



SCHOOL OF
ECONOMICS AND
MANAGEMENT

The new hybrid product design legislation

The protection of fashion and product design
in the digital world and the physical world

Oliver Titikic

DEPARTMENT OF BUSINESS LAW

Master's Thesis in European and International Trade Law

15 ECTS

HARN63

Spring 2024

Contents

Abstract	5
Abbreviations	7
1 Introduction	9
1.1 Background	9
1.2 Purpose and research questions.....	12
1.3 Delimitations	12
1.4 Method and materials.....	13
1.4.1 The legal dogmatic method.....	13
1.4.2 The EU legal method	13
1.5 Outline.....	14
2 New technology and the digital world	16
2.1 An introduction to the digital world.....	16
2.2 A new era of technology, augmented reality and virtual reality	16
2.3 The rise of Metaverse.....	18
2.3.1 Practical examples of metaverse in today’s society.....	19
2.4 Non fungible tokens and tokenisation of physical product design	22
3 The hybrid product design legislation	26
3.1 An introduction to design.....	26
3.2 The international Design legislation	26
3.3 Design legislation in EU	29
3.3.1 The legal definition of “design”	30
3.3.2 The legal definition of “product” in the context of design	31
3.3.3 Novelty as a criteria for protection	32
3.3.4 Individual character as a criteria for protection	33
3.4 The new hybrid legislation.....	37
3.4.1 The proposal from the commission.....	37
3.4.2 Opinion from the European Economic and Social Committee.....	40
3.4.3 The council and the parliament.....	40
4 Analysis and conclusion	45
4.1 Introduction	45
4.2 Research Question 1.....	45
4.3 Research Question 2.....	48
References.....	54

Abstract

With the rise of new technologies such as augmented reality¹, virtual reality², non-fungible tokens (NFT)³ and the metaverse⁴. A new world is on the rise, the digital world.⁵ With the digital world on the rise there will be new design, digital design. With digital design, there will be new opportunities for brands to capitalise on new markets. Brands such as Gucci, Nike and Balenciaga are in the forefront to capitalise market shares in the digital world.⁶ The EU have encountered the digital evolution and have come to the realisation that the current (soon to be former) design regulation, the Council Regulation (EC) No 6/2002 of 12 December 2001 on Community design, requires to change. The changes are aimed to protect design in both the digital world and the physical world. For this kind of, hybrid product design regulation to exist, the commission proposed a new definition of “design” and “product”. With some modification, the parliament accepted the proposal.⁷

¹IKEA, IKEA place app launched to help people virtually place furniture at home, 2017, See Snap AR, The latest from Snap AR, 2024. See Spectacles, The next Generation of spectacles, 2024. See Snapchat, The most popular filters/licenses, 2024, See WIPO, Metaverse, WIPO Conversation IP and Frontier Technologies, 2023, See RTFKT, What we do?, 2024, See Business of Fashion, Biography Benoit Pagotto, 2020, See M.McDowell, Vogue, Nike and RTFKT take on digital fashion with first “cryptokick” sneaker, 2022.

² T.Spangler, Variety, “Ready Player One” to be turned into massive metaverse experience in partnership with warner bros, 2024, See IMDb, “Ready Player One”, 2018, See Meta, Founders letter, 2021.

³ A.Sestino, G.Guido, & A.Peluso, Non-Fungible Tokens (NFTs), 2022, p 11-17, See R.Sharma, D. Clemon, & Y.Perez, Investopedia, Non fungible token (NFT): What it means and how it works, 2024, See L.DeNicole & T.Campbell, Business Insider, What is an NFT and should you be investing? Everything you need to know about these popular digital assets, 2023.

⁴ WIPO, Metaverse, WIPO Conversation IP and Frontier Technologies, 2023, See Meta, Express yourself with Meta-avatars, 2024, See RTFKT, Meet the team, 2024, See Meta, Express yourself with Meta-avatars, 2024, See B.Marr, Forbes, how to create your digital avatar for the metaverse, 2022, See D.Sturman, Roblox, Blogg, How Roblox avatar tech is evolving, 2023, See RTFKT, What we do?, 2024, See Business of Fashion, Biography Benoit Pagotto, 2020, See M.McDowell, Vogue, Nike and RTFKT take on digital fashion with first “cryptokick” sneaker, 2022.

⁵ University of New South Wales, Materials science and engineering, Materials that shaped history, See A.Ramos, WIPO magazine, the metaverse, NFTs and IP right: to regulate or not to regulate?, 2022, See WIPO, Metaverse, WIPO Conversation IP and Frontier Technologies, 2023, See Meta, Express yourself with Meta-avatars, 2024, See RTFKT, Meet the team, 2024, See Meta, Express yourself with Meta-avatars, 2024, See B.Marr, Forbes, how to create your digital avatar for the metaverse, 2022, See D.Sturman, Roblox, Blogg, How Roblox avatar tech is evolving, 2023, See RTFKT, What we do?, 2024, See Business of Fashion, Biography Benoit Pagotto, 2020, See M.McDowell, Vogue, Nike and RTFKT take on digital fashion with first “cryptokick” sneaker, 2022.

⁶ Hypebeast, A virtual Gucci bag sold for more money on Roblox than the actual bag, 2021, See Gucci, Gucci garden on Roblox, 2021, See Roblox, The Gucci garden experience land on Roblox, 2021. Fortnite, High digital fashion drop into Fortnite with Balenciaga, 2021, See Epic Games, Balenciaga brings high fashion to Fortnite, 2021, See Chapter 2, RTFKT, What we do?, 2024, See Business of Fashion, Biography Benoit Pagotto, 2020, See M.McDowell, Vogue, Nike and RTFKT take on digital fashion with first “cryptokicks” sneaker, 2022.

⁷ The Thesis will focus on the Council Regulation (EC) No 6/2002 of 12 December 2001 on Community design (cit: Design regulation 6/2002) and not on the Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998, See Section 1.3, See European Commission, COM(2022) 666 final, 2022/0391 (COD), Brussels 28/11/2022, Chapter 1, See European Parliament, P9_TA(2024)0164, Industrial property: protection of community designs, European Parliament legislative resolution of 14 March 2024 on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 6/2002 on Community design and repealing Commission Regulation (EC) No 2246/2002 (COM(2022)0666-C9-0394/2022-2022/0391(COD)), Preamble 13, See European Parliament, Legislative Train schedule, Revision of the Community Design Regulation, 2024, Article 3.

“The purpose of this thesis is to describe and analyse the new definitions of “product” and “design” in the new EU design regulation⁸, and to describe and analyse to what extent the design of digital product will be able to be protected in the digital world, such as metaverse.

To fulfil the purpose of this thesis, the following questions will be answered:

- 1. What is the content and scope of the new definitions of “product” and “design” in the updated EU design legislation and how do they differ from the current definitions?*
- 2. To what extent can the design of a digital product be protected in the digital world?”⁹*

The conclusion is that the definition of “product” and “design” has changed to be able to protect digital products in the digital world. The new word for digital product in the new regulation is “non-physical form” which is the opposite to a physical product/object. This means that, design of patterns, animation, logos, different shape and lines etc, could be protected in the digital world. These examples are only touching the surface of what these changes will and could do to the overall protection of design. The new definitions, gives precision to what could be protected in the physical world as in the digital world. With the technology of NFT, one could protect a digital product with the help of NFT technology and a registration at the EUIPO. There is a possibility that international legislation will follow the same hybrid approach to update the legislation to be fitted in both worlds, for example an evolution of the TRIPS agreement. However, it is important to emphasise that this is only the beginning for the new regulation. From my point of view, the criteria for protection, novelty and individual character will change with the help of case law. The limitation will be more concrete over time with the help of case law and guidelines.¹⁰

Keywords: Product, Design, Fashion, NFT, Metaverse, Hybrid legislation, Suitability.

⁸ The thesis will focus on the Council Regulation (EC) No 6/2002 of 12 December 2001 on Community design, even if there is similar provision set out in the Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998. This will be further explained in the sector of delimitation.

⁹ Section 1.2

¹⁰ Chapter 4.

Abbreviations

AR	Augmented Reality
CTJ	Court of Justice of the European Union
DSA	Digital Service Act
DMA	Digital Market Act
EESC	European Economic and Social Committee
EU	European Union
GUI	Graphical user interface
GW	Graphic Works
HPDL	Hybrid Product Design Legislation
NFT	Non-Fungible Tokens
SME	Small and Medium Enterprises
TEU	Treaty on the European Union
TFEU	Treaty on Functioning of the European Union
TRIPS	Agreement on Trade Related Aspects of Intellectual Property Rights
UN	United Nations
VR	Virtual Reality
WIPO	World Intellectual Property Organisation
WTO	World Trade Organisation

1 Introduction

1.1 Background

Throughout the history of mankind, the design of products has always been limited, by the material and technology that has been existing in that specific historic period of time. The material and technology have been the limitation of what the humans have been able to design. For example, as wood, metal, plastic evolved, the designer could evolve and be more creative with their designs. The creativity evolved with the evolution of the materials. Form meets function. With the help of technology and computers, this limitation of industrial design has started to fade away.¹¹ The material that has been used over the years have been everything from, the organic wood from a forest to the plastic that harms our planet. The material has set the boundaries of the creativity of the designer. However, this will change with digital products, a designer doesn't need to have in mind what kind of material to use, or if the material is durable etc.¹²

One of the goals with the design is to make our surroundings beautiful and more artistic but also more ergonomic. Thus, design sometimes have dual purpose which is both functional and aesthetic. Design has an important role in our day-to-day life.¹³ A good design with good quality can help a company gain market shares, therefore it encourages the consumer to buy a certain product. A good design can be a status symbol, a good design can help the human body with the day-to-day ergonomics etc.¹⁴ An example, of a design that have both a function and are beautiful is fashion. Fashion and design have been throughout history part of a nation's tradition and heritage. Fashion have been a symbol of expression, national traditions, family traditions, political opinions or traditions that are connected to a religion etc.¹⁵

However, products such as cars, fast and luxury fashion are limited by their material and have had a big impact on our planet from a sustainability point of view. The impact has not been positive.¹⁶ Although, a product may have sustainable aspects, its the process of creating the product in the physical world, that are harmful to the environment. Especially in those country's that refuse to follow environmental legislation or don't have any legislation to follow.¹⁷ The United Nations (UN)

¹¹ University of New South Wales, Materials science and engineering, Materials that shaped history, See A.Ramos, WIPO magazine, the metaverse, NFTs and IP right: to regulate or not to regulate?, 2022.

¹² University of New South Wales, Materials science and engineering, Materials that shaped history.

¹³ S.Monseau, Protecting creativity in fashion design, 2023, p 3-5, see C.Wainikka, Designrätt, 2016, p 15-28.

¹⁴ R.Wessman, J.Kraus, & I.Lukins, Immaterialrättens struktur, 2019, p 13-15, 33-34, See C.Wainikka, Designrätt, 2016, p 15-28, See S.Monseau, Protecting creativity in fashion design, 2023, p 3-5.

¹⁵ S.Monseau, Protecting creativity in fashion design, 2023, p 3-5.

¹⁶ Agenda 2030, see M.L.Montagani & I.Calboli, Handbook of intellectual property research, 2021, p 616-618 see S.Monseau, Protecting creativity in fashion design, 2023, p 8-9, 14-15, 15-16.

¹⁷ M.L.Montagani & I.Calboli, Handbook of intellectual property research, 2021, p 616-618, See S.Monseau, Protecting creativity in fashion design, 2023, p 15-16, O.Andreas Rognstad & Inger B.Örstavik, Intellectual property and sustainable markets, 2021, p 1-2.

created the agenda 2030. The agenda 2030 was created to fight poverty, build peace, create justice and a more sustainable planet etc.¹⁸

One solution to some of the environmental problems are the new technology. The new technology could change the creativity and development process of a product. One example is the fashion industry, that has embraced the new technology. The new technology is Augmented Reality (AR), Virtual Reality (VR), Non-Fungible Tokens (NFT) and the metaverse, these technologies, with the help of the internet creates the digital world.¹⁹ The NFT technology is a key technology for what could be authentic in the digital world, as a certificate of ownership.²⁰ The AR technology uses the physical world and combines it with digital filters. The effect of this is a merger of the physical world and the digital world creating a hybrid world, where both the physical products can interact with the digital products. A practical example is the IKEA AR app²¹ and the Snapchat filters. AR is a tool for the fashion industry where the creativity is limitless.²²

Furthermore, VR technology gives humans, with help of headsets, the opportunity to interact with the digital world, the metaverse. In some cases, humans could interact with the metaverse with the help of an avatar. The avatar could be designed with different fashion accessories, clothes, hairstyles etc.²³ The metaverse is a beautiful dream/fantasy where humans could live, play, interact, and feel in a digital world with the help of VR headsets, as in the movie, “Ready Player One”²⁴, (Meta²⁵, Roblox²⁶ and Fortnite²⁷ have created some variants of what could be the real metaverse in the near future). The technology is not there yet to have the metaverse such as in the movie “Ready Player One”. However, there are fragments (games and platforms such as Fortnite, Roblox and Meta) of metaverse out there. One day the “Ready Player One” metaverse, could be a reality.²⁸

¹⁸ Agenda 2030, See M.L Montagani & I.Calboli, Handbook of intellectual property research, 2021, p 616-618, See O.Andreas Rognstad & Inger B.Ørstavik, Intellectual property and sustainable markets, 2021, p 1-2.

¹⁹ WIPO, Metaverse, WIPO Conversation IP and Frontier Technologies, 2023, See University of Minnesota, 11.2 The Evolution of the internet, 2024, See University system of Georgia, A Brief History of the Internet.

²⁰ A.Sestino, G.Guido, & A.Peluso, Non-Fungible Tokens (NFTs), 2022, p 11-17, See R.Sharma, D. Clemon, & Y.Perez, .Investopedia, Non funnel token (NFT): What it means and how it works, 2024, See L.DeNicole & T.Campell, Business Insider, What is an NFT and should you be investing? Everything you need to know about these popular digital assets, 2023.

²¹ IKEA, IKEA place app launched to help people virtually place furniture at home, 2017.

²² Snap AR, The latest from Snap AR, 2024. See Spectacles, The next Generation of spectacles, 2024. See Snapchat, The most popular filters/licenses, 2024, See WIPO, Metaverse, WIPO Conversation IP and Frontier Technologies, 2023, See RTFKT, What we do?, 2024, See Business of Fashion, Biography Benoit Pagotto, 2020, See M.McDowell, Vogue, Nike and RTFKT take on digital fashion with first “cryptokick” sneaker, 2022.

²³ WIPO, Metaverse, WIPO Conversation IP and Frontier Technologies, 2023, See Meta, Express yourself with Meta-avatars, 2024, See RTFKT, Meet the team, 2024, See Meta, Express yourself with Meta-avatars, 2024, See B.Marr, Forbes, how to create your digital avatar for the metaverse, 2022, See D.Sturman, Roblox, Blogg, How Roblox avatar tech is evolving, 2023, See RTFKT, What we do?, 2024, See Business of Fashion, Biography Benoit Pagotto, 2020, See M.McDowell, Vogue, Nike and RTFKT take on digital fashion with first “cryptokick” sneaker, 2022.

²⁴ T.Spangler, Variety, “Ready Player One” to be turned into massive metaverse experience in partnership with warner bros, 2024, See IMDb, “Ready Player One”, 2018, See Meta, Founders letter, 2021.

²⁵ Meta, introducera Meta:A social Technology company, 2021, See Meta, Founders letter, 2021.

²⁶ Roblox, About us, Reimagining the way people come together, 2024, See D.Sturman, Roblox, Blogg, How Roblox avatar tech is evolving, 2023.

²⁷ Fortnite, Epic Games, 2024, See P.Tassi, Forbes, “Fortnite” has actually made the metaverse after everyone else quit, 2023, See WIPO, Metaverse, WIPO Conversation IP and Frontier Technologies, 2023, See J.Taylor, Dexerto, every single Fortnite collab & crossover in battle royales history, 2024.

²⁸ N.Stephenson, Snow Crash, 2011, See WIPO, Metaverse, WIPO Conversation IP and Frontier Technologies, 2023, See Dictionary, Meta, 2024, See Meta, Founders letter, 2021, See A. Ramos, WIPO, the metaverse, NFTs and

Gucci, Nike and Balenciaga have been in the forefront and embraced the new technology. They have transformed physical products to digital products.²⁹ For example, Gucci sold a digital bag for more money than their physical bag in the real world. Gucci also created a digital store, called the Gucci Garden in the video game Roblox.³⁰ Furthermore, Balenciaga have been ambitious with their strategy of digital fashion. They have collaborated with the video game Fortnite and launched their physical collection into the digital world of Fortnite. This shows that products are evolving to hybrid products. Products that could exist both in the physical world and the digital world, as a digital twin.³¹ Nike have been creative and used one of their iconic shoes from the physical world and transformed it to a digital product. Nike then evolve the design of the shoe to a more extreme design. This design would not be possible in the real world, thus of the limitation of the material in the real world.³²

The technological evolution of the digital world, and the creation of digital products have led to the birth of the new hybrid product design legislation in the European Union (EU). This is an evolution of the current (soon to be former) Council Regulation (EC) No 6/2002 of 12 December 2001 on Community design.³³ The current design legislation is 20 years old and was originally designed to protect physical products in the physical world. The legislation has been creating friction when one has tried to apply the legislation on the digital world.³⁴ The commission realised that a new world is on the rise, the digital world. The commission sees the evolution of the design regulation as an opportunity to have more innovation, creativity, and competition in the EU. The digital world doesn't "play by the same rules" as the physical world. For example, creative and production processes, physical material, the quality of the material, safety issues etc. The previous examples are often problems for designers in the physical world. These problems will not occur in the digital world.³⁵ In 2022 the commission came with a proposal

IP rights: to regulate or not to regulate?, 2022, See WIPO, Metaverse, WIPO Conversation IP and Frontier Technologies, 2023, See Meta, Founders letter, 2021.

²⁹ S.Monseau, Protecting creativity in fashion design, 2023, p 14-15, See Hypebeast, A virtual Gucci bag sold for more money on Roblox than the actual bag, 2021, See Gucci, Gucci garden on Roblox, 2021, See Roblox, The Gucci garden experience land on Roblox, 2021.

