightable (Separable features sufficiently creative)



Design 299A

Design 299B



- Not copyrightable (no separable features or separable features insufficiently creative)



- The U.S. threshold does not categorically deny copyright to useful articles; it asks whether a work's particular expressive features justify receiving copyright's unusually powerful and long-lasting protection

European Standard for Copyrightability of a Design of a Useful Article

- **Infopaq** (2009): Copyright protection applies to subject matter which is “original in the sense that it is its author's own intellectual creation”.
- **Flos** (2011): EU Member States cannot deny copyright protection to designs (works of applied art) if they meet the general requirements for copyright.
- **Cofemel** (2019): EU Member states cannot require a special threshold of “aesthetic effect” or “artistic value”. The only requirement is **originality**.



European Standard for Copyrightability of a Design of a Useful Article

Brompton (2020): Technical functionality does not automatically kill copyright, provided the creator was able to express their personality by exercising “free and creative choices”.



Case C-833/18 (Brompton), ECLI:EU:C:2020:461

Mio / Konektra (2025): Copyright is independent of **design** rights, but originality cannot be abstract, it must be visible and clear in the final product.



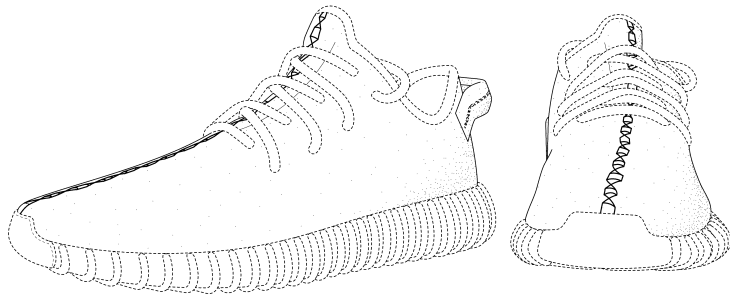
Joined Cases C-580/23 and C-795/23 (Mio/Konektra), ECLI:EU:C:2025:941



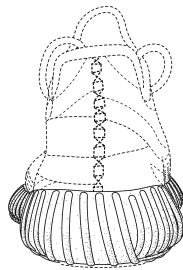
Which System is Better?

The U.S. Copyrightability Standard is Preferable

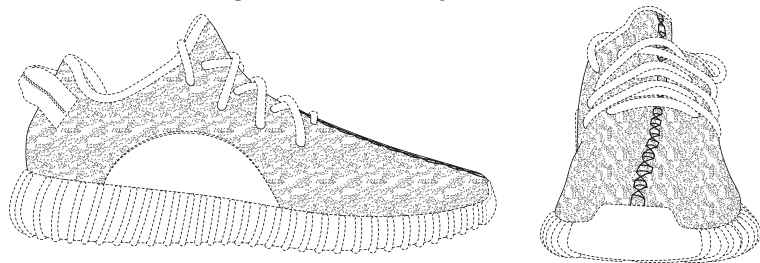
- Copyright's long duration and derivative rights justify the U.S. framework's threshold separability screen for useful products, so that protection rewards creative investment without unnecessarily constraining subsequent design investment



*D775805 to Adidas
Expires January 10, 2032*



*D821078 to Adidas
Expires June 26, 2033*



*D838958 to Adidas
Expires January 1, 2034*



*Reg. VA 2-180-485 to Adidas
Created & Published in 2015
Expires in 2110*

*Copyrightability of 2-D artwork and sculpture claims in the Work
"relates only to the [Work] as a whole, and does not extend
individually to any of the standard and common elements
depicted in the Works such as lines, stripes, or swirl design."
CORB 2019*

The U.S. Copyrightability Standard is Preferable

- The EU framework provides decades-long control over product configurations after the investment that initially justified exclusivity has long since been made, potentially constraining the next generation of designers investing in products that build on an established design vocabulary