³⁰ Hypebeast, A virtual Gucci bag sold for more money on Roblox than the actual bag, 2021, See Gucci, Gucci garden on Roblox, 2021, See Roblox, The Gucci garden experience land on Roblox, 2021.

³¹ Fortnite, High digital fashion drop into Fortnite with Balenciaga, 2021, See Epic Games, Balenciaga brings high fashion to Fortnite, 2021, See Chapter 2.

³² RTFKT, What we do?, 2024, See Business of Fashion, Biography Benoit Pagotto, 2020, See M.McDowell, Vogue, Nike and RTFKT take on digital fashion with first "cryptokicks" sneaker, 2022.

³³ The Thesis will focus on the Council Regulation (EC) No 6/2002 of 12 December 2001 on Community design (cit: Design regulation 6/2002) and not on the Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998, See Section 1.3, See European Commission, COM(2022) 666 final, 2022/0391 (COD), Brussels 28/11/2022, Chapter 1, See European Parliament, P9_TA(2024)0164, Industrial property: protection of community designs, European Parliament legislative resolution of 14 March 2024 on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 6/2002 on Community design and repealing Commission Regulation (EC) No 2246/2002 (COM(2022)0666-C9-0394/2022-2022/0391(COD)), Preamble 13, See European Parliament, Legislative Train schedule, Revision of the Community Design Regulation, 2024, Article 3.

³⁴ European Parliament, P9_TA(2024)0164, Industrial property: protection of community designs, European Parliament legislative resolution of 14 March 2024 on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 6/2002 on Community design and repealing Commission Regulation (EC) No 2246/2002 (COM(2022)0666-C9-0394/2022-2022/0391(COD)), Preamble 13, „Design regulation 6/2002 article 3(a-b), See European Commission, COM(2022) 666 final, 2022/0391 (COD), Brussels 28/11/2022, Chapter 1. See D. Stone, European Union design law, 2016, p 16-18, See C.Carani, Design Rights, Functionality and scope of protection, 2017, p 53-57, See B.Gray & R.Gao, Industrial Design Rights, 2016, p 98-100.

³⁵ Design regulation 6/2002, See European Parliament, Legislative Train schedule, Revision of the Community Design Regulation, 2024, Article 3. European Parliament, P9_TA(2024)0164, Industrial property: protection of

to evolve certain aspects of the current design regulation 6/2002. The purpose was to evolve the regulation to be able of keep up with current and new technology.³⁶ The changes to the regulation that have been accepted by the parliament are aimed to protect design of two worlds, the digital world and the physical world. A product can either be a physical object or have a “non-physical form”. The term “non-physical form” is a game changer and will have a big impact on the design sphere. This means, everything that is not a physical object could be protected by the new design regulation. For example, the new regulation will cover digital products such as, surface patterns on buildings and fashion items, animation, logos, interior and exterior environment etc. This is just a fraction of what a digital product could be.³⁷ It is important to emphasise that the current and the new design legislation, together with the EU trademark legislation are harmonised in the EU, therefore sometimes there is a natural comparison between the two legislations.³⁸

1.2 Purpose and research questions

The purpose of this thesis is to describe and analyse the new definitions of “product” and “design” in the new EU design regulation³⁹, and to describe and analyse to what extent the design of digital product will be able to be protected in the digital world, such as metaverse.

To fulfil the purpose of this thesis, the following questions will be answered:

1. What is the content and scope of the new definitions of “product” and “design” in the updated EU design legislation and how do they differ from the current definitions?
2. To what extent can the design of a digital product be protected in the digital world?

1.3 Delimitations

As set in the purpose section and the background section the thesis will focus on the Council Regulation (EC) No 6/2002 of 12 December 2001 on Community design and not on the Directive 98/71/EC of the European Parliament and of the Council of

community designs, European Parliament legislative resolution of 14 March 2024 on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 6/2002 on Community design and repealing Commission Regulation (EC) No 2246/2002 (COM(2022)0666-C9-0394/2022-2022/0391(COD)), Article 3.

³⁶ European Commission, COM(2022) 666 final, 2022/0391 (COD), Brussels 28/11/2022, Chapter 1.

³⁷ European Parliament, P9_TA(2024)0164, Industrial property: protection of community designs, European Parliament legislative resolution of 14 March 2024 on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 6/2002 on Community design and repealing Commission Regulation (EC) No 2246/2002 (COM(2022)0666-C9-0394/2022-2022/0391(COD)), article 3, See European Parliament, Legislative Train schedule, Revision of the Community Design Regulation, 2024, Article 3(2).

³⁸ Paris Convention article 1 and 5 quinquies, See WIPO, summary of the Paris convention for the protection of industrial property 1883, 2024, See Design regulation 6/2002 compare with Trademark regulation 2017/1001.

³⁹ The thesis will focus on the Council Regulation (EC) No 6/2002 of 12 December 2001 on Community design, even if there is similar provision set out in the Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998. This will be further explained in the sector of delimitation.

13 October 1998. The reason for the delimitation is because the purpose of the thesis is to describe and analyse the new EU design regulation.⁴⁰

1.4 Method and materials

In this section of the thesis, the aim is to explain and describe, which method and materials have been used to investigate and analyse, the purpose and research questions of this thesis.⁴¹

1.4.1 The legal dogmatic method

The legal dogmatic method is a common method to be used in this kind of legal academic thesis and has been used for many years. The legal dogmatic method could be defined as follows, to analyse and describe the law as it currently is.⁴² To be able to analyse and describe what the current law is, one needs to understand what the law have been, the past, the present (with a focus on the present) and the future. This resonates with the approach to describe and analyse the purpose of this thesis. To analyse and describe what a new legislation is and what it could become (the impact the legislation could have) one needs to analyse and describe what the old legislation have been and done.⁴³ This is important because, the new design regulation have been accepted by the parliament but have not entered to force yet, see Section 1.1. The legal dogmatic method will be used from an EU point of view and from an international point of view. The legal sources that will be analysed from an international perspective is the Paris convention and the TRIPS agreement.⁴⁴

1.4.2 The EU legal method

The purpose of this thesis is to describe and analyse EU legislation and therefore the main method of this thesis will be, the EU method.⁴⁵ In the EU, there are a hierarchy of primary law and secondary law.⁴⁶ The primary law in the EU is based on two main treaties, Treaty on the European Union (TEU) and the Treaty of the Function of the European Union (TFEU).⁴⁷ The secondary law are the EU regulations and the directives. The regulation has a direct effect in the member states. A direct effect means that the regulation binds the member states and their citizens. The regulation has a direct implementation to the member states legal system. The citizens can then

⁴⁰ Council Regulation (EC) No 6/2002 of 12 December 2001 on Community design, See Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998.

⁴¹ Section 1.2.

⁴² Smiths, What is legal doctrine? On the aims and Methods of Legal-Dogmatic Research, 2015, p 5-17, See C.Sandgren, Rättsvetenskap för uppsatsförfattare, 2021, p 38-43, 49-52,

⁴³ C.Sandgren, Rättsvetenskap för uppsatsförfattare, 2021, p 38-43, 49-52, See, Smiths, What is legal doctrine? On the aims and Methods of Legal-Dogmatic Research, 2015, p 5-17.

⁴⁴ European Parliament, P9_TA(2024)0164, Industrial property: protection of community designs, European Parliament legislative resolution of 14 March 2024 on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 6/2002 on Community design and repealing Commission Regulation (EC) No 2246/2002 (COM(2022)0666-C9-0394/2022-2022/0391(COD)), Preamble 13, See European Parliament, Legislative Train schedule, Revision of the Community Design Regulation, 2024, article 3(2).

⁴⁵ J.Pila & P.Torremans, European intellectual property law, 2019, p 37-47,

⁴⁶ J.Pila & P.Torremans, European intellectual property law, 2019, p 40.

⁴⁷ J.Pila & P.Torremans, European intellectual property law, 2019, p 40-41.

use the regulation in the national court.⁴⁸ The directive on the other hand, is different compared to the regulation. The directive sets a minimum standard for the member states to “build” on the legislation with their own individual interpretation of the directives, that could be the best interest of the member state.⁴⁹

The court of justice (CTJ) in the EU have an important role and that is to interpret the EU legislation such as the regulation and directive. The CTJ interprets the legislation in the context of a problem/scenario. This gives a legal context to a certain problem or a scenario that one can use to analyse, compare and interpret, new legal problems/scenarios. This have been important for this thesis.⁵⁰

For one to be able to interpret the preparatory works of a legislation and to understand it, a brief mention of the key EU institution that are important for the legislation process and the preparatory work in the EU. The commission have the purpose to execute new legislation, such as proposals to improve current design legislation, see Section 1.1. These proposals from the commission are important because it gives one the perspective of the commission intentions and the purpose of a new legislation.⁵¹ The council of the EU collaborates with the parliament on new legislation.⁵² The parliament has the main task to represent the member states citizen, to review new legislation and to pass/accept the new legislation.⁵³

The legal doctrine has been an important source to analyse the purpose of this thesis. The legal doctrine has provided different point of views, both in macro and micro perspective. A few examples are the legal literature and news, articles etc.⁵⁴

1.5 Outline

The outline of this essay has been divided into four chapters. The first chapter is the intro to the thesis that provides the reader with the fundamental information and structure. The second chapter is focused to provide an understanding of new technologies such as metaverse, VR, AR and NFT:s. The third chapter is focussing on the design regulation and the new definitions of “product” and “design” in the EU. There has been a comparison between, what the commission proposed and what was accepted by the parliament. Furthermore, the chapter provides the reader with general information of design legislation outside of the EU, for example analysing

⁴⁸ Article 288 TEFU, See J.Pila & P.Torremans, European intellectual property law, 2019, p 60. For this thesis the design regulation 6/2002 is central.

⁴⁹ Article 288 TEFU, See J.Pila & P.Torremans, European intellectual property law, 2019, p 60.

⁵⁰ J.Pila & P.Torremans, European intellectual property law, 2019, p 60.

⁵¹ J.Pila & P.Torremans, European intellectual property law, 2019, p 40-42, See example of preparatory work that is relevant for this thesis from the commission, European Commission, COM(2022) 666 final, 2022/0391 (COD), Brussels 28/11/2022.

⁵² J.Pila & P.Torremans, European intellectual property law, 2019, p 40-42, See example of preparatory work that is relevant for this thesis from the Council, Council of the European Union, Interinstitutional Files: 2022/0392 (COD), 2022/0391 (COD), Brussels, 21 December 2023.

⁵³ J.Pila & P.Torremans, European intellectual property law, 2019, p 40-42, See example of preparatory work that will be relevant and the key for this thesis from the parliament that has been accepted as the new design regulation ,European Parliament, P9_TA(2024)0164, Industrial property: protection of community designs, European Parliament legislative resolution of 14 March 2024 on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 6/2002 on Community design and repealing Commission Regulation (EC) No 2246/2002 (COM(2022)0666-C9-0394/2022-2022/0391(COD)), Article 3.

⁵⁴ C.Sandgren, Rättsvetenskap för uppsatsförfattare, 2021, p 38-43, 49-52.

the Paris convention and the TRIPS agreement, in the context of protecting design. The old definitions, and the criteria of design protection, has been compared to the new definitions of “product” and “design” in Chapter 3 and 4. The fourth chapter is the last chapter where the purpose and research question have been answered, there is a final conclusions and overall analysis in the fourth chapter.

2 New technology and the digital world

2.1 An introduction to the digital world

This chapter will be technical and focus on creating a good foundation for the reader regarding the technical aspects of the digital world. The chapter will also explain the difference between VR and AR technology, how this technology is important for the metaverse. Other key technology's will also be addressed in this chapter such as NFT:s, digital product design such as digital fashion etc.⁵⁵ The chapter will focus more on the new technology than the legislation. One must understand the AR, VR, NFT and metaverse to then analyse it with help of the design legislation, see Chapter 3. Though out history when technology has changed the intellectual property (IP) legislation and norms have followed. When technology is evolving the innovation becomes more efficient and changes the context of the society.⁵⁶ With a more digital society there comes more opportunity's to be sustainable, a good example of this is the agenda 2030, which is united nations (UN) global goals, that are set to drive the world to a more sustainable future, see Section 1.1.⁵⁷

2.2 A new era of technology, augmented reality and virtual reality

The digital landscape is changing and evolving into something new, VR and AR are good examples of the digital landscape that are a product of the digital evolution and part of the digital world. The more the internet and the technological devises are evolving, the more likely it is that two different worlds are being created, the digital world v. The physical world.⁵⁸ During several years one has been getting access to the digital world of video games, social media platforms and in general the internet. This have been offering the user to be innovative in a digital world that does not have the same limitation as the physical world.⁵⁹

The digital world and the physical world have been separated because of the technical limitations. However, imagine now if we, the humans, could get a deeper access to the digital world with the help of technical devises. For example, with our own avatars, that are a reflection of ourselves in the digital world.⁶⁰ Imagine if the digital world and the the physical world could be one world where everything is

⁵⁵ The authors introduction.

⁵⁶ Levin & Hellstadius, *Lärobok i immaterialrätt*, 2023, p 58-61, See Agenda 2030.

⁵⁷ Agenda 2030.

⁵⁸ WIPO, *Metaverse, WIPO Conversation IP and Frontier Technologies*, 2023, See University of Minnesota, 11.2 The Evolution of the internet, 2024, See University system of Georgia, *A Brief History of the Internet*.

⁵⁹ L.Grossman, *TIME*, *Go Behinde the Scenes of Apples First iPhone Release*, 2007, See E.Ravenscraft, *WIRED*, *What is the Metaverse, Exactly?*, 2023, See WIPO, *Metaverse, WIPO Conversation IP and Frontier Technologies*, 2023, See University of Minnesota, 11.2 The Evolution of the internet, 2024.

⁶⁰ B.Marr, *Forbes*, *how to create your digital avatar for the metaverse*, 2022, See J.Meredith, *Forbes*, *the power of social media to capture todays consumer*, 2020, See WIPO, *Metaverse, WIPO Conversation IP and Frontier Technologies*, 2023, See E.Ravenscraft, *WIRED*, *What is the Metaverse, Exactly?*, 2023.

possible. The only limitation would be our own imagination compared to the physical world where the evolution of product design is limited by materials and the sustainable impact on our planet. This would change with a parallel digital world, a digital twin of the real world.⁶¹

To understand what metaverse is, one must understand the AR and VR technology. The AR technology combines visual effects and digital objects with the physical world.⁶² A good example is IKEA: s AR app⁶³, google glasses⁶⁴ and snapchat filter / glasses.⁶⁵ Apples new Vision Pro headset gives the opportunity to see the physical world with the combination of digital objects as browsing the internet, play games etc. However, Apple Vision Pro gives the user the opportunity to choose between VR and AR mode. When one chooses the AR mode the physical world and the digital objects created by the headset, creates a new hybrid world, that combines the elements of the physical world and the digital interface, for example from computer interface and video games.⁶⁶ In conclusion AR is when there is a digital layer on the physical world. One can see the physical world and then combine the digital world with the help of a digital interface, the result is a hybrid world.⁶⁷

The VR technology takes it a step further and makes it more advanced than the AR technology. VR creates a digital world that is not interfering with the physical world, to the same extent as AR. The VR world is a digital world where one could interact with different avatars in different games. One needs a headset and in some cases hand controls for the digital interaction.⁶⁸ An avatar is a reflection of your self in the digital world, the character you want to be in a video game or the digital world such as metaverse. One can change the avatars clothes, fashion style and even accessories such as watches or jewelleries.⁶⁹ A example of digital product design with the help of AR and VR technology's is Benoit Pagotto and his company RTFKT. His company together with Nike, designed and created the "CryptoKicks", a virtual sneaker, that can be used in both AR and VR environments.⁷⁰

New technology such as VR and AR have been one of the reasons for the evolution of a new legislation, see Chapter 3.⁷¹ However, a good example when new technology arrives new legislation follows, is the regulation 2022/2065 digital

⁶¹ WIPO, Metaverse, WIPO Conversation IP and Frontier Technologies, 2023, See B.Marr, Forbes, how to create your digital avatar for the metaverse, 2022.

⁶² WIPO, Metaverse, WIPO Conversation IP and Frontier Technologies, 2023, See Apple, Vision Pro, 2024, See Apple, A guide tour of Vision Pro, 2024, See Forbes, What the Apple Vision Pro means for how we watch entertainment, 2024.

⁶³ IKEA, IKEA place app launched to help people virtually place furniture at home, 2017.

⁶⁴ M. Montecinos-Deppe, Year of glass: Google glass, 2022.

⁶⁵ Snap AR, The latest from Snap AR, 2024. See Spectacles, The next Generation of spectacles, 2024. See Snapchat, The most popular filters/licenses, 2024.

⁶⁶ Apple, Vision Pro, 2024, See Apple, A guide tour of Vision Pro, 2024.

⁶⁷ WIPO, Metaverse, WIPO Conversation IP and Frontier Technologies, 2023.

⁶⁸ WIPO, Metaverse, WIPO Conversation IP and Frontier Technologies, 2023, See Meta, Express yourself with Meta-avatars, 2024, See RTFKT, Meet the team, 2024.

⁶⁹ Meta, Express yourself with Meta-avatars, 2024, See B.Marr, Forbes, how to create your digital avatar for the metaverse, 2022, See D.Sturman, Roblox, Blogg, How Roblox avatar tech is evolving, 2023.

⁷⁰ RTFKT, What we do?, 2024, See Business of Fashion, Biography Benoit Pagotto, 2020, See M.McDowell, Vogue, Nike and RTFKT take on digital fashion with first "cryptokicks" sneaker, 2022.

⁷¹ See Chapter 3.

service act (DSA)⁷², regulation 2022/1925 digital markets act (DMA)⁷³ and the new design legislation in the EU. The new design regulation will focus more on digital design.⁷⁴

In conclusion and in my own point of view, the AR and VR is the next big technical evolution, one could draw parallels to when apple launched the iPhone. In the same way the iPhone and the smartphone changed how we communicated with each other, and how we consumed content with the help of social media and interacted with trademarks and design. AR and VR will make similar changes. However, I think that AR and VR has the potential to make even bigger impact on our daily lives. For example, they process of study and absorb information will change. If you are a medical student, the student will have the opportunity to see and examine the human body in 3D, with the help of AR and AR technology. The way trademarks and design are used will change, because of AR and VR. For example, the fashion of avatars will be used both in AR and VR, however, the fashion industry and the production of product design will have a more efficient and sustainable approach, because in a digital world designers and producers are not dependent on material and distribution systems.⁷⁵

2.3 The rise of Metaverse

The evolution of technology drives changes and new concepts. New realities are created in the process. There are many references out there where Neal Stephenson is getting the praise for coining and introducing the trending term, metaverse. Neal introduced the concept of metaverse in his novel “Snow Crash”.⁷⁶ The Word, meta, have a deeper meaning that could simply give an indication of what metaverse is and could be in the future. Meta has a Greece heritage and means “beyond”. In today's society it will translate to, beyond the physical world, into the digital world ⁷⁷

Metaverse is a “product” of the VR technology, the concept metaverse is a social platform based on the VR technology, with the help of VR headset. Avatars could meet up in the metaverse and be social with other avatars or get access to different worlds etc.⁷⁸ A good example and visual aid to imagine the metaverse, is the movie, “ready player one”. However, as I see it, the metaverse in “ready player one” is the end game, and the goal for companies such as Meta, Apple etc to capitalise and create, in the years to come. For these company's this is a race to the “new kingdom”.⁷⁹ There are some numbers from WIPO that shows how big the market for the metaverse can be. According to WIPO the metaverse market has a worth of 680

⁷² Regulation 2022/2065, see Digital Service Act, Preamble 1-10.

⁷³ Regulation 2022/1925, see Digital Markets Act, Preamble 1-15.

⁷⁴ Design regulation 6/2002, See Design directive 98/71, See Chapter 3, See Levin & Hellstadius, Lärobok i immaterialrätt, 2023, p 61-69.

⁷⁵ Authors own opinion, thoughts and conclusion.

⁷⁶ N.Stephenson, Snow Crash, 2011, See WIPO, Metaverse, WIPO Conversation IP and Frontier Technologies, 2023.

⁷⁷ Dictionary, Meta, 2024, See Meta, Founders letter, 2021.

⁷⁸ A. Ramos, WIPO, the metaverse, NFTs and IP rights: to regulate or not to regulate?, 2022, See WIPO, Metaverse, WIPO Conversation IP and Frontier Technologies, 2023, See Meta, Founders letter, 2021.

⁷⁹ T.Spangler, Variety, “Ready Player One” to be turned into massive metaverse experience in partnership with warner bros, 2024, See IMDb, “Ready Player One”, 2018, See Meta, Founders letter, 2021.

billion dollar on a global level. If one must look into the future, the metaverse estimates be a 5 trillion-dollar market. With that said, a new kingdom is on the raise, the big question is who will be the new king (Apple, Meta, Microsoft etc?).⁸⁰

Metaverse will be a facilitator to many different worlds, in these worlds there will be different themes. For example, one world could be where one can be educated, on another world one could be playing funny games, on another world there could be military training.⁸¹ However, right now the metaverse is not there yet. Everyone have their own interpretation on what metaverse should be and could be. The reason for this is that the technology is not there yet.⁸²

There is also some speculation that the metaverse could have a positive impact on the gaming industry. The gaming industry has already an estimated worth of 100 billion dollars. The creation of metaverse could boost the gaming industry to 260 billion dollars on a global scale as soon as 2027, thanks to the AR, VR and metaverse.⁸³

2.3.1 Practical examples of metaverse in today's society

Furthermore, today the metaverse is still a concept that is not yet a reality.⁸⁴ Video games as Fortnite⁸⁵ and Roblox⁸⁶ gives a clue to what metaverse could be and the complexity of it. These games have a metaverse concept, where one has avatars interacting with other avatars, that can jump between worlds. However, this is done with the help of a regular computer and no need to have a VR or AR technology.⁸⁷ What makes Fortnite interesting from one point of view is that they have made a lot of collaborations with both celebrities, for example Eminem, Travis Scott and Lady Gaga, and characters from other franchises such as Star Wars, Dragon Ball, Marvel etc. This is very interesting from a design, trademark and copyright perspective, where these intellectual properties are becoming more digitalised.⁸⁸ A good example could even be Disney, Ferrari, Nike and Lego where they are introducing their physical products in digital formats, (digital products in Fortnite).⁸⁹

The physical products will in one way or the other, turn into digital products in the metaverse, a digital twin. A digital twin is a reflection, mirror, simulation of the physical world in the digital world. The products in the physical world will exist in the digital world, creating a digital twin. (This can lead to that IP legislation

⁸⁰ WIPO, Metaverse, WIPO Conversation IP and Frontier Technologies, 2023, See Meta, Founders letter, 2021.

⁸¹ A. Ramos, WIPO, the metaverse, NFTs and IP rights: to regulate or not to regulate?, 2022, See WIPO, Metaverse, WIPO Conversation IP and Frontier Technologies, 2023.

⁸² WIRED, What is the Metaverse, Exactly?, 2023.

⁸³ WIPO, Metaverse, WIPO Conversation IP and Frontier Technologies, 2023.

⁸⁴ WIRED, What is the Metaverse, Exactly?, 2023.

⁸⁵ Fortnite, Epic Games, 2024.

⁸⁶ Roblox, About us, Reimagining the way people come together, 2024, See D.Sturman, Roblox, Blogg, How Roblox avatar tech is evolving, 2023.

⁸⁷ P.Tassi, Forbes, "Fortnite" has actually made the metaverse after everyone else quit, 2023, See WIPO, Metaverse, WIPO Conversation IP and Frontier Technologies, 2023, See J.Taylor, Dexerto, every single Fortnite collab & crossover in battle royales history, 2024.

⁸⁸ Disney, Disney and Epic Games to create expansive and open games and entertainment universe contend to Fortnite, 2024, See J.Taylor, Dexerto, every single Fortnite collab & crossover in battle royales history, 2024.

⁸⁹ J.Taylor, Dexerto, Fortnite Nike Airphoria vol.2 event: How to play creative 2.0 map in Fortnite, See J.Taylor, Dexerto, every single Fortnite collab & crossover in battle royales history, 2024, See Disney, Disney and Epic Games to create expansive and open games and entertainment universe contend to Fortnite, 2024.

could/should have the same effect).⁹⁰ A good example is the famous Gucci bag in Roblox that was sold for more money than the physical product.⁹¹ Gucci together with Roblox created Gucci Garden (a Gucci store), where users together with their avatar could go inside the store and buy or try on different Gucci products.⁹² Another example is Balenciaga clothes, that have appeared in Fortnite, the cloths did not only appear in game, Balenciaga launched their entire physical collection into a digital format in Fortnite.⁹³ Disney have, during many years earned a fortune of physical products such as toys.⁹⁴ The physical products that are based on the characters in the movies of Star Wars, Marvel etc, have become digital products, called skins in Fortnite and in Roblox. Skins can then be used by the avatars. Skins can be seen as a digital product, the user's avatar receives a new outfit/costume and becomes a famous character, such as Darth Vader, Thanos, John Wick, Batman or a skin that the game has design them self that has a unique value and meaning to the storyline of the game.⁹⁵

The former company Facebook rebranded to Meta on 28 October 2021 and made big headlines.⁹⁶ This was a statement to the rest of the world, that the company will go all in, to the concept of creating metaverse. Providing both the platform, metaverse, and the hardware technology such as, VR headsets etc.⁹⁷ Meta and Mark Zuckerberg make it clear in the Metas founder letter that, the vision is not only the create the metaverse, but also aiming to replace physical products as the TV, desktop devices, physical board games etc. All the physical products will be replaced by holograms with the help of VR and AR technology. This could lead to minimalistic homes in the future.⁹⁸

However, in the metaverse, there will be opportunities for new designs, for example furniture, fashion (for example fashion clothes for the avatars), different types of transporting devices, accessories etc. Companies that withhold design, copyright and trademark protection in the physical world will/is trying to extend that protection of the intellectual property to the digital world.⁹⁹

Furthermore, the companies that are establishing them self's in the metaverse will try to innovate new design and then protect it, with the help of different intellectual property legislation. In the end, a new digital world as metaverse creates new

⁹⁰ D.Sturman, Roblox, Blogg, How Roblox avatar tech is evolving, 2023.

⁹¹ Hypebeast, A virtual Gucci bag sold for more money on Roblox than the actual bag, 2021.

⁹² Gucci, Gucci garden on Roblox, 2021, See Roblox, The Gucci garden experience land on Roblox, 2021.

⁹³ Fortnite, High digital fashion drop into Fortnite with Balenciaga, 2021, See Epic Games, Balenciaga brings high fashion to Fortnite, 2021.

⁹⁴ D.Trainer, Forbes, Disneys strategy is working, 2019. See J.Sonnefeld &S.Tian, Fortune, Why Bob Igers strategy for the next decade of growth at Disney promises a magic carpet ride for the magic kingdoms future, 2024.

⁹⁵ P.Tassi, Forbes, Fortnite is doing another Star Wars event, here are the remaining skins it needs, 2024. See Disney, Disney and Epic Games to create expansive and open games and entertainment universe contend to Fortnite, 2024, See J.Taylor, Dexerto, Fortnite Nike Airphoria vol.2 event: How to play creative 2.0 map in Fortnite, See D.Sturman, Roblox, Blogg, How Roblox avatar tech is evolving, 2023. See See J.Taylor, Dexerto, every single Fortnite collab & crossover in battle royales history, 2024, See J. Taylor, Dexerto, how to get Coachella 2024 skins in Fortnite: Horizon, Cosma and inferno skeleton Balvin, 2024.

⁹⁶ Meta, introducera Meta:A social Technology company, 2021, See Meta, Founders letter, 2021.

⁹⁷ A. Ramis, WIPO, the metaverse, NFTs and IP rights: to regulate or not to regulate?, 2022, See Meta, introducera Meta:A social Technology company, 2021.

⁹⁸ See Meta, Founders letter, 2021.

⁹⁹ A. Ramos, WIPO, the metaverse, NFTs and IP rights: to regulate or not to regulate?, 2022, See WIPO, IP is key for incentivizing Metaverse investments and innovation, WIPO DG Says, 2023.

markets, which means new opportunities that could lead to a first move advantage, a good example is Meta. Meta together with other tech giants are competing for the “key to the new kingdom” and in the end who will be the main facilitator for metaverse. However, for this to happen the stars must align. There are technologies, both hardware and software, that must align and work together, to reach the metaverse of “ready player one”.¹⁰⁰

In conclusion, Fortnite and Roblox is a glimmer, fraction of what metaverse could be. Metaverse is the idea, to be a 3D facilitator of the internet, in a way turning the internet from 2D to 3D, where one could move around the metaverse with their own avatar and visit different worlds. These worlds could be the webpages of different companies, games, activities, dimensions etc.¹⁰¹

One can clearly see a shift in what product design can and will be in the digital world. For example, a digital handbag, skins, digital fashion or even design of an avatar. It will begin with the design of products around the avatar, but the product design could also involve cars in the metaverse, imagine driving a vintage Ferrari in the metaverse or if Ferrari creates a co-branding (where two brands collaborate to create a new product) collaboration with another brand where they modifier the vintage Ferrari, in the same way as Nike did with their Cryptokicks.¹⁰²

Metaverse is around the corner and in the next few years there will be a shift of how humans are communicating, compare it to when social media became a thing. The way humans interact and use products will change, both with physical product and digital products, such as fashion. In metaverse the design will be more important than practical function, such as the ergonomics, which is important for physical products. As mentioned, throughout history there has always been a balance between the design and the functions / ergonomics of the product. However, this will change and there will be another perceptive on how humans see and uses products. This is important that the legislatures and courts keep up with the digital changes because these changes will impact our society. If the legislation can keep up with the digital changes, then there will be harmony where the digital evolution and the new legislation can work together and evolve together. However, for this to happen there need to be competent legislators and courts that understands the technology and its impact. Furthermore, in my own opinion, the metaverse can be divided in two metaverses. One metaverse based on AR technology and another metaverse based on VR technology. It is possible that these two variants could build on each other, or even be seen as two different phases, phase 1 and phase 2 of the metaverse. In conclusion, it all depends on the development of the technology and if the society is ready for the technology. Compare it with the introduction of the iPhone and then the birth of social media. History will repeat itself, but with different technology.¹⁰³

¹⁰⁰ WIPO, IP is key for incentivizing Metaverse investments and innovation, WIPO DG Says, 2023. See A. Ramos, WIPO, the metaverse, NFTs and IP rights: to regulate or not to regulate?, 2022, See T.Spangler, Variety, “Ready Player One” to be turned into massive metaverse experience in partnership with warner bros, 2024, See IMDb, “Ready Player One”, 2018, See H.Newman, Forbes, Ready player one versus reality: how close are we?, 2018, See WIRED, What is the Metaverse, Exactly?, 2023.

¹⁰¹ Authors own opinion, thoughts and conclusion.

¹⁰² Authors own opinion, thoughts and conclusion.

¹⁰³ Authors own opinion, thoughts and conclusion.

The problem right now is that there are games that can in some way act as a glimmer and a hint of what metaverse could be. However, the technology as VR, AR headset, software, jumping between different games as a portal, gloves and suits that can generate feedback from the metaverse, all these things have to be developed, the stars have to align, to fulfil the goal of what we want the metaverse to be. This will also be combined, most likely with Web 3.0, see Chapter 2.4.¹⁰⁴

2.4 Non fungible tokens and tokenisation of physical product design

With a new digital world on the rise, new technology pushing innovation further, new ways of owning assets have been established by the evolution of the internet and digitalisation. The digital world, metaverse and the internet goes hand in hand. The internet, or as some refer to it, the web, started with the Web 1.0, created by Tim Berners-Lee during the 90s. Back then the internet was a place where one could read about things, a digital library, where the user was a consumer.¹⁰⁵ Web 2.0 is the internet as it is today, but it is different compared the Web 1.0 in regards of how the user interacts with the internet. For example, now the user is not only a consumer, rather an interactive user where one could make content, be social on different platforms, such as Facebook, TikTok, Instagram, X etc.¹⁰⁶ Furthermore, the internet become more data driven, platforms collected data and then sold the data to the different ad companies, data became the new currency on the expense of the user's privacy.¹⁰⁷

Web 3.0 is on its way and there is no 100% definition of it yet. However, there are some hints of what it can be or will be depends on who one is asking. The concept of Web 3.0 is that the user has more control over their own data and the data shall be protected. Decentralisation is a shift of power, which means that the central authority, for example the big platforms will lose the power of monitoring and collecting data as frequent as they have done. The focus will be on the user and how they can control their data and privacy. The idea is that the Web 3.0 shall go beyond how one uses the internet today.¹⁰⁸

Products have value and some have more value than other. Even the same product can have a different value. Because, a product could be the first product ever made, the original or that specific product was owned or designed for a specific famous individual. This creates value.¹⁰⁹ There is also something about how a product is perceived by a higher price, quality and design, then add to the equation, if a product with high price, good quality and beautiful design is an original product, that will

¹⁰⁴ Authors own opinion, thoughts and conclusion.

¹⁰⁵ M.James & T.Li, Investopedia, 2024, See I. Bashir, Forbes, Metaverse, NFT and the inventability of Web3, 2022.

¹⁰⁶ M.James & T.Li, Investopedia, 2024, See I. Bashir, Forbes, Metaverse, NFT and the inventability of Web3, 2022

¹⁰⁷ M.James & T.Li, Investopedia, 2024, See I. Bashir, Forbes, Metaverse, NFT and the inventability of Web3, 2022

¹⁰⁸ E.Rosati, WIPO, Advisory Committee on enforcement, 2024 p 2-3,7-8, See M.James & T.Li, Investopedia, 2024, See I. Bashir, Forbes, Metaverse, NFT and the inventability of Web3, 2022.

¹⁰⁹ J. Anderson & J.Narus, Harvard business review, Business marketing: understand what customer value, 1998 See Paddle, What is a product value & how can it boost market share, 2022, See I.Mochari, Inc, its proven: the science behind why people value authentic products, 2014.

lead to a much higher value.¹¹⁰ For example, the Mona Lisa, the original Mona Lisa painting has a value of around 1 billion dollars, but a Mona Lisa painting from a regular store does not have the same value.¹¹¹ Another example is the Omega Speedmaster professional, Moonwatch, that was worn in space, the original Omega watch that have been on the moon or in space have more value, compared to other Omega watches.¹¹²

In the same way a famous watch or a famous painting in the real world creates value, the same value can now be transferred into metaverse with the help of NFT technology.¹¹³ NFT is a technology of mark the authenticity of a digital product¹¹⁴ such as art, video highlight, skins, fashion design, digital products etc.¹¹⁵ One can explain NFT as certificate of digital ownership in the digital world, a token. This token is not fungible, which means that the token is the one and only of its kind. Which then creates authenticity in the digital world. This then leads to that a digital object in the digital world can have certain value. Compare this to something that is fungible, for example traditional cash, copies of Mona Lisa etc.¹¹⁶

To understand what a NFT is, one must understand the blockchain technology. The blockchain technology is the foundation of the NFT concept. Blockchain as a technology has the unique function of having blocks with information. For example, these blocks have the information of who has been the owner of the NFT and what kind of transaction has been made. These blocks of information are creating a chain of information that could be traced.¹¹⁷ This information that is registered in the blocks are transparent and therefore gives the community of the digital world access to the information. This leads to, that the community can indicate if a NFT is authentic and track its history with the help of the blockchain technology, see it as a red thread of data-history. This is a decentralised system that is dependent to the digital worlds community to identify if an asset as an NFT is authentic. The consequences are that this system creates trust and therefore value.¹¹⁸

¹¹⁰ J. Anderson & J.Narus, Harvard business review, Business marketing: understand what customer value, 1998, See I.Mochari, Inc, its proven: the science behind why people value authentic products, 2014, See

¹¹¹ Louvre, From the Mona Lisa ton the wedding feast at Cana, 2024, See Britannica, What is the value of the Mona Lisa, 2024.