*Düsseldorf Regional Court (Dec. 2025) default judgment recognized claimed © in Stratocaster body shape
Created & Published in 1954; Author died in 1991*

Expires in 2041 under the court's treaty analysis

"The decision creates enforceable rights against any guitars using the Stratocaster body shape that are manufactured, sold or distributed into Germany or other countries of the European Union (EU)." <https://www.fender.com/newsroom/270265-fender-wins-landmark-court-ruling-protecting-the-iconic-stratocaster-body-design/>

The U.S. Copyrightability Standard is Preferable

- The U.S. framework helps to prevent copyright from operating as a long-term extension of expired/expiring design patent protection



D592773 to Kia
Expired May 19, 2023



D705963 to Kia
Expires May 27, 2028

KR C-2021-034887 to Kia
Created & Published in 2008
Would expire 2103 if copyright
recognized

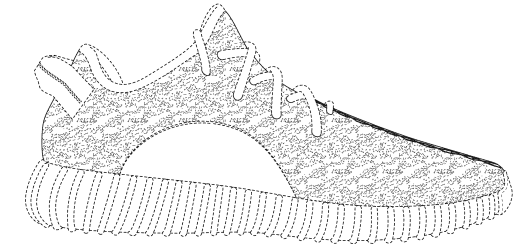
KR C-2021-034885 to Kia
Created & Published in 2012
Would expire 2107 if copyright
recognized



D671167 to Lanard Toys (top)
Expires November 20, 2026

Reg. VA 1-794-458 (bottom)
Created & Published in 2010

Would expire 2105 if copyright
recognized



D838958 to Adidas
Expires January 1, 2034

Reg. VA 2-180-485 to Adidas
Created & Published in 2015
Expires in 2110

**Copyrightability of 2-D artwork and
sculpture claims in the Work “relates only
to the [Work] as a whole...” CORB 2019**

The U.S. Copyrightability Standard is Preferable

- The U.S. addresses copyrightability earlier through its separability screen for useful articles and, for U.S. works, pre-suit registration, providing an additional layer of upfront review that the EU framework lacks



Same sandal designs resulted in opposite determinations under the harmonized EU standard:

German Supreme Court (Feb. 2025) – Not copyrightable

District Court of Central Netherlands (Nov. 2025) - Copyrightable

The European Copyrightability Standard is Preferable



The international framework starts with authorship of a creative work.

Not with whether the resulting object is useful.

What is Copyright For?

“to protect, in as effective and uniform a manner as possible, the rights of authors in their literary and artistic works”

“literary and artistic works” shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as... works of applied art

Berne Convention for the Protection of Literary and Artistic Works, as amended September 1979

The European Copyrightability Standard is Preferable

- A sculpture doesn't stop being art because you can sit on it
- Separability leads to perverse outcomes and is the wrong solution to the problem of term



Source: fi.aarniooriginals.com



Source: vitra.com

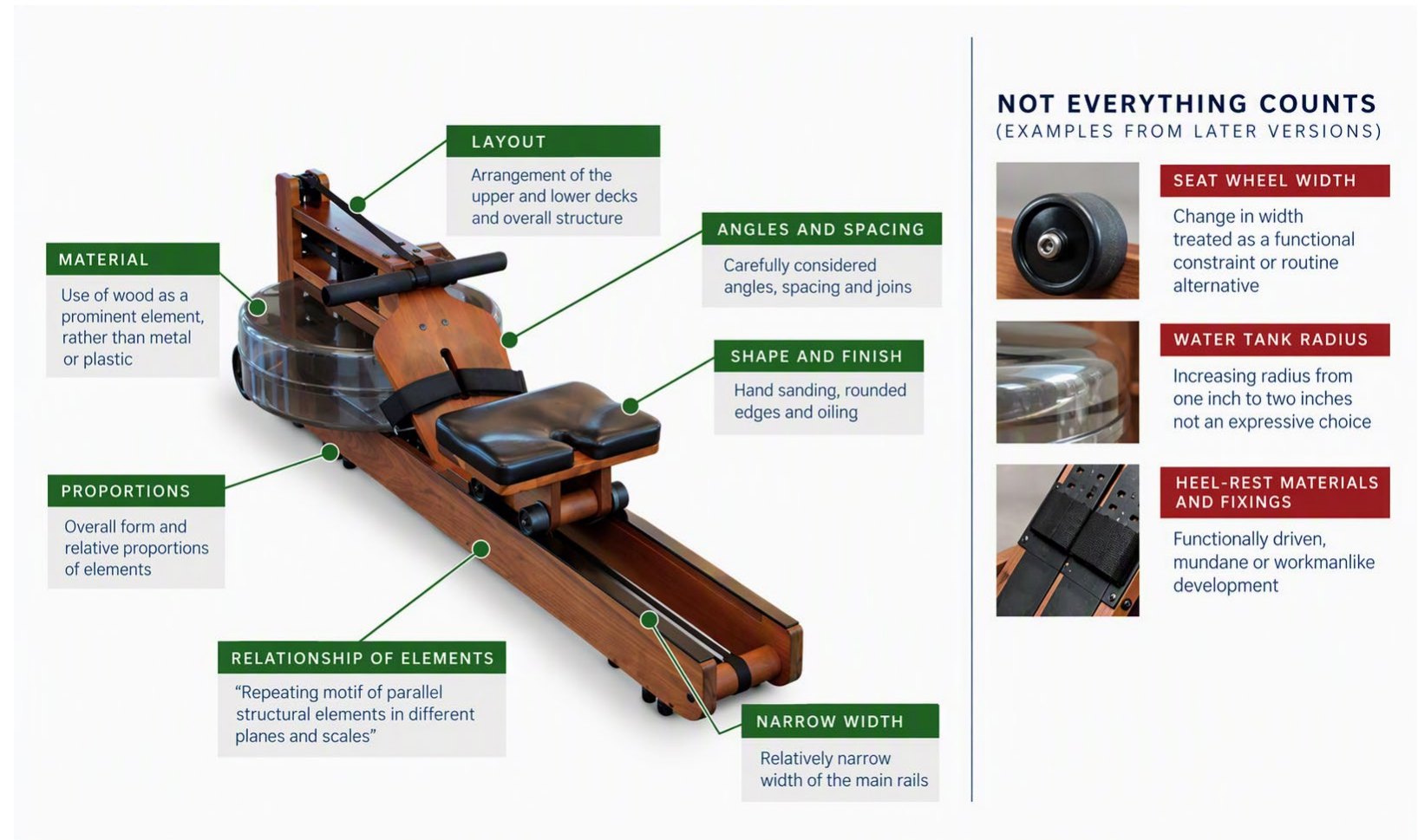
*It shall be a matter for legislation in the countries of the Union to determine the term of protection of... **works of applied art** in so far as they are protected as artistic works; however, this term shall last at least until the end of a period of **twenty-five years from the making** of such a work.*

Berne Convention (as amended)