¹¹² Omega, Speedmaster moonwatch professional, 2024, See Omega, Planet Omega our space legacy, 2024, See R.Pearlman, NBC news, Omega watch flow to moon sells for 245.000 dollars, 2015, See A.Traina, Hodinkee, Could astronaut Wally Schirra omega speedmaster set a speedy record?, 2022.

¹¹³ WIPO, Metaverse, WIPO conversation IP and frontier technologies, 2023, See A.Sestino, G.Guido, & A.Peluso, Non-Fungible Tokens (NFTs), 2022, p 11-15.

¹¹⁴ EUIPO, Guidelines, 6.25 downloadable goods and virtual goods, 2023.

¹¹⁵ EUIPO, IP and the metaverse, 2022, See A.Ramos, WIPO, the metaverse, NFTs and IP rights to regulat or not to regulate?, 2022, See A.Sestino, G.Guido, & A.Peluso, Non-Fungible Tokens (NFTs), 2022, p 11-17, See See L.DeNicole & T.Campell, Business Insider, What is an NFT and should you be investing? Everything you need to know about these popular digital assets, 2023.

¹¹⁶ A.Sestino, G.Guido, & A.Peluso, Non-Fungible Tokens (NFTs), 2022, p 11-17, See R.Sharma, D. Clemon, & Y.Perez, ,Investopedia, Non funnel token (NFT): What it means and how it works, 2024, See L.DeNicole & T.Campell, Business Insider, What is an NFT and should you be investing? Everything you need to know about these popular digital assets, 2023.

¹¹⁷ R.Sharma, D. Clemon, & Y.Perez, ,Investopedia, Non funnel token (NFT): What it means and how it works, 2024, See L.DeNicole & T.Campell, Business Insider, What is an NFT and should you be investing? Everything you need to know about these popular digital assets, 2023, See A.Sestino, G.Guido, & A.Peluso, Non-Fungible Tokens (NFTs), 2022, p 11-17, See N.Dailey, Business Insider, Watch Beeple react to his crypto art selling for 69 million dollar, making him the third most valuable living artist, 2021, See A.Ramos, WIPO, the metaverse, NFTs and IP rights to regulate or not to regulate?, 2022.

¹¹⁸ A.Ramos, WIPO, the metaverse, NFTs and IP rights to regulate or not to regulate?, 2022, See R.Sharma, D. Clemon, & Y.Perez, ,Investopedia, Non funnel token (NFT): What it means and how it works, 2024, See L.DeNicole

NFT have evolved to be a thing where people have spent some serious money on NFTs, a good example is from June 2021 to June 2022 there was a sale of NFTs for over 29 billion dollars. Then in 2023 the numbers dropped to 21 billion dollars in yearly revenue.¹¹⁹ It is important to empathise that the NFT can withhold assets such as artwork, literature, trademarks, product design etc. All of these have one thing in common, they could be protected by the intellectual propriety legislation.¹²⁰ Furthermore, there will be more and more brands that will be on the aggressive side of protecting their design and trademarks in digital world, metaverse, for example the Birking bag from the company Hermes was copied and then created as a NFT, to then be used in the metaverse. Hermes took legal actions. Hermes will most probably in the future us NFTs in their intellectual property development strategy, to protect their trademark and design, a good example is Gucci and Nike that are embracing digital products and the new technology.¹²¹ Intellectual property and NFT will go hand in hand in the future and companies will most likely use NFT technology in their intellectual property strategy, therefore NFT and other intellectual property legislation will work together in the digital world.¹²²

In conclusion, NFT in my point of view is a certification of ownership of the digital product, which will be important for the digital product design moving forward. As I see it, NFT will assist the intellectual property legislation and they will work together and be a helping hand for the user to protects its digital assets in the digital world. This could then lead to that the average consumer/user will get more familiar with how to protect digital asset. However, for this to work there must be a solid platform that is user friendly, both regards creating NFTs and buying/selling them. Furthermore, NFT could be a tool to fight counterfeited design and trademarks, this could be a way of creating a trusted system for digital products. This could then work together with the intellectual property legislation to make the metaverse a safe place for intellectual property assets. There is also a possibility that a design and trademark protection from EUIPO becomes an NFT, to then be used or traded in digital world. These kinds of NFTs could serve as a status symbol. Products such as vintage Ferraris, planes or motorcycles from the real world could be transferred into the digital world with the help of NFT technology, and then become a digital product with the same value as in the real world. The positive perspective is that these digital products and digital designs are not limited by the material as in the physical world. The vintage Ferraris or planes can be modified in digital world to be more innovative; a good example is the Cyberkicks by Nike. It is also important for the courts to understand this kind of technology moving forward and be up to date with both the NFT development and the rest of the digital world to create a good foundation for the NFT and intellectual property legislation moving forward to a new digital era. The same point of view applies on the legislators to embrace what will

& T.Campell, Business Insider, What is an NFT and should you be investing? Everything you need to know about these popular digital assets, 2023, See A.Sestino, G.Guido, & A.Peluso, Non-Fungible Tokens (NFTs), 2022, p 11-17, See N.Dailey, Business Insider, Watch Beeple react to his crypto art selling for 69 million dollar, making him the third most valuable living artist, 2021.

¹¹⁹ L.DeNicole & T.Campell, Business Insider, What is an NFT and should you be investing? Everything you need to know about these popular digital assets, 2023.

¹²⁰ Bern convention, See Paris convention, See TRIPS agreement, See A.Ramos, WIPO, the metaverse, NFTs and IP rights to regulate or not to regulate?, 2022.

¹²¹ EUIPO, IP and the metaverse, 2022.

¹²² WIPO, NFTs at the hear of WIPOs IP moot competition problem, 2024.

come and not fear it. The intellectual property legislation and the digital innovation such as NFT, metaverse, AR, VR and in general Web 3.0 must be in line to be developed together and not against each other, the new technology must be embraced.¹²³

¹²³ Authors own opinion, thoughts and conclusion.

3 The hybrid product design legislation

3.1 An introduction to design

This chapter will address both the international design legislation and the EU design regulation. The focus of this chapter will be on the development of the design regulation in the EU, to understand the new definition on design and product, that has been accepted by the parliament in the EU. Furthermore, this will be analysed in the contexts of digital product design and the digital world.¹²⁴

Design can be the reason why one is choosing a product over another product. The design of a product can be sign of status, part of a community, heritage and tradition or even a sign of artistic expression and ergonomic function. The design of a product could show one's passion for certain brand.¹²⁵ From a commercial point of view, a good design could be the difference of a successful product and gaining market shares. Therefore, it is crucial to protect the design.¹²⁶ It is important to emphasise that design can be so much more than, how the product looks. Design can have a reason to why it looks how it looks because of its functions, ergonomic, brand identity etc, there is a practical element to design, a balance between design and function.¹²⁷

3.2 The international Design legislation

The creation of the digital world and the digital products, that will be used in the digital world, is creating questions of how the legal perspective of intellectual property will be adopted. Will the digital world adapt to the EU and international legal system or will the legal system adapt to the creation of the digital world. Both WIPO and the EU are doing the best they can to keep up with the new technology.¹²⁸ WIPO is the World Intellectual Property organisation, they administrated and facilitated the Bern, Paris convention.¹²⁹ The Paris convention legislates the international, global, trademark, patent and design legislation. The relevant articles in the Paris convention for design are the following, Article 1 and 5 quinquies. The articles states that design in the union shall be protected.¹³⁰ It is important to

¹²⁴ Author's introduction of the chapter.

¹²⁵ R.Wessman, J.Kraus & I.Lukins, *Immaterialrättens struktur*, 2019, p 33-34, See Levin & Hellstadius, *Lärobok i immaterialrätt*, 2023, p 386-387.

¹²⁶ Levin & Hellstadius, *Lärobok i immaterialrätt*, 2023, p 386-387, See R.Wessman, J.Kraus & I.Lukins, *Immaterialrättens struktur*, 2019, p 33-34.

¹²⁷ Levin & Hellstadius, *Lärobok i immaterialrätt*, 2023, p 386-387, See D. Bentley, *Fortune, the greatest designs of modern times*, 2020, See *Ensamble, 100 years of iconic design*, 2023.

¹²⁸ A. Ramos, *WIPO, the metaverse, NFTs and IP rights: to regulate or not to regulate?*, 2022, See *EUIPO, Guidelines, 6.25 downloadable goods and virtual goods*, 2023, See *WIPO, Metaverse, WIPO conversation IP and frontier technologies*, 2023.

¹²⁹ *Paris and Bern Convention*, See *WIPO, a brief history*, 2024.

¹³⁰ *Paris Convention Article 1 and 5 quinquies*, See *WIPO, summary of the Paris convention for the protection of industrial property 1883*, 2024.

emphasise that the Paris convention states that one has the right to protect the design but not how to protect the design.¹³¹

A product design is the aesthetics of a product such as the shape, material etc. The design can be the reason one buys a product, the competition advantage, see Chapter 3.1.¹³² A product design can be protected from two strategy point of views, the 3d shape of the product or the 2d design such as lines, colours and patterns. Graphical user interface (GUI) is also a 2d design that could be protected. Furthermore, example of a product design could be, the design of a car, watch, cloths, bags, shoes, chair, jewellery etc, see Chapter 3.1.¹³³ It is important to emphasise that the Paris convention is a minimum standard that the member states have to follow, entering the international agreement. This gives room for the member states to build on these minimum standards.¹³⁴

The problem with the Paris convention is the general perspective of the convention. The Paris convention doesn't have any minimum standards on enforcements. This is a problem, because intellectual property has value if there are protection mechanism as enforcement, compare this to the purpose of implementing IPRED directive in the EU.¹³⁵ However, the solution to this was to create the TRIPS agreement, see Article 7.¹³⁶ The TRIPS agreement serves as an evolution to the Bern and Paris convention; therefore, the TRIPS agreement withholds the nickname, the Bern and Paris convention plus.¹³⁷ Even though the TRIPS agreement is an evolution, the agreement is still minimum standard for the member states. The member states have certain freedom to implement the TRIPS agreement, see Article 1.¹³⁸ The member states can build on the agreement with their own legislation, which means that the legislation for product design can deviate and differ from country to county. It is important to emphasise that the TRIPS agreement main purpose is to protect, create and innovate intellectual property.¹³⁹

To withhold a design protection the design shall be new and/or original compared to other design. This design shall be compared to the peers of the design in the same sector, see Article 25 TRIPS. The Article 25 also states that the member states can choose how one can be denied design protection, and too what level of originality it has to reach, too then be earned a design protection. The design has in some way differ from other designs. There is a hint in the article that, the design shall not only differ, but also significantly different from other designs. This means that the design

¹³¹ Paris Convention Article 1 and 5 quinquies, See WIPO, summary of the Paris convention for the protection of industrial property 1883, 2024, See Levin & Hellstadius, *Lärobok i immaterialrätt*, 2023, p 389.

¹³² Chapter 3.1

¹³³ WIPO, WIPOD – design talks: transcript of episode 1, 2024, See R.Wessman, J.Kraus & I.Lukins, *Immaterialrättens struktur*, 2019, p 33-34, See WIPO, *Industrial design - what is industrial design?*, 2024, See Chapter 3.1.

¹³⁴ Lester, Mercurio & Davies, *World Trade Law*, 2018, p 803-807, See Levin & Hellstadius, *Lärobok i immaterialrätt*, 2023, p 29-39, See Lenaerts & Guterrez-Fros *EUI working papers*, 2013, p 29-33.

¹³⁵ IPRED 2004/48/EC Directive Preamble 1-13.

¹³⁶ TRIPS agreement Article 7.

¹³⁷ Levin & Hellstadius, *Lärobok i immaterialrätt*, 2023, p 36-39.

¹³⁸ TRIPS agreement Article 1, See Lester, Mercurio & Davies, *World Trade Law*, 2018, p 803-807, See Levin & Hellstadius, *Lärobok i immaterialrätt*, 2023, p 36-39.

¹³⁹ Paris convention Article 1 and 5 quinquies, 6-9, Bern Convention Article 2,5,9, TRIPS agreement Article 10-13,15-21 25-26, IPRED 2004/48/EC Directive Preamble 1-13, See Lester, Mercurio & Davies, *World Trade Law*, 2018, p 803-807, See Levin & Hellstadius, *Lärobok i immaterialrätt*, 2023, p 29-39, Lenaerts & Guterrez-Fros *EUI working papers*, 2013, p 29-33.

shall stand out from other designs in a manner that can be seen by the regular eye/consumer, according to my own analysis.¹⁴⁰ However, the right holder of the design shall have the exclusive right of that design, therefore a 10-year minimum protection, see Article 26. Article 26 gives some examples of what the exclusive right of the right holder could be, for example the right holder could prohibit and prevent third parties from selling, importing look a likes or copies etc.¹⁴¹

The text in both Article 25 and 26 refers to the design as industrial design which gives an indication more towards the physical product design. In some ways reserves it to the product design in the physical world and blocks the digital, which could be a problem moving forward with new technology and innovation. The text of Article 25 and 26 in the TRIPS agreement will change in time to a more hybrid definition of digital design and industrial design will merge. A suggestion could be “hybrid design” or “hybrid product design”, which cover both the product design of the real world and the digital world, such as metaverse.¹⁴²

With the help of the Hague system one can register the design of a product on an international level. To protect the design of a product one has the opportunity to register the design with the help of WIPO and The Hague system.¹⁴³ With the help of the Hague system, one has the possibility to file a registration in 96 countries. If one wants to register a design outside of the Hague system, then there has to be a national or even in some cases regional registration in a certain country.¹⁴⁴

To register a product design could have a major impact for the long-term business, brand and of course affecting the market shares in the long term. The product design registration could be a tool to protect these market shares. Both in existing markets but also in new markets such as metaverse and the digital world. The design protection can be a tool to expand the overall brand and to create new strategies.¹⁴⁵ A practical example when a business can get hurt as a consequence of not register the design of a product is the footwear brand, Crocs. Crocs never registered their design and the consequence of this was that their design and brand were diluted. There were many looks alike on the market. In my point of view, either one is aggressive with registration and the legal actions against competitors to protect the market shares and the investment that have been made into the company, or the competitors will aggressively be copying the design, and the consequence is dilution.¹⁴⁶

¹⁴⁰ TRIPS agreement Article 25.

¹⁴¹ TRIPS agreement Article 26, See WIPO, WIPOD – design talks: transcript of episode 1, 2024.

¹⁴² TRIPS agreement Article 25-26.

¹⁴³ WIPO, how does the Hague system work?, See 2024, WIPO, Hague system – the international design system, 2024, See WIPO, Industrial design - what is industrial design?, 2024.

¹⁴⁴ WIPO, How does the Hague system work?, 2024, See WIPO, WIPOD – design talks: transcript of episode 1, 2024. WIPO, Hague system – the international design system, 2024, WIPO, industrial designs – what is an industry design, See WIPO, Industrial design - what is industrial design?, 2024.

¹⁴⁵ F.Fischer, WIPO magazine – design law in the European fashion sector, 2008, See WIPO, WIPOD – design talks: transcript of episode 1, 2024, WIPO magazine, Designing for business success, 2012.

¹⁴⁶ WIPO, WIPOD – design talks: transcript of episode 1, 2024, WIPO magazine, Designing for business success, 2012, See F.Fischer, WIPO magazine – design law in the European fashion sector, 2008.

3.3 Design legislation in EU

The design legislation in the EU started in the 1600 century with the textile industry in both France and England. This was the start of something new and had the consequence of inspiring other nations such as Sweden with their legislation.¹⁴⁷ One could see some parallels to this with the metaverse, avatars and digital fashion. Digital products such as fashion is one of the central products in a new digital era, see Chapter 2.¹⁴⁸

The starting point for the design legislation in the EU was the green paper in 1991.¹⁴⁹ Furthermore, the design legislation evolved to a directive and then a regulation that created a harmonisation in the EU.¹⁵⁰ The harmonisation in the EU regarding the design protection is that the member states have to follow the regulation, the regulation have a direct effect on the member states. The directive acts as a minimal standard and the member state has the opportunity to build on the directive. The directive has the same function as the TRIPS agreement.¹⁵¹ One of the core reasons for the harmonisation is to create a fair playfield and a more efficient competition in the union. This leads to a more innovative competition and the positive effect of more innovation is a stronger and excelling economy, for example, more investors will invest, and more job opportunities will be created for the citizens etc.¹⁵²

It is important to emphasise that the design legislation is not a “popular” legislation in the EU, and it is not “rich” on case law. Compare to the trademark legislation that have a lot of case law and companies are keen to use and protect their trademarks. For example, there is 2,2 million registered trademarks in the EU and over 200 000 applications each year that EUIPO are handling.¹⁵³ EUIPO stands for European Union Intellectual Property Office. EUIPO is the registering office, agency, where the EU intellectual property is registered and managed. EUIPO have guidelines on how to manage the intellectual property such as trademark and design.¹⁵⁴ Compare the trademark statistics with design application and registrations, the application is around 30.000 each year.¹⁵⁵ EUIPO has also guidelines on design from a more practical perspective and these guidelines are there to help the EUIPO as an agency to make fair and better decision, but also to guide the one who tries to register a design. For example, the guidelines have been updated to include NFT: s, virtual

¹⁴⁷ Levin & Hellstadius, *Lärobok i immaterialrätt*, 2023, p 387, See S. Monseau, *Protecting creativity in fashion design*, 2023, p 83-87.

¹⁴⁸ Chapter 2.

¹⁴⁹ Green paper on the legal protection of industrial design, 1991, See Levin & Hellstadius, *Lärobok i immaterialrätt*, 2023, p 45-46, See S. Monseau, *Protecting creativity in fashion design*, 2023, p 83-87

¹⁵⁰ Regulation 6/2002, See Directive 98/71/EG.

¹⁵¹ Design regulation 6/2002, See design directive 98/71, Preamble 1-33, See TRIPS agreement, See J.Pila & P.Torremans, *European intellectual property law*, 2019, p 461-470, See Levin & Hellstadius, *Lärobok i immaterialrätt*, 2023, p 45-46, 287-390, See S. Monseau, *Protecting creativity in fashion design*, 2023, p 83-87.

¹⁵² J.Pila & P.Torremans, *European intellectual property law*, 2019, p 461-470, See Levin & Hellstadius, *Lärobok i immaterialrätt*, 2023, p 45-46, 287-390, See Design regulation 6/2002, Design directive 98/71, Preamble 1-33, 7.

¹⁵³ EUIPO, *EUIPO statistics for European Union trade marks, 1996-01 to 2024-04 evolution*, 2024, See Levin & Hellstadius, *Lärobok i immaterialrätt*, 2023, p 429-430

¹⁵⁴ EUIPO, *About us, Who we are*, 2024.

¹⁵⁵ EUIPO, *EUIPO statistics for community designs, 2003-01 to 2024-01 evolution*, 2024.

goods/services etc.¹⁵⁶ This gives a hint of what will come, and that EU is embracing the new digital era that is around the corner.¹⁵⁷

3.3.1 The legal definition of “design”

The “old” definition is defined in the Article 3 design regulation 6/2002.¹⁵⁸ In Article 3(a) the design regulation states clear that a design is the impression of an object/product from the outside, the appearances of the whole product or it can be a specific part of a product.¹⁵⁹ It is important to emphasise that the design of a product is the external appearances, it could be the combination of different elements. For example, shapes and lines could be combined with different materials. Colours and texture could also be combined with all the alternatives above (shapes, material, colour, texture etc could have the possibility to be combined to create a design that affects the overall impression).¹⁶⁰

In simple terms, a design, is the external / outside appearances of a product. The design, such as components/parts, shall be visible during a normal use by the product, see Preamble 12 design regulation.¹⁶¹ In design directive 98/71 Preamble 11 a design shall be a design that has visible features, for example how a product looks, the design protects in general what the eyes can see.¹⁶²

A good example is the T-494/12 biscuits poult case.¹⁶³ It was made clear in the case that a design must stay visible during the normal use of the product, as in this case it was a cookie with chocolate filling, cannot be protected because it has not an external visibility during a normal use by the consumer, the chocolate inside the cookie was only visible when the consumer sliced the cookie in half.¹⁶⁴ However, in my opinion this is a case that is in the grey zone, because to be able to eat a cookie it needs to break in half. On the other side there is nothing special with a chocolate filing.¹⁶⁵ In the case C-361/15 Easy sanitary solutions also addressed the definition of a design and what it could be, the court states the important of the visibility of the design because that is what will or can be protected, the parts that is not visibly during a normal use shall not be protected. The court takes is even further and emphasis that the parts that helps the product to be mounted that are not visible will not be included in the design and therefore not protected.¹⁶⁶

In conclusion a design shall be visible during a normal use of the product. However, one solution for design that is not 100% visible is to make that specific material that is covering the design transparent, one can take inspiration from the Dyson products

¹⁵⁶ EUIPO, Trademark and design guidelines, 2024, See Levin & Hellstadius, *Lärobok i immaterialrätt*, 2023, p 388.

¹⁵⁷ EUIPO, Trademark and design guidelines, 2024, See Levin & Hellstadius, *Lärobok i immaterialrätt*, 2023, p 388.

¹⁵⁸ Design regulation 6/2002 Article 3, See Chapter 3.4.

¹⁵⁹ Design regulation 6/2002 Article 3(a).

¹⁶⁰ Design regulation 6/2002 Article 3(a).

¹⁶¹ Design regulation 6/2002 Preamble 12, See J.Pila & P.Torremans, *European intellectual property law*, 2019, p 462-463.

¹⁶² Design directive 98/71 Preamble 11, See J.Pila & P.Torremans, *European intellectual property law*, 2019, p 462.

¹⁶³ T-494/12 Biscuits Poult case, See design regulation Article 3(a).

¹⁶⁴ T-494/12 Biscuits Poult case, para 9, See Levin & Hellstadius, *Lärobok i immaterialrätt*, 2023, p 400.

¹⁶⁵ Authors own analysis and opinion.

¹⁶⁶ C-361/15 Easy sanitary solutions, para 62-64, See S. Monseau, *Protecting creativity in fashion design*, 2023, p 88-89.

design and sports cars such as Ferraris, Porsche etc, sometimes they have the engine cover transparent. Levin states that what is under the engine cover cannot be protected, and I can agree to that statement when it comes to regular cars, however if a sport car have a transparent engine cover it creates an opportunity to be protected. This could then be compared to a handbag that is much easier to argue that the design inside of a handbag is used by a consumer to a day-to-day basis. In the end the definition of design and normal use will depend on the product, the purpose of the product, and what the normal use for that specific product is. I think some cases could be solved with a general, on size fits all approach but other cases should be more isolated when it comes to the conclusions. The reason for this, is that high end products compared with low end products are used in different ways. The normal use and the design process and the choice of material etc, are different compared to low end products. Therefore, normal use should cover two categories, the use of high-end products and low-end products.¹⁶⁷

3.3.2 The legal definition of “product” in the context of design

The definition of a product, one can find in Article 3(b) design regulation.¹⁶⁸ A product is an object that have been in any sorts of industrial production or an object that have been made by hand. This means that a product could be something that are made in mass production such as cars, watches or fashion cloths, or it can be an object that is more unique such as a chair, watch that is one of a kind, or fashion clothes that are manufactured with the help of a famous brand or designer in a co-branding collaboration.¹⁶⁹ But the definition of a product goes even further to include cartons, “graphic symbols, typography, get-up” (the decoration and pattern on a jacket or a dress) and complex products.¹⁷⁰ A complex product has its own definition in Article 3(c) design regulation, and by the definition in the regulation a complex product is a product that is based on many components/parts, such as car, watches, computers etc. The complex product shall be able to be reassembled or disabled.¹⁷¹ A very specific example is a bicycle saddle on a bicycle, the bicycle is not working without the bicycle saddle, see case C-472/21 Monz Handelgesellschaft international.¹⁷²

It is importantly to emphasise that a part on a complex product that is dependent on a specific part can be a separate product and have a design that could be protected if the requirements are fulfilled. The overall analysis will be executed from the normal use of the product from a consumer's point of view.¹⁷³ The case C-123/20 Ferrari makes it clear that if a part of a complex product shall be seen as its own design, the design must be independent from the rest of the design of the complex product. The design has to be visible for the consumer during a normal use and stand out from the

¹⁶⁷ Authors own analysis and opinion.

¹⁶⁸ Design regulation 6/2002 Article 3(b).

¹⁶⁹ Design regulation 6/2002 Article 3(b), See C-361/15 Easy sanitary solutions, para 95.

¹⁷⁰ Design regulation 6/2002 Article 3(b-c), See Get-up – RDC 00530852-0001, See Typographical typefaces – RDC 00855176-0001, See Modular Element – 00898416-0001.

¹⁷¹ Design regulation 6/2002 Article 3(c).

¹⁷² C-472/21 Monz Handelgesellschaft international, para 33-34.

¹⁷³ C-472/21 Monz Handelgesellschaft international para 35-36, See design directive 98/71 Article 3(3), See design directive 98/71 Preamble 12.

rest of the product.¹⁷⁴ The part of a product can stand out from the rest of the complex product with the help of colour, different types of lines that creates shapes, or texture that create contrast for the overall design, and then that specific part have to fulfil the criteria of design protection on its own.¹⁷⁵ In conclusion, to protect certain design in a complex product such as the interior in a Ferrari, it needs to be able to fulfil the cumulative criteria of product design, which means that the design must stand on its own and different itself from the rest of the complex product, and be visible during a normal use of the product from the consumer point of view.¹⁷⁶

3.3.3 Novelty as a criteria for protection

The criteria for design protection are that the design shall be novel¹⁷⁷ and the design shall have an individual character¹⁷⁸, see Article 4 in the design regulation.¹⁷⁹ A design is novel when the public has not seen that kind of design before, one could even see the design as unique or innovative compared to the competitor's design. However, the criteria of novelty is less complex and strict compared to the criteria of novelty in the patent legislation.¹⁸⁰

A design is not novel if the design is close in the overall design, this means that the two designs cannot be too similarly, the two designs must have a bigger deviation in the design approach and aesthetics. To be novel means, to be innovative to the overall design of the product.¹⁸¹ It is important to know that the date of the application at EUIPO, is the relevant date. Which means, if one is granted the protection of the design, it shall be protected from the relevant date, the date of the filing to EUIPO, see Article 7 design regulation.¹⁸² The day of the application is the day of the unveiling to the public, the novelty of the design.¹⁸³ Article 7 in the design regulation makes it clear that the design can be unveiled and known to the public in other circumstance than a registration at the EUIPO. One example could be if the design has been used in a commercial business or event.¹⁸⁴

The criteria of novelty for a design are precise and narrow, this means that, one thing that can stop the design to reach the novel criteria is identical design that have been launched to the public. Small changes to the design do not matter, the overall impression is the key to be novel and when the design have been unveiled to the

¹⁷⁴ C-123/20 Ferrari, para 29-34, 44, 48-49, 50

¹⁷⁵ C-123/20 Ferrari, para 48-49, 50, 52.

¹⁷⁶ Authors own analysis and opinion.

¹⁷⁷ Design regulation 6/2002 Article 5, See design directive 98/71 Article 4, See design regulation 6/2002 Preamble 19.

¹⁷⁸ Design regulation 6/2002 Article 6. See design regulation 6/2002 Preamble 19.

¹⁷⁹ Design regulation 6/2002 Article 4,5,6, 7, design directive 98/71 Article, see Design regulation 6/2002, Preamble 19.

¹⁸⁰ Design regulation 6/2002 Article 5, 7, See design directive 98/71 Article 4, See J.Pila & P.Torremans, European intellectual property law, 2019, p 464-465, compare to EPC Article 52 & TRIPS agreement Article 27.

¹⁸¹ Design regulation 6/2002 Article 5(2), 7, See C-361/15 Easy sanitary solutions, para 62-64, 96, See D.Stone, European union design law, 2016, p 196-197.

¹⁸² Design regulation 6/2002 Article 5, 7 See J.Pila & P.Torremans, European intellectual property law, 2019, p 464-465

¹⁸³ Design regulation 6/2002 Article 7, See Levin & Hellstadius, Lärobok i immaterialrätt, 2023, p 402-403.

¹⁸⁴ Design regulation 6/2002 Article 7.

market.¹⁸⁵ One can even suggest that earlier the design is identical or not identical, there cannot be different levels of identical, if there is some hesitation, then one shall be analysing the criteria of the individual character.¹⁸⁶ The novelty is not an criteria that is tested from an informed user perspective. Compared to the EU trademark legislation, where the criteria of distinctiveness, that is based on a trademark functions, such as the origin of function, is analysed in the light of an average consumer.¹⁸⁷ From my point of view this makes sense to have the criteria of novelty more objective and let the agency such as EUIPO assess and analyse, if the design is novel or not. This leads to that other criteria, individual character, is not overlapping with the criteria of novelty, both criteria have their own role to play. The novelty criteria are more objective and the criteria of individual character is based on the informed user, in the same sense as the trademark legislation analyses the functions and distinctiveness from an average consumer point of view, however there is a big difference between an average consumer and an informed user.¹⁸⁸

To make novelty more concrete and practical one needs to analyse some case law. In the case C-488/10 Celaya, the court made it clear that the design is first unveiled to the public, when one registers the design at EUIPO. However, this is a presumption and can be challenge if there is evidence to support that other design have unveiled the design before the one that have been filed at EUIPO. In conclusion, there is a presumption of novelty until the opposite is proven, for example a competition is challenging the registration at EUIPO.¹⁸⁹ In the case C-361/15 Easy sanitary solutions, the court stated that a design is novel if there has not been a design made available to the public before the application was filed at the EUIPO or made available in other circumstances.¹⁹⁰ Other practical problem that can occur is the proof of when a design has been launched, if one chooses to not register the design with the help of EUIPO.¹⁹¹

3.3.4 Individual character as a criteria for protection

It is always good to know the aim of the design regulation, it gives one a hint of the legislations approach and mindset for the design legislation. There is clearly a bigger perspective when it comes for the aim of the legislation. The legislation shall not only protect designer but also serve as a tool for innovation and to push innovation further with the help of investments.¹⁹² Individual character is the second criteria and have to be fulfilled alongside with the criteria of novelty, see Article 6 design

¹⁸⁵ Design regulation 6/2002 Article 5 See J.Pila & P.Torremans, European intellectual property law, 2019, p 464-465, See Levin & Hellstadius, Lärobok i immaterialrätt, 2023, p 401-403, See C-488/10 Celaya para 40, See C-361/15 Easy sanitary solutions, para 89-94, 98, See Case R 887/2008-3 Norman Copenhagen para 25, See D.Stone, European union design law, 2016, p 194.

¹⁸⁶ D.Stone, European union design law, 2016, p 194-195.

¹⁸⁷ Trademark regulation 2017/1001 Article 1,4, 9, Preamble 11, See C-281/10 PepsiCo, para 53-60 compare with C-342/97 Loyd Schuhfabrik Meyer para 25-26, See C-206/01 Arsenal para 48, 51, See C-487/07 L'Oréal para 51-58, See S.Arnestål, Känneteckensrätt, 2022, p 75-77, See S.Arnestål, Varumärkesanvändning, 2018, p 48-54, 58, 60, See Levin & Hellstadius, Lärobok i immaterialrätt, 2023, p 466-467, 518-527.

¹⁸⁸ Authors own analysis and opinion.

¹⁸⁹ C-488/10 Celaya para 40-43.

¹⁹⁰ C-361/15 Easy sanitary solutions para 88-89, 128-133., See Design regulation 6/2002 Article 5(1)(b).

¹⁹¹ C-361/15 Easy sanitary solutions para 101-102, 128-133.

¹⁹² Design regulation 6/2002 Preamble 7, See D.Stone, European Union design law, 2016, p 207.

regulation.¹⁹³ Individual character can be seen as the design shall have a innovative character that can stand alone and deviate itself from the competitor's design.¹⁹⁴ The individual character shall be analysed from the overall impression from an informed user point of view, see Preamble 14 in the design regulation.¹⁹⁵ The overall impression of a novel design on the informed user shall differ of the overall impression from other design in that specific sector to the informed user.¹⁹⁶ The overall impression and the informed user are two central point of views. The preamble explains further that the informed user shall take in consideration the type of product the design covers in the specific industrial sector, what kind of product it is and the design freedom of that product. What kind of creativity is there to innovate the design on the product in the specific sector. This means that on some products one can be more creative compared to other products.¹⁹⁷

The informed user shall take in consideration the specific sector that the design has been created for. In some sectors the design of a product “lives” longer than in other sectors. This is also the reason why there are two alternatives for the length of the design protection, the registered design protection v. The unregistered design protection.¹⁹⁸ To withhold an unregistered design the design must be novel and have individual character, the same criteria as the registered design.¹⁹⁹ The time of protection for the unregistered design is 3 years.²⁰⁰ Compared to the registered design that have a protection of 5 years from the day that the design application has been filed to the EUIPO. Then the registration can be renewed up to in total 25 years.²⁰¹

3.3.4.1 The test of the Informed user

The overall impression of the design on the informed user is central to analyse if the design fulfils the criteria of having an individual character.²⁰² One can break the criteria of individual character in to four tests, the test of the sector of the product, the test of overall impression, the test of informed user and the last test, the freedom of design, see T-255/13 para 32.²⁰³ In the case T-525/13, H&M v. YSL, addresses the term of an informed user of handbags. In this case it is clear that an informed used is a user that uses handbags and have an interest in handbags. This means, that the informed uses have a deeper knowledge of handbags and up to date on the latest news in the sectors of handbags.²⁰⁴ The attention of the informed user shall be seen as detailed and observant according to the case C-281/10 PepsiCo. The attention of

¹⁹³ Design regulation 6/2002 Article 6.

¹⁹⁴ Design regulation 6/2002 Article 6, See C-281/10 Pepsico, See J.Pila & P.Torremans, European intellectual property law, 2019, p 464-465.

¹⁹⁵ Design regulation 6/2002 Article 6, Preamble 14.

¹⁹⁶ Design regulation 6/2002 Article 6, Preamble 14.

¹⁹⁷ Design regulation 6/2002 Article 6, 10, Preamble 14, See C-281/10 Pepsico, See J.Pila & P.Torremans, European intellectual property law, 2019, p 464-465.

¹⁹⁸ Design regulation 6/2002 Article 5,6, 10, 11, 12, compare to the unregistered copyright protection in the EU and Bern convention.

¹⁹⁹ Design regulation 6/2002 Article 4,5,6, 11, 12.

²⁰⁰ Design regulation 6/2002 Article 11(1).

²⁰¹ Design regulation 6/2002 Article 12.

²⁰² Design regulation 6/2002 Article 6.

²⁰³ Design regulation 6/2002 Article 6, Preamble 14-15, See H&M v. YSL , para 24-26, 28-30, 28-29, 32 See D.Stone, European union design law, 2016, p 206-207, See Levin & Hellstadius, L robok i immaterialr tt, 2023, p 407-408.

²⁰⁴ T-525/13 H&M v. YSL, para 23-26.

the informed user shall not be seen as average, because the informed user is someone that has a lot of experience in the sector and/or broad and detailed knowledge of the sector.²⁰⁵

One can compare the informed user to the average consumer in the EU trademark legislation. The average consumer in the trademark legislation is seen as a regular consumer that often has a blurry mind, no attention to details and has a connection or affected by the trademark functions, which then can give the trademark a distinctiveness. There is a higher expectation of knowledge, attention and experience to the informed user in the design legislation compared to the average consumer in the trademark legislation.²⁰⁶

However, the informed user is not an expert or a professional, person skilled in the art, in any means compared to the Article 83 EPC in the patent legislation.²⁰⁷ In the case C-281/10 PepsiCo makes it clear that the informed user shall not be analysed in the same way as the averaging consumer in the trademark legislation because the informed user has the opportunity to compare a design with other designs. This means that informed user has the knowledge to analyse and compare different design, not as a professional, but rather than someone who can still spot different of different designs. In conclusion, the informed user shall be seen and analysed as something in the middle of the average consumer from the trademark legislation and a person skilled in the art from the patent legislation.²⁰⁸

Worth mentioning that in case C-342/97 Loyd Schuhfabrik Meyer, the court stated that an average consumer does not have time to compare trademarks and therefore an average consumer sees trademarks with a blurry mind. However, the average consumer shall be overall informed by normal standards. It is important to emphasise that this can be a factor that can deviate from different sectors. In my own opinion this shall also be the case with the informed user. Both the average consumer and the informed user shall be more alert and overall informed with the help of doing a proper due diligence if one shall buy or use an expensive watch or a car compared with buying something at the supermarket.²⁰⁹

3.3.4.2 The test of the freedom of design

When it comes to the test of designer freedom, one can see it as, the more freedom a designer has, the less likely there will be an impact on the overall impression regarding the detail on the design. However, if there is less freedom to design a product, then small details can affect the overall impression of the product. For

²⁰⁵ C-281/10 PepsiCo, para 24, See T-525/13 H&M v. YSL, para 24-26.