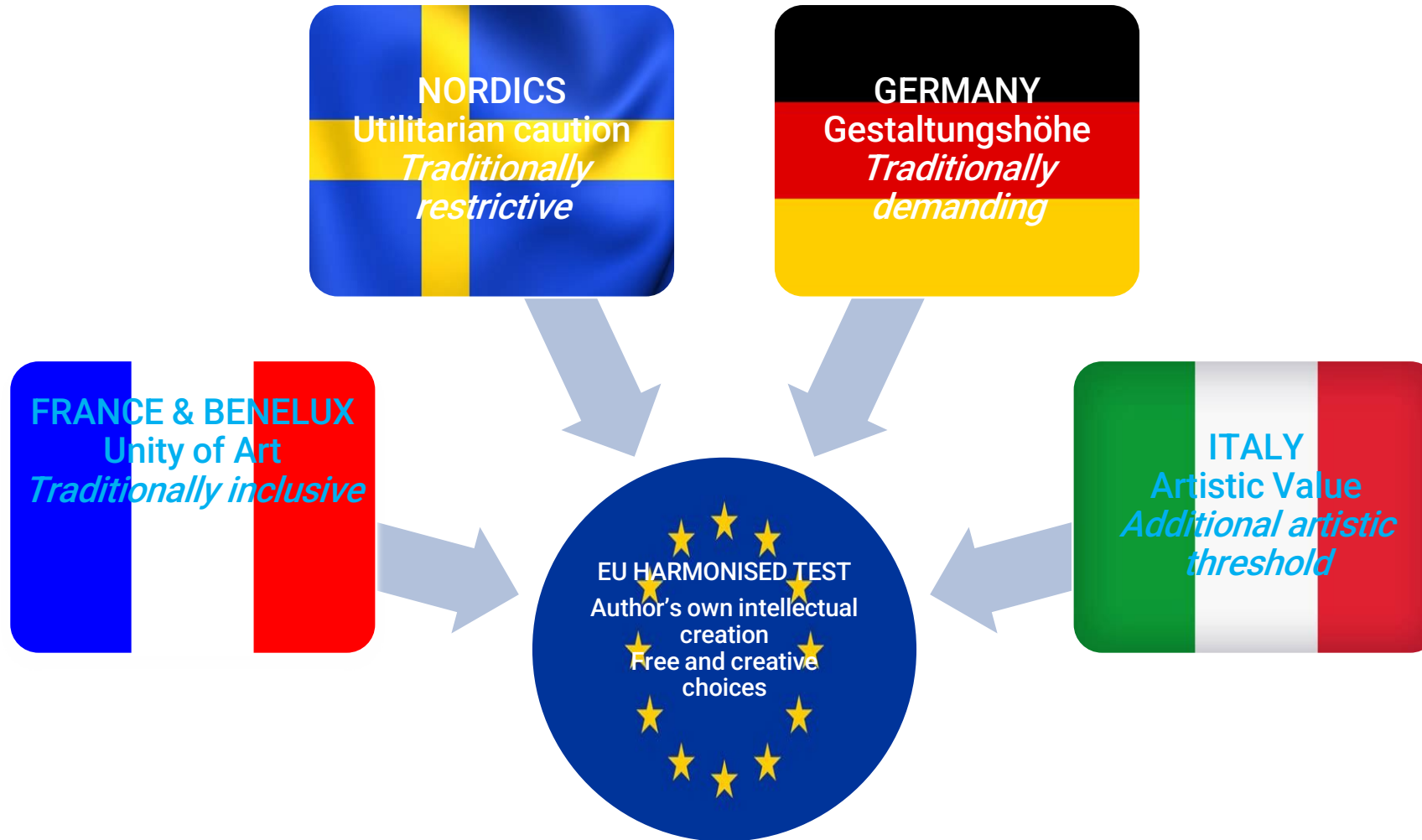
The European Copyrightability Standard is Preferable

A low bar? Look Closer.

- 1985-87 Developed by former competitive rower John Duke
- Resistance intended to evoke rowing on open water
- A deliberate alternative to conventional metal exercisers
- Iterative sketches, testing and prototype development



The European Copyrightability Standard is Preferable



One harmonised standard.

Different legal traditions.

Different applications.



**THE CHALLENGE IS
HARMONISING THE
ANSWERS, NOT ASKING
A DIFFERENT QUESTION.**



Enforcement Considerations

Enforcement Considerations

- Products not granted protection in the US may be eligible for copyright in the EU (the reverse is less likely but also possible)
- Member states applying the EU's harmonized standard may reach opposite copyrightability determinations
- Seek registered design/design patent protection when possible
- Register foreign works in the U.S. when U.S. enforcement is anticipated

Thank you.