²⁰⁶ Trademark regulation 2017/1001 Article 1,4, 9, Preamble 11, See C-281/10 PepsiCo, para 53-60 compare with C-342/97 Loyd Schuhfabrik Meyer para 25-26, See C-206/01 Arsenal para 48, 51, See C-487/07 L'Oréal para 51-58, See S.Arnestål, Känneteckensrätt, 2022, p 75-77, See S.Arnestål, Varumärkesanvändning, 2018, p 48-54, 58, 60, See Levin & Hellstadius, Lärobok i immaterialrätt, 2023, p 466-467, 518-527.

²⁰⁷ C-281/10 PepsiCo, para 53-60, compare with Article 83 EPC.

²⁰⁸ Trademark regulation 2017/1001 Article 1,4, 9, Preamble 11, See C-281/10 PepsiCo, para 53-60 compare with C-342/97 Loyd Schuhfabrik Meyer para 25-26, See C-206/01 Arsenal para 48, 51, See C-487/07 L'Oréal para 51-58, See S.Arnestål, Känneteckensrätt, 2022, p 75-77, See S.Arnestål, Varumärkesanvändning, 2018, p 48-54, 58, 60, See Levin & Hellstadius, Lärobok i immaterialrätt, 2023, p 466-467, 518-527.-C-281/10 PepsiCo, para 53-60, compare with Article 83 EPC.

²⁰⁹ PepsiCo, para 53-60 compare with C-342/97 Loyd Schuhfabrik Meyer para 25-26.

example, when it comes to fashion products such as fashion handbags, one shall see it as a product with a high freedom of design.²¹⁰

3.3.4.3 The test of the overall impression

In the test of the overall impression on the informed user, one shall compare the design with other designs in the specific sector where the design will be consumed.²¹¹ The overall impression of a new design on the informed user will be affected and based on the other design in the sector that have reached a level of novelty and indictable character. The informed user will use older design as a reference point for the overall impression of the new design that have the potential of individual character.²¹² In conclusion for a design to have individual character, the overall impression shall be different compared to other designs on the informed user. But the overall impression on the older designs shall be analysed separately by the informed user, one by one.²¹³

3.3.4.4 The test of the sector of the product

The sector of the product is as simple as the sector of a product, for example a handbag for fashion, have the sector of handbag in the fashion sector. Then assuming this could be divided into more sub-sectors, as in a sector for luxury handbags compared to a sector of non-luxury handbags etc.²¹⁴ To have this as a test in the overall analysis of the individual character, has some similarities to the trademark legislation and their approach to the analysing the criteria for trademarks. For example, in the trademark legislation one analysis the trademarks in the relevant public, the trademark territory and trademark classes for registration.²¹⁵ The sector of the product design shall have an overall impact on how to analyse the informed user, in the same way that an average consumer attention, knowledge and blurry mind will differ compared to different sectors, for example luxury sector compare with the buying something at the supermarket. The informed user shall be analysed and judge in the same way as the average consumer, in my point of view.²¹⁶

3.3.4.5 The limitation of the protection

The limitation of the protection is set in Article 8 in the design regulation. The aim of the design legislation is to protect the design of a product and not the technical functions such as technical solutions.²¹⁷ Article 8 in the design regulation makes it clear that details in a design that have a technical function cannot be protected.²¹⁸ The technical solutions are set to be protected by the patent legislation and not in the

²¹⁰ C-281/10 PepsiCo, para 43-46, See T-525/13 H&M v. YSL, para 28-30.

²¹¹ C-345/13 Karen Millen fashion para 25-26, C-281/10 PepsiCo para 55, See T-525/13 H&M v. YSL , para 32.

²¹² C-345/13 Karen Millen fashion para 25-26, C-281/10 PepsiCo para 55, See T-525/13 H&M v. YSL , para 32.

²¹³ C-345/13 Karen Millen fashion para 35.

²¹⁴ T-525/13 H&M v. YSL, para 32.

²¹⁵ C-281/10 PepsiCo, para 47-50, See C-342/97 Loyd Schuhfabrik Meyer para 25-26.

²¹⁶ C-281/10 PepsiCo, para 47-50, See C-342/97 Loyd Schuhfabrik Meyer para 25-26.

²¹⁷ Design regulation 6/2002 Article 8

²¹⁸ Design regulation 6/2002 Article 8(1).

design legislation.²¹⁹ The preamble to the design regulation emphasis on this matter in the Article 8.²²⁰ Furthermore, there can be products that are built with a mechanical approach and this can be important for the overall product and product design which shall be able to be protected by the design regulation, see Preamble 11.²²¹

One other limitation to the design protection is what's visible and not visible. What is not visible cannot be protected by the legislation. For example, this can be measured by what can be seen during a normal use during a consumption of the product.²²² Another limitation is in Article 9 design regulation. If a design is disturbing the public policy or moral in any way, it shall not be protected. For example, if there are some immoral messages, patterns etc. The same regards for messages that is racist and discriminatory etc. However, it is allowed to use flags and religious symbols with the exception of that the use of the flags and symbols are used in a proper way.²²³ A good example of a design that could not be registered was a water bottle shaped as a sperm.²²⁴

3.4 The new hybrid legislation

3.4.1 The proposal from the commission

The current design legislation is more than 20 years old, and a lot have happened during the 20 years in our society.²²⁵ The technology has changed and evolved.²²⁶ It is important to remember that the scope of the design regulation is to push innovation further and have the effect of attracting more investors. To fulfil the purpose of the legislation, the legislation must keep up with the new technology.²²⁷

The background to the new design legislation proposal (the regulation and the directive) is quite a few, first of all the commission recognised and emphasised the value and the opportunity's design brings to the community, for example more investors invest, creates job opportunities and it also creates more competition. This leads to more innovation.²²⁸ The commission is also aware of how important it is to keep up with the technological development. The legislation and the technology could be evolved in parallel to each other, therefore a new proposal to evolve the design legislation in the EU.²²⁹

The current design legislation, design regulation 6/2002, entered in to force in December 2001. In 2014 the commission made a evaluation on the current design

²¹⁹ Design regulation 6/2002 Article 8, compared to Article 52 EPC.

²²⁰ Design regulation 6/2002 Preamble 10-12.

²²¹ Design regulation 6/2002 Preamble 11.

²²² Design regulation 6/2002 Preamble 12, See the explanation of the "product" and "complex product" in Chapter 3.

²²³ Design regulation Article 9.

²²⁴ 10 W (pat) 713, German patent court.

²²⁵ Design regulation 6/2002.

²²⁶ Chapter 2.

²²⁷ Design regulation 6/2002 Preamble 7, European Commission, COM(2022) 666 final, 2022/0391 (COD), Brussels 28/11/2022, Chapter 1.

²²⁸ European Commission, COM(2022) 666 final, 2022/0391 (COD), Brussels 28/11/2022, Chapter 1.

²²⁹ European Commission, COM(2022) 666 final, 2022/0391 (COD), Brussels 28/11/2022, Chapter 1.

legislation in the EU. The conclusion was that the commission had to develop the design legislation to make it more appealing to small and medium entrepreneurs, (SME), investors and designers.²³⁰ This could be compared to the trademark legislation that have had an enormous success in the EU throughout the years.²³¹ This approach from the EU and the commission is logical and makes sense, because the designers and entrepreneurs, big or small, are using, direct or indirect digital tools, the internet, digital platforms, VR, AR, NFT, metaverse etc to evolve their business, ideas, design or creativity.²³²

In 2020 the commission had as a mission to analyse and evolve the current design legislation to be more emerging with the modern and digital world. EU had seen the positive effects of the updates that had been given to the trademark legislation, Trademark regulation 2017/1001 and they hold that as an inspiration for the future of the new design legislation in the EU, the hybrid product design legislation.²³³ The goal and approach to the change of the current design legislation in the EU was to evolve it, to a more efficient, modern legislation and make the legislation clearer to what it protects in the modern world.²³⁴

In 2022 the commission came with a final proposal for the new design legislation, the COM(2022) 666 2022/0391(COD), the purpose of the new design legislation is to be applicable to the modern society, this means to the digital evolution of the internet and the modern technology, the digital world. As a consequence, the design legislation shall be more approachable by SME:s and easier, simpler to register the design.²³⁵ To be able to achieve the goal of being more modern, digital and efficient the commission changed the definitions on “product” and “design” in Article 3. The aim was to future proof the definition to be in line with the technological evolution for many years to come. Regarding the definition of what could be a product in the context of the design legislation the commission made the definition broader in including digital products and non-digital products such as physical products in the definitions, a hybrid.²³⁶

In the proposal to the parliament one can clearly see that the commission want to “breath in new life” into the legislation and make it more relevant, in similar way to the trademark legislation.²³⁷ In Para 9, the commission explains that they are aware that the technology has evolved and will keep evolving. The design has evolved together with the technology, leading to two design perspectives, design for the physical world and design for the digital world. The third alternative is if the physical product has some sort of digital screen, then the product could have both a digital

²³⁰ European Commission, COM(2022) 666 final, 2022/0391 (COD), Brussels 28/11/2022, Chapter 1.

²³¹ See Chapter 3.

²³² See Chapter 2.

²³³ European Commission, COM(2022) 666 final, 2022/0391 (COD), Brussels 28/11/2022, Chapter 1, Compare with Trademark regulation 2017/1001.

²³⁴ European Commission, COM(2022) 666 final, 2022/0391 (COD), Brussels 28/11/2022, Chapter 1.

²³⁵ Article 118(1) TFEU, See European Commission, COM(2022) 666 final, 2022/0391 (COD), Brussels 28/11/2022, Chapter 3.

²³⁶ European Commission, COM(2022) 666 final, 2022/0391 (COD), Brussels 28/11/2022, Section 5.

²³⁷ European Commission, COM(2022) 666 final, 2022/0391 (COD), Brussels 28/11/2022, Proposal, regulation of the European Parliament and of the council, amending council Regulation (EC) No 6/2002 on community design and repealing Commission Regulation (EC) no 2246/2002, Compare with Trademark regulation 2017/1001.

design and a physical design. This could be called hybrid product design.²³⁸ Furthermore, the commission gave some indirect examples in Para 9, the graphical, animation, and other digital transitions and movement that can create a design shall be cover in the new definitions. However, there is also a focus on the design of the interior environments. This could be where the design of AR products can be protected, or if one is using a physical room and then makes a light show/art. Another alternative is for brand such as Gucci creating a store in the metaverse and protect the interior of that store and the same regards if Gucci or Nike want to create an AR store with AR technology.²³⁹

In the proposal to the parliament, the commission suggested that Article 3(1) definition of “design” have some ad-ons such as design that could be in a transition, movement or other kinds of animations. The overall text of the old definition is still in the new proposal from the commission. For example, design could be seen as shape/lines or/and texture and/or colour combinations etc. The new ad-on opens a huge door for interpretation, but in a static approach, to a more digital era of design. Moving away from the classical industrial design. The new definition of design could be movie sets, digital product design, holograms, hotel and stores interior (both digital and physical), animated characters such as design of an avatar, which leads to digital fashion such as AR fashion (digital filters, a good example is Snapchat) and in general the digital fashion in the metaverse and the digital world.²⁴⁰

Furthermore, in the commission proposal for Article 3(2), the new ad-on to the definition of “product” could be seen both as a physical object but also as a “digital form”. In my point of view, it is a very interesting choice of words from the commission. However, the commission divides the Article 3(2) into a (a) and (b) Section compared to the old design regulation 6/2002. I assume, the reason for an (a) and (b) Section is to create some guidelines for the “digital form” and “physical object”.²⁴¹ For example, in Article 3(2)(a) includes details to objects, such as the packaging of a product, parts to a complex product, an interior design, both digitally and physically thanks to the new word “digital form”.²⁴²

²³⁸ European Commission, COM(2022) 666 final, 2022/0391 (COD), Brussels 28/11/2022, Proposal, regulation of the European Parliament and of the council, amending council Regulation (EC) No 6/2002 on community design and repealing Commission Regulation (EC) no 2246/2002, para 9-10, Authors own analysis.

²³⁹ Chapter 2, See European Commission, COM(2022) 666 final, 2022/0391 (COD), Brussels 28/11/2022, Proposal, regulation of the European Parliament and of the council, amending council Regulation (EC) No 6/2002 on community design and repealing Commission Regulation (EC) no 2246/2002, para 9-10, Authors own analysis.

²⁴⁰ Compare Chapter 3.2 with Chapter 2 and compare with European Commission, COM(2022) 666 final, 2022/0391 (COD), Brussels 28/11/2022, Proposal, regulation of the European Parliament and of the council, amending council Regulation (EC) No 6/2002 on community design and repealing Commission Regulation (EC) no 2246/2002, proposals to Article 3(1), Authors own analysis.

²⁴¹ Compare Chapter 3.2 with Chapter 2 and compare with European Commission, COM(2022) 666 final, 2022/0391 (COD), Brussels 28/11/2022, Proposal, regulation of the European Parliament and of the council, amending council Regulation (EC) No 6/2002 on community design and repealing Commission Regulation (EC) no 2246/2002, proposals to Article 3(2)(a-b), Authors own analysis.

²⁴² Compare Chapter 3.2 with Chapter 2 and compare with European Commission, COM(2022) 666 final, 2022/0391 (COD), Brussels 28/11/2022, Proposal, regulation of the European Parliament and of the council, amending council Regulation (EC) No 6/2002 on community design and repealing Commission Regulation (EC) no 2246/2002, proposals to Article 3(2)(a-b), Authors own analysis.

3.4.2 Opinion from the European Economic and Social Committee

It is important to quickly mention the opinion from the European economic and social committee, (EESC). The EESC is an advisory body and gives opinions on future legislations. For example, the EESC can give an opinion on a proposal from the commission.²⁴³ The EESC sees the new design proposal beneficial for the consumers, general public and the competition in the union. EESC further commented that this change and modern approach to the new design legislation will make a positive impact on the overall economic development and creativity in different industries which means that, products as a concept will evolve.²⁴⁴ The EESC have a very modern and positive perspective on the new technology. EESC emphasises that the legislation must be in line with the innovation of technology.²⁴⁵ Furthermore, in Para 1.3 the EESC addresses the new definitions of “product” and “design”, and emphasis that with the new update/ad-on, the legislation will be relevant with today's technology and the future technology.²⁴⁶

The EESC is in line with the perspective of the commission, and they have similar point of view. However, the EESC and the commission are not mentioning the sustainable point of view. With the rise of digital product there are a possibility that the production of physical products will decrease. The growth of the digital world and digital products increases in value, with a help of a bigger demand of the digital world. The focus will shift from physical production in the physical world to digital production of products in the digital world. With the help of technology such as VR, AR, NFT and the metaverse. A good example is the fashion industry, that will probably have a more sustainable production of products with the help of digital productions of clothes and accessories. The effect of the sustainability will create more innovation and then even more sustainability, in both the physical world and the digital world. From my point of view, these two worlds will push each-other to a more innovation and sustainability future.²⁴⁷

3.4.3 The council and the parliament

Compared to the commission's proposal, the council made some changes to the definitions. The reason for this was to make the definitions relevant during the evolution of technology in the years to come. As the commission stated in their proposal, the hybrid legislation shall be future proofed.²⁴⁸

²⁴³ European Union, EU body, European Economic and social committee (EESC), 2024, See European Commission, COM(2022) 666 final, 2022/0391 (COD), Brussels 28/11/2022, Proposal, regulation of the European Parliament and of the council, amending council Regulation (EC) No 6/2002 on community design and repealing Commission Regulation (EC) no 2246/2002, See Opinion, European Economic and Social Committee, Revision of the design directive and regulation.

²⁴⁴ Opinion, European Economic and Social Committee, Revision of the design directive and regulation, See para 1.1, 1.3, 3.3.

²⁴⁵ Opinion, European Economic and Social Committee, Revision of the design directive and regulation, See para 1.3, 3.3

²⁴⁶ Opinion, European Economic and Social Committee, Revision of the design directive and regulation, See para 1.3.

²⁴⁷ Authors own analysis and opinion.

²⁴⁸ European Parliament, Legislative Train schedule, Revision of the Community Design Regulation, 2024, Compare with European Commission, COM(2022) 666 final, 2022/0391 (COD), Brussels 28/11/2022, Proposal, regulation of the European Parliament and of the council, amending council Regulation (EC) No 6/2002 on community design

The council added a Preamble 10a to the proposal text from the commission and stated that a design does not need to be visible all the time. This means that the design does not need to be visible all the time during a use of the design. The exception here is a complex product, where the components of that complex product shall be visible during a normal use.²⁴⁹ Furthermore, the council modified Article 3(2) and Article (2)(a). In Article 3(2) they changed “digital form” to “non-physical form”. In my point of view, this is a huge change. This means that the word “non-physical form” is everything opposite to the physical objects/forms.²⁵⁰ There were also some changes in Article 3(2)(a), where the council added “an interior or exterior” in Article 3(2)(a). As mentioned before Article 3(2)(a-b) is there to give some guidance, to what includes in product such as physical object or non-physical form.²⁵¹

The Parliament accepted the overall new proposal for the new regulation, with some changes from the Council. In the Preamble 13 states clear that for a design to receive design protection, the design does not need to be visible during a specific use. This means that the design doesn’t need to be visible all the time or at a specific time of use and/or situation. However, there is an exception and that is the components of a complex product. These component needs to be visible during a normal use. The visibility needs to be visible at all the time during a normal use of the product.²⁵² This is smart from a legal and strategic point of view; thus, a digital design will be able to be more “alive” than a physical design. The reason for this is that the digital design is not limited by the shape of the physical material. For example, a suit or a dress in the physical world is a suit with certain material and shape. However, a digital suit and a dress could have certain patterns or colours that shift during a specific time etc.²⁵³

One needs to analyse and compare what the parliament have adopted and compare it to the original proposal from the commission. In the original proposal, the commission did not use the word “non-physical”. The commission used “digital form”, which is in my opinion a more precise and correct definition of a digital product. Because then the courts could focus on what is digital in the context of a

and repealing Commission Regulation (EC) no 2246/2002, Compare with Council of the European Union, Interinstitutional Files: 2022/0392 (COD), 2022/0391 (COD), Brussels, 21 December 2023.

²⁴⁹ Council of the European Union, Interinstitutional Files: 2022/0392 (COD), 2022/0391 (COD), Brussels, 21 December 2023, Preamble 10a, Compare with Chapter 3.2 with Chapter 2 and Compare with European Commission, COM(2022) 666 final, 2022/0391 (COD), Brussels 28/11/2022, Proposal, regulation of the European Parliament and of the council, amending council Regulation (EC) No 6/2002 on community design and repealing Commission Regulation (EC) no 2246/2002, proposals to Article 3(2)(a-b), Authors own analysis.

²⁵⁰ Council of the European Union, Interinstitutional Files: 2022/0392 (COD), 2022/0391 (COD), Brussels, 21 December 2023, Article 3(2), Compare with Chapter 3.2 with Chapter 2 and Compare with European Commission, COM(2022) 666 final, 2022/0391 (COD), Brussels 28/11/2022, Proposal, regulation of the European Parliament and of the council, amending council Regulation (EC) No 6/2002 on community design and repealing Commission Regulation (EC) no 2246/2002, proposals to Article 3(2)(a-b), Authors own analysis.

²⁵¹ Council of the European Union, Interinstitutional Files: 2022/0392 (COD), 2022/0391 (COD), Brussels, 21 December 2023, Article 3(2)(a).

²⁵² European Parliament, P9_TA(2024)0164, Industrial property: protection of community designs, European Parliament legislative resolution of 14 March 2024 on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 6/2002 on Community design and repealing Commission Regulation (EC) No 2246/2002 (COM(2022)0666-C9-0394/2022-2022/0391(COD)), Preamble 13, See European Parliament, Legislative Train schedule, Revision of the Community Design Regulation, 2024.

²⁵³ European Parliament, P9_TA(2024)0164, Industrial property: protection of community designs, European Parliament legislative resolution of 14 March 2024 on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 6/2002 on Community design and repealing Commission Regulation (EC) No 2246/2002 (COM(2022)0666-C9-0394/2022-2022/0391(COD)), Preamble 13, Authors own analysis and opinion.

product design. Everything that is not a physical object could be non-physical form.²⁵⁴ This could be smart from a strategic point of view; it could be easier to integrate the new regulation with this kind of interpretation. In conclusion a product can be a physical object and in a non-physical form, which at least means digital product, and more. The word “non-physical form” has a lot more room for interpretation in different scenarios compared to “digital form”. The word “non-physical form” is also more sustainable for future development and evolution of the technology and the digital world. The Commission’s purpose was to make the design legislation more relevant and future-proof, and I think they have succeeded. The CJT could have a challenge on their hands to concretise (and limit) the word “non-physical form”, it will create a lot more case law. This is good because create more opportunity’s both for designer, company’s and lawyers. The new design legislation will probably be a “competitor” to both the trademark legislation and the copyright legislation, or they could “work” together.²⁵⁵

Furthermore, there is some changes I Article 3(2)(a) in comparison to the original proposal and what was adopted by the parliament. The word “get-up” does not longer exist in the final version. There have been some clarifications of the term “interior environment” that was used in the commission's proposal. The word that has replaced “interior environment” is “interior or exterior”. In the final document that have been accepted by the parliament the term evolved, and became more precise and broader, in line with the term “non-physical form”. In my opinion, the term “non-physical form” combined with “interior or exterior environments”, there will be possibility to protect different sorts of architecture objects in the digital world, such as the Gucci Garden²⁵⁶ that was created as a store in the digital world. There is possibility to protect different kind of concepts of ads, digital infrastructure and AR filters²⁵⁷ etc. Even though there have been some changes from the commission’s original proposal, the changes have in line with the commission purpose of the evolution to a new design legislation. Which is to have a hybrid legislation that can keep up with technology.²⁵⁸

However, it will not be easy in the beginning because, as always, there will be friction on how to interpret the new legislation and it will take a while before one

²⁵⁴ European Parliament, P9_TA(2024)0164, Industrial property: protection of community designs, European Parliament legislative resolution of 14 March 2024 on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 6/2002 on Community design and repealing Commission Regulation (EC) No 2246/2002 (COM(2022)0666-C9-0394/2022-2022/0391(COD)), Article 3(2), Compare with European Commission, COM(2022) 666 final, 2022/0391 (COD), Brussels 28/11/2022, Proposal, regulation of the European Parliament and of the council, amending council Regulation (EC) No 6/2002 on community design and repealing Commission Regulation (EC) no 2246/2002, proposals to Article 3(2)(a-b), Authors own analysis and opinion.

²⁵⁵ European Parliament, P9_TA(2024)0164, Industrial property: protection of community designs, European Parliament legislative resolution of 14 March 2024 on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 6/2002 on Community design and repealing Commission Regulation (EC) No 2246/2002 (COM(2022)0666-C9-0394/2022-2022/0391(COD)), Article 3(2), Compare with Chapter 2, Authors own analysis and opinion.

²⁵⁶ See Gucci, Gucci garden on Roblox, 2021, See Roblox, The Gucci garden experience land on Roblox, 2021.

²⁵⁷ Snap AR, The latest from Snap AR, 2024. See Spectacles, The next Generation of spectacles, 2024. See Snapchat, The most popular filters/licenses, 2024, See WIPO, Metaverse, WIPO Conversation IP and Frontier Technologies, 2023, See RTFKT, What we do?, 2024, See Business of Fashion, Biography Benoit Pagotto, 2020, See M.McDowell, Vogue, Nike and RTFKT take on digital fashion with first “cryptokick” sneaker, 2022.

²⁵⁸ Authors own analysis and opinion.

gets clear and precise guidelines from the CTJ.²⁵⁹ However, it is important to emphasise that Article 3(1) combined with Article 3(2) evolves to an overall complex Article. The reason for this is that different shapes, lines, texture and also colours can be “alive” in some sorts of movement such as animation. The animation could be in the context of AR technology as a filter for a fashion product or a product, such as Skins²⁶⁰ in the metaverse, created by Disney/ Marvel²⁶¹, Nike²⁶² or Balenciaga²⁶³. It will be a challenge to judge the overall impression, I think there will be challenges for the court to analyse and judge infringement cases. One solution is to take further inspiration from the trademark legislation.²⁶⁴ In conclusion the combination of the Article 3(1-2) (a-b) designers will create more flexibility to be creative and décor general objects such as watches, cars, avatars suits and dresses in the digital world. Such general objects from the physical world will be a baseline for a designer to build on in the digital world. Therefore, the material in the physical world is limited and in the digital world materials are not an obstacle. Materials in the real world are limited but also limited in the context of what the material cost. Then there is the quality of the product and the sustainable aspects such as where it has been made and by whom. These problems will be eliminated in the digital world. Other problems will of course arrive such as who have made the design and where have the inspiration come from etc, see Chapter 3.4.1.²⁶⁵

²⁵⁹ European Parliament, P9_TA(2024)0164, Industrial property: protection of community designs, European Parliament legislative resolution of 14 March 2024 on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 6/2002 on Community design and repealing Commission Regulation (EC) No 2246/2002 (COM(2022)0666-C9-0394/2022-2022/0391(COD)), Article 3(2), Compare with European Commission, COM(2022) 666 final, 2022/0391 (COD), Brussels 28/11/2022, Proposal, regulation of the European Parliament and of the council, amending council Regulation (EC) No 6/2002 on community design and repealing Commission Regulation (EC) no 2246/2002, proposals to Article 3(2)(a-b), Compare with Chapter 2, see See Gucci, Gucci garden on Roblox, 2021, See Roblox, The Gucci garden experience land on Roblox, 2021. Authors own analysis and opinion.

²⁶⁰ P.Tassi, Forbes, Fortnite is doing another Star Wars event, here are the remaining skins it needs, 2024. See Disney, Disney and Epic Games to create expansive and open games and entertainment universe contend to Fortnite, 2024, See J.Taylor, Dexerto, Fortnite Nike Airphoria vol.2 event: How to play creative 2.0 map in Fortnite, See D.Sturman, Roblox, Blogg, How Roblox avatar tech is evolving, 2023. See See J.Taylor, Dexerto, every single Fortnite collab & crossover in battle royales history, 2024, See J. Taylor, Dexerto, how to get Coachella 2024 skins in Fortnite: Horizon, Cosma and inferno skeleton Balvin, 2024.

²⁶¹ P.Tassi, Forbes, Fortnite is doing another Star Wars event, here are the remaining skins it needs, 2024. See Disney, Disney and Epic Games to create expansive and open games and entertainment universe contend to Fortnite, 2024, See J.Taylor, Dexerto, Fortnite Nike Airphoria vol.2 event: How to play creative 2.0 map in Fortnite, See D.Sturman, Roblox, Blogg, How Roblox avatar tech is evolving, 2023. See See J.Taylor, Dexerto, every single Fortnite collab & crossover in battle royales history, 2024, See J. Taylor, Dexerto, how to get Coachella 2024 skins in Fortnite: Horizon, Cosma and inferno skeleton Balvin, 2024.

²⁶² RTFKT, What we do?, 2024, See Business of Fashion, Biography Benoit Pagotto, 2020, See M.McDowell, Vogue, Nike and RTFKT take on digital fashion with first “cryptokick” sneaker, 2022.

²⁶³ Fortnite, High digital fashion drop into Fortnite with Balenciaga, 2021, See Epic Games, Balenciaga brings high fashion to Fortnite, 2021, See Chapter 2.

²⁶⁴ European Parliament, P9_TA(2024)0164, Industrial property: protection of community designs, European Parliament legislative resolution of 14 March 2024 on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 6/2002 on Community design and repealing Commission Regulation (EC) No 2246/2002 (COM(2022)0666-C9-0394/2022-2022/0391(COD)), Article 3(2), Compare with European Commission, COM(2022) 666 final, 2022/0391 (COD), Brussels 28/11/2022, Proposal, regulation of the European Parliament and of the council, amending council Regulation (EC) No 6/2002 on community design and repealing Commission Regulation (EC) no 2246/2002, proposals to Article 3(2)(a-b).

²⁶⁵ European Parliament, P9_TA(2024)0164, Industrial property: protection of community designs, European Parliament legislative resolution of 14 March 2024 on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 6/2002 on Community design and repealing Commission Regulation (EC) No 2246/2002 (COM(2022)0666-C9-0394/2022-2022/0391(COD)), Article 3(2), Compare with European Commission, COM(2022) 666 final, 2022/0391 (COD), Brussels 28/11/2022, Proposal, regulation of the European Parliament and of the council, amending council Regulation (EC) No 6/2002 on community design and repealing Commission Regulation (EC) no 2246/2002, proposals to Article 3(2)(a-b).

In Article 3(2)(b), the commission choose some words that differ from the old legislation, such as Graphic User Interface (GUI), logos and Graphic Works (GW). The Parliament accepted this, and it is still part of Article 3(2)(b). GUI, GW and surface patterns will be important to protect in the digital world. Especially in the metaverse with the VR and AR technology, see for example apples VR/AR headset.²⁶⁶ The purpose of the metaverse is to create a better world, therefore areas of metaverse must be protected because of the competition advantage. The interesting part here is to see how the new legislation will collaborate or collide with the current trademark legislation and Copyright legislation, thus there could be some overlaps.²⁶⁷

²⁶⁶ Compare Chapter 3.4.1 with Chapter 2, See European Parliament, P9_TA(2024)0164, Industrial property: protection of community designs, European Parliament legislative resolution of 14 March 2024 on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 6/2002 on Community design and repealing Commission Regulation (EC) No 2246/2002 (COM(2022)0666-C9-0394/2022-2022/0391(COD)), Article 3(2),

²⁶⁷ Compare Chapter 3.4.1 with Chapter 2 and compare with European Parliament, P9_TA(2024)0164, Industrial property: protection of community designs, European Parliament legislative resolution of 14 March 2024 on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 6/2002 on Community design and repealing Commission Regulation (EC) No 2246/2002 (COM(2022)0666-C9-0394/2022-2022/0391(COD)), Article 3(2), Compare with European Commission, COM(2022) 666 final, 2022/0391 (COD), Brussels 28/11/2022, Proposal, regulation of the European Parliament and of the council, amending council Regulation (EC) No 6/2002 on community design and repealing Commission Regulation (EC) no 2246/2002, proposals to Article 3(2)(a-b), Authors own analysis.

4 Analysis and conclusion

4.1 Introduction

This is the finale chapter of the thesis. There will be an overall analysis and conclusion. The purpose of this chapter is to fulfil the thesis's purpose and answers the following questions from Chapter 1:

“The purpose of this thesis is to describe and analyse the new definitions of “product” and “design” in the new EU design regulation²⁶⁸, and to describe and analyse to what extent the design of digital product will be able to be protected in the digital world, such as metaverse.

To fulfil the purpose of this thesis, the following questions will be answered:

- 1. What is the content and scope of the new definitions of “product” and “design” in the updated EU design legislation and how do they differ from the current definitions?*
- 2. To what extent can the design of a digital product be protected in the digital world?”²⁶⁹*

4.2 Research Question 1

The starting point to the initiative for a new design regulation was the commissions realisation to keep up with the technology and that the current design legislation (Council Regulation (EC) No 6/2002 of 12 December 2001 on Community design) have been outdated.²⁷⁰ The perspective of the commission has been to invest into a new design legislation that shall contribute to more innovation, investment, competition and job opportunities in the EU. The new design regulation shall keep up with the technology today and future society. The aim with the new design regulation is to make it future proof for the technology's that are on the rise, such as NFT:s, AR, VR and the metaverse.²⁷¹ The new definition that has been accepted by the parliament is a massive change compared to the current definitions in the design regulation.²⁷²

One can clearly see that there are big changes to the regulation, that will affect the overall use and protection of the design legislation in the EU. The overall structure in the new Article 3, compared to the old, have three paragraphs and (a) and (b) sub

²⁶⁸ The thesis will focus on the Council Regulation (EC) No 6/2002 of 12 December 2001 on Community design, even if there is similar provision set out in the Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998. This will be further explained in the sector of delimitation.

²⁶⁹ Chapter 1.2.

²⁷⁰ Chapter 3.4.1.

²⁷¹ Chapter 3.4.1.

²⁷² Chapter 3.4.1, 3.4.3 Compare with 3.3.2, 3.3.1.

paragraphs. Even though there are big changes in Article 3, the definition of “design” is similar to the old regulation, with some changes. In the new design regulation, the Article 3 includes words such as “movement, transition, animation” which shows that, a digital design could be “alive” and not limited by a certain shape or material.²⁷³

The changes to the definition of “design” are to make the definition more adaptable to the digital world. This means that in the digital world the design does not have limitation of certain material. The design in the digital world is flexible and it does not have the same limitation as in the physical world. The design in the digital world can be animation and other “alive” decorations, shapes, lines and textures that can be animated, shape shift, change colours and patterns etc. However, while a design in the digital world can change appearance and be more “alive”, the physical design has an aspect of quality and feel to the texture etc.²⁷⁴

A digital design compared to a physical design will have a more sustainable process of creating the design and the process will be more efficient. For example, a design of a car in the physical world must be a certain size, to have space for the batteries or the engine. One needs to think of the quality of the materials used in the cars for safety reason etc, this creates limitation to the design. In the digital world these aspects don’t need to be considered in the design process. Therefore, there will be more creativity and innovation, because the design is not limited by a material, process or quality.²⁷⁵ For example, a general suit or a dress from the physical world could be modified with patterns that change every two seconds in the digital world. This could be created as a filter for AR technology, or a Skin for the metaverse. I personally think that the fashion industry will be in the forefront of this new technology. The reason for this is that from a strategic point of view, the process of creating fashion products will be easier and cheaper. In the metaverse one can decorate the avatar that one uses in the metaverse with the help of different fashion items. Certain fashion items could even be protected with the help of the NFT technology.²⁷⁶

The biggest change, one can find in Article 3(2). In the old regulation there are a focus on physical products, such as “industrial design” and “handcrafted items”. One can clearly analyse that the paragraph is designed by the legislator to be used on physical products. Compare this to the new design regulation that have been accepted, the definition has become broader, and the paragraph have become bigger. There are two new words and together they will change how one uses the legislation. The definition of products in the new regulation is a “industrial or handcrafted item “that could be either a “physical object” or “non-physical form”. These two words is not present in the old regulation. The word is opposite to each other, the “non-physical form” is everything that is not a “physical object “. The “physical object” is representing the objects in the physical world, that have been addressed and covered by the old regulation. However, “non-physical form” is new and clearly emphasis on the opposite of what is included in the definition of “physical object”.

²⁷³ Chapter 3.4.1 & 3.4.3 compare with 3.3.2 & 3.3.1.

²⁷⁴ Chapter 3.4.1 & 3.4.3 compare with 3.3.2 & 3.3.1, See Chapter 2.

²⁷⁵ Chapter 3.4.1 & 3.4.3 compare with 3.3.2 & 3.3.1, See Chapter 2.3.1. & 2.2

²⁷⁶ Chapter 3.4.1 & 3.4.3 compare with 3.3.2 & 3.3.1, See Chapter 2.3.1. & 2.2 & 2.4.

These two words are meant for two different worlds, the digital and the physical world.²⁷⁷

“Non-physical form” is a big word that could include many things. The new regulation gives one some guidelines, see Article 3(2)(a-b). The (a-b) in the Article 3(2) is new but there are some similarities to the old regulation and some modifications and novelties. In Article 3(2)(a) is more focused on interior and exterior environments that could be both in the physical and digital world. This will give companies the opportunity to protect their digital products such as collaboration with videos games, if the companies are building a digital store, as Gucci did with the Gucci Garden. Another possibility is to protect the digital packaging of a product in the digital world, for example the metaverse. Another example is if NFT:s is to be sold with a package box or if a specific packaging is created into an NFT. This could lead to more value and new markets (or secondary markets) created in the digital world. The design that are set for stores, buildings and other environments will be protected and will be important for the brands in the digital world such as the metaverse. This will be markets shares in the digital world that brands will try to capitalise on. Article 3(2)(a), in my opinion concretises also what the overall definition of products in the physical world are compared to the old regulation.²⁷⁸

Furthermore, the complex product gets a clearer definition in my opinion in the new regulation compared to the old design regulation. The complex product has its own paragraph as a stand-alone definition, see Article 3(3) in both the old and new regulation, the paragraphs are identical. However, the commission has integrated it better into the new regulation. The new regulation makes it more precise and clearer what can be protected in the complex product. I think there will be some discussions and interesting case law that covers the phrase “parts intended to be assembled into a complex product”. The word “intended” will be discussed because in my point of view it is a word that could open for interpretation and will problem be analysed from a point of view of how the product have been created and will be used etc. It will also be interesting to see how the court will analyse a digital complex product. Because a complex product and the functions will be different from the physical world compared to the digital world. As mentioned before, the court will probably create two different criteria for each complex product (digital world and physical world). In the Preamble 13 to the new regulation, it was made clear that parts of a complex product need to be visible all the time during a normal use. This is the opposite mindset if the product is not a complex product.²⁷⁹

In the old Article 3(b) there is some examples what a product could be, a graphic symbol or a graphical typeface etc. In the new Article 3(2)(b) there is an extension in the regulation, that a product could be GUI which is important for the overall user experience in the digital world both with the AR technology and VR technology. The new Article 3(2)(b) have a brand-new term for product such as “surface patterns” this will be important for digital fashion. This could be the pattern on different fashion items that are used on the avatars. This could also include the design

²⁷⁷ Chapter 3.4.3, compare with Chapter 3.4.1 & Chapter 2.

²⁷⁸ Chapter 2.4, compare with Chapter 3.4.1 & 3.4.3.

²⁷⁹ Chapter 2 compare with Chapter 3.4 & 3.3

of Skins that one can use in different games and the metaverse. Surface pattern on different architecture or brand stores can now be protected, both in the digital world and the physical world.²⁸⁰ There are two new words that will probably have a lot of discussion and the courts need to set some clear boundaries, the GW and logos. This is two broad words and from my point of view, there is a lot of room for interpretation and together with the other changes and novelties the definitions make the new regulation even broader. It will be interesting to see how this plays out in comparison to the trademark and copyright legislation. The smart thing to do is to create some kind of criteria or a system where these intellectual property legislations can work together and create a stronger protection if one can fulfil all of the criteria, then one could be rewarded with a bigger and stronger protection.²⁸¹

In conclusion this is massive changes to the regulation even though they may seem small. In my opinion these changes will future proof the regulation, as it was intended from the commission. The new hybrid product design legislation, will keep up with the new technology, compared to the old regulation. The evolution of the definitions will change how one sees and analyses the whole design regulation, and this will affect the case law. I think that the guidelines from the old case law will in due time fade away. There will be some sort of interaction, between the other intellectual property legislation in the EU. The new design regulation will have a bigger “role” and overall impact than the old regulation, there will be a shift in the dynamic of the intellectual property legislation in the EU. I can see that the new design legislation, at least, could have the same success (and value) as the trademark legislation have had over the years. The CJEU will have a crucial role to establish, if the new regulation and the other intellectual property legislation will collaborate, collide, or complete each other, especially of protecting intellectual property in the digital world. One can even speculate that if there is a positive outcome of this hybrid approach to create a hybrid product design legislation, there will be changes elsewhere, such as in the TRIPS agreement or in other intellectual property legislation in the EU.²⁸²

4.3 Research Question 2

For a digital product to have design protection in the digital world, the design needs to fulfil the criteria of novelty and individual character. The same as the physical products. The interesting perspective to analyse is how the digital product will be analysed with the criteria of design protection, novelty and individual character. For example, when is a digital product novel and when does a digital product have individual character.²⁸³

A digital product is novel when a public have not seen similar design before, it shall be unique compared to the competitions. The design shall be novel to the public, the public in this context are the users of the digital world. The users of the digital world

²⁸⁰ Chapter 2 compare with Chapter 3.4 & 3.3.

²⁸¹ Chapter 2 compare with Chapter 3.4 & 3.3.

²⁸² Chapter 2 compare with Chapter 3.4 & 3.3 & 3.2.

²⁸³ Chapter 3.3, compare with Chapter 3.4.

could be divided into gamers, designers, lecturers etc, depend on which public a design is meant for. However, I think there will be difficult to divide the public into sectors or groups because the digital world is one big public compared to the physical world. The digital world is faster and have a constant flow of information. I think that there will be easier to see if a digital product is novel or not in the digital world and with the help of NFT technology (the blockchain technology), which will serve as an extra layer of protection and authentication. Combine the NFT technology with an application for registration to the EUIPO, there could be two layers of protection. The digital world could make it easier to track when and if a digital product has been available on a certain time and serve as a proof for the EUIPO. This could be compared to the case C-488/10 Celaya. The case C-488/10 Celaya made it clear that novelty is a presumption and can be challenged if there is evidence for it. From my point of view there will be easier to challenge novelty as a criteria in the digital world combined with EUIPO and NFT:s. However, the novelty of a digital product, that has a non-physical form, will be dictated by future case law combined with future technologies.²⁸⁴

The second criteria are individual character. The criteria of individual character shall be fulfilled in parallel with novelty. Individual character of a design is a design that is innovative and stands out from the competitors. The individual character is analysed from, the overall impression of an informed user. The overall impression on the informed user shall be analysed from a perspective of the specific sector. The reason for this is that each sector of a product has different characteristics. For example, how long the product will last, how it is used, the freedom of creativity. All of this is based on a point of view where the materials, shape, quality, safety etc have dictated the freedom to be creative and innovative. This will change in the digital world where these boundaries will not exist, as mentioned before in this thesis.²⁸⁵

In my opinion, the court will create two definitions of the overall impression and informed user. Two definitions that are for the two different worlds. It is not possible to use the same definition of an informed user and overall impression from the physical world to the digital world, I don't believe in that kind of simplistic approach. There is a possibility that everyone that is active in the digital world could be an informed user. For example, if one is active in the digital world and understand how NFT:s work or plays Fortnite, then that is an informed user. The case T-525/13 H&M v. YSL stated clear that an informed user in the world of handbags, is one who uses handbags. The same argument could be applied to the digital world. Furthermore, in case C-281/10 PepsiCo, it was stated that an informed user is someone that is observant and well informed. The informed user shall not be seen as average, in comparison to the average consumer in the trademark legislation. The informed user shall also be someone who has experience in the sector according to the case C-281/10 PepsiCo (more alert and have more knowledge than an average consumer). If one is active in the digital world and have the experience of how to use the technology, for example AR, VR, metaverse, trading NFT:s, then one is an informed user, for now. The users that play Fortnite will react if someone tries to infringe on

²⁸⁴ Chapter 3.3, compare with 3.4.

²⁸⁵ Chapter 3.3, compare with Chapter 3.4, compare with Chapter 2.

Balenciagas new fashion collection that they have recently launched in the digital world. Or if someone tries to copy the Disney/Marvel Skins, the user will notice, thus the user is an informed user. However, this could change in the future, where there are “advanced player/users” that could be seen as an informed user and the more casual user that is not an informed user. Either way, the criteria of protection for the digital design and the limitation of the protection is up to the courts to decide. Therefore, it is important that the courts are competent and understands the new technologies.²⁸⁶

In my opinion, the overall impression of the informed user in the digital world shall be different compared to the overall impression of an informed user in the physical world. In the case C-345/13 Karen Millen fashion, the court stated that the overall impression on the informed user shall be compared with the overall impression from other similar products design. However, the overall impression of other products shall be analysed one by one. I can see this work with the physical products, but with digital products in the digital world could be more challenging. However, the overall impression should be a criteria that is more difficult to fulfil in the digital world compared to the physical world. Because, to create a design in the digital world will be much easier, compared to create a design in the physical world. Similar mindset as in the cases C-281/10 PepsiCo and T-525/13 H&M v. YSL regarding the freedom of the design. The more freedom a designer has, the more effort and innovation the designer must put into the design to reach an impact of the overall impression. If the freedom of the design is limited, then the designer doesn’t need to put as much effort, to the design to make an impact on the overall impression to the informed user. Another reason why there should be a stricter overall impression for the digital products is that with the physical products there is no “feelings” involved in the same way of a physical products where one can touch the product and feel it. This could change in the future with the evolution of the technologies.²⁸⁷

It will be interesting to see how the courts will analyse the complex products in the digital world. A complex product shall be assembled. The protection of a complex product is based on what is visible on the complex product during a normal use. The components that are visible during a normal use can be protected, see case C-471/21 Monz Handelgesellschaft international and the case C-123/20 Ferrari. The new regulation emphasises on the interior and exterior design, this could be combined with a complex product in the digital world.²⁸⁸

In conclusion there is no hesitation that the new design regulation will have a big impact and cover a lot, especially with term used in the regulation such as “non-physical form”. The limitation is the physical objects, in the context of protecting digital products. The digital product could be NFT:s, Skins in the metaverse, fashion items for the avatars, animated logos, different sorts of animations, design for a digital store, patterns on a building and more. Limitations that are obvious is digital products that have immoral messages. Another limitation will be complex products and the normal use of that complex product in a digital world. One does not expect

²⁸⁶ Chapter 3.3, compare with Chapter 3.4, compare with Chapter 2.

²⁸⁷ Chapter 2, compare with Chapter 3.3. & 3.4.

²⁸⁸ Chapter 2, compare with Chapter 3.3. & 3.4.

to use the same reasoning and criteria as a complex product in the physical world compared to the digital world. The last limitation is the technical functions that is aimed to be protected by the patent legislation. However, it will be interesting to see how the design regulation and the patent legislation “collaborates”, because of the digital twin technologies. There will be an interesting aspect to see if the case law will create different criteria and limitations for the physical products and the digital products, because of different contexts/worlds. Or if the criteria and limitations will be a mirror to each other, like a digital twin of legislation, the limitations of the design protection could be the same in both worlds. From my point of view, it is better to have to separate limitations of protection because the two worlds “don’t play by the same rules”.²⁸⁹

²⁸⁹ Chapter 2, compare with Chapter 3.3 & 3.4.

References

Official documents

European Parliament

European Parliament, P9_TA(2024)0164, Industrial property: protection of community designs, European Parliament legislative resolution of 14 March 2024 on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 6/2002 on Community design and repealing Commission Regulation (EC) No 2246/2002 (COM(2022)0666-C9-0394/2022-2022/0391(COD)),
https://www.europarl.europa.eu/doceo/document/TA-9-2024-0164_EN.pdf .

Council of the European Union

Council of the European Union, Interinstitutional Files: 2022/0392 (COD), 2022/0391 (COD), Brussels, 21 December 2023,
<https://data.consilium.europa.eu/doc/document/ST-16992-2023-INIT/en/pdf>.

European Commission

Proposal for a regulation of the European Parliament and the council, amending council regulation (EC) No 6/2002 on community design and repealing commission regulation (EC) No 2246/2002 - European Commission, COM(2022) 666 final, 2022/0391 (COD), Brussels 28/11/2022,
[https://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2022/0666/COM_COM\(2022\)0666_EN.pdf](https://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2022/0666/COM_COM(2022)0666_EN.pdf) .

European Economic and Social committee

Opinion, European Economic and Social Committee, Revision of the design directive and regulation

The Green Paper

Green paper on the legal protection of industrial design, 1991.

Green paper on the legal protection of industrial design – working document for the services of the commission, III/F5131/91-EN, June 1991.

Reports from EUIPO

EUIPO, Guidelines, 6.25 downloadable goods and virtual goods, 2023,
<https://guidelines.euipo.europa.eu/2058843/2065747/trade-mark-guidelines/6-25-downloadable-goods-and-virtual-goods>, accessed 24/04/28.

EUIPO, EUIPO statistics for community designs, 2003-01 to 2024-01 evolution, 2024, https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/contentPdfs/about_euipo/the_office/statistics-of-community-designs_en.pdf, accessed 24/05/10.

EUIPO, EUIPO statistics for European Union trade marks, 1996-01 to 2024-04 evolution, 2024, https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/contentPdfs/about_euipo/the_office/statistics-of-european-union-trade-marks_en.pdf, accessed 24/05/10.

EUIPO, Trademark and design guidelines, 2024, <https://guidelines.euipo.europa.eu/2214311/2199801/trade-mark-guidelines/1-introduction>, accessed 24/05/11.

Literature

Monographs

Arnestål S, *Varumärkesanvändning*, (1th edn, Norstedts Juridik, 2018).

Arnestål S, *Känneteckensrätt*, (1th edn, Iustis, 2022).

Carani C, *Design Rights*, (1th edn, Kluwer Law International B.V, 2017).

Gray B and Gao R, *Industrial Design Rights*, (2th edn, Kluwer Law International B.V, 2016).

Lester S, Mercurio B and Davies A, *World Trade Law*, (3th edn, Hart Publishing, 2018).

Levin M and Hellstadius Å, *Lärobok i Immaterialrätt*, (13th edn, Nordstedts Juridik AB, 2023).

Montagani M.L and Calboli I, *Handbook of Intellectual Property Research*, (1th edn, Oxford University Press, 2021).

Monseau S, *Protecting Creativity in Fashion Design*, (1th edn, Routledge, 2023).

Pila J and Torremans P, *European Intellectual Property law*, (2th edn, Oxford University press, 2019).

Sandgren C, *Rättsvetenskap för Uppsatsförfattare*, (5th edn, Norstedts Juridik AB, 2021).

Stephenson N, *Snow Crash*, (1th edn, Penguin Books Ltd, 2011).

Stone D, *European Union Design law*, (2th edn, Oxford University Press, 2016).

Wessman R, Kraus J and Lukins I, *Immaterialrättens Struktur*, (1th edn, Nordsteds Juridik AB, 2019).

Wainikka C, *Designrätt*, (1th edn, Wolters Kluwer Sverige AB, 2016).

Electronic Literature

Rognstad A and Örstavik I, *Intellectual property and sustainable markets*, (Edward Elgar Publishing, ebook, 2021).

Sestino A, Guido G, and Peluso A, *Non-Fungible Tokens (NFTs)*, (Springer International Publishing AG, ebook, 2022).

Articles

Smiths M, “What is legal doctrine”, No 215/06, Faculty of Law Maastricht University 2015.

Online Sources

Apple, Vision Pro, 2024, <https://www.apple.com/apple-vision-pro/>, accessed 24/04/03.

Apple, A guide tour of Vision Pro, 2024, <https://www.apple.com/apple-vision-pro/guided-tour/>, accessed 24/04/15.

WIPO, Metaverse, WIPO Conversation IP and Frontier Technologies, 2023, https://www.wipo.int/export/sites/www/aboutip/en/frontier_technologies/pdf/metaverse-factsheet.pdf, accessed, 24/04/03.

Ravenscraft, WIRED, What is the Metaverse, Exactly?, 2023, <https://www.wired.com/story/what-is-the-metaverse/>, accessed 24/04/04.

IKEA, IKEA place app launched to help people virtually place furniture at home, 2017, <https://www.ikea.com/global/en/newsroom/innovation/ikea-launches-ikea-place-a-new-app-that-allows-people-to-virtually-place-furniture-in-their-home-170912/>, accessed 24/04/06.

M. Montecinos-Deppe, Year of glass: Google glass, 2022, <https://www.cooperhewitt.org/2022/08/31/year-of-glass-google-glass/>, accessed, 24/04/06.

Spectacles, The next Generation of spectacles, 2024. <https://www.spectacles.com/se/>, accessed 24/04/06.

University of New South Wales, Materials science and engineering, Materials that shaped history, <https://www.unsw.edu.au/science/our-schools/materials/engage-with-us/high-school-students-and-teachers/materials-shaped-history>, accessed 24/04/06.

L.Grossman, TIME, Go Behind the Scenes of Apples First iPhone Release, 2007, <https://time.com/3222128/apple-iphone/>, accessed 24/04/06.

J.Meredith, Forbes, the power of social media to capture todays consumer, 2020, <https://www.forbes.com/sites/forbescommunicationscouncil/2020/06/25/the-power-of-social-media-to-capture-todays-consumer/?sh=6e60fb6e789e>, accessed, 24/04/06.

T.Spangler, Variety, “Ready Player One” to be turned into massive metaverse experience in partnership with warner bros, 2024, <https://variety.com/2024/digital/news/ready-player-one-metaverse-warner-bros-discovery-1235862190/>, accessed 24/04/06.

H.Newman, Forbes, Ready player one versus reality: how close are we?, 2018, <https://www.forbes.com/sites/hnewman/2018/03/31/ready-player-one-versus-reality-how-close-are-we/?sh=1f7306252a01>, accessed 24/04/06.

A. Ramis, WIPO, the metaverse, NFTs and IP rights: to regulate or not to regulate?, 2022, https://www.wipo.int/wipo_magazine/en/2022/02/article_0002.html, accessed 24/04/06.

University of Minnesota, 11.2 The Evolution of the internet, 2024, <https://open.lib.umn.edu/mediaandculture/chapter/11-2-the-evolution-of-the-internet/> accessed 24/04/14.

University system of Georgia, A Brief History of the Internet, https://www.usg.edu/galileo/skills/unit07/internet07_02.phtml, accessed 24/04/14.

Snap AR, The latest from Snap AR, 2024, <https://ar.snap.com>, accessed 24/04/15.

Forbes, What the Apple Vision Pro means for how we watch entertainment, 2024, <https://www.forbes.com/sites/falonfatemi/2024/02/20/what-the-apple-vision-pro-means-for-traditional-entertainment/?sh=7ffe263b678a> , accessed 24/04/15.

Meta, express yourself with Meta-avatars, 2024, <https://www.meta.com/se/avatars/> , accessed 24/04/15.

IMDb, “Ready Player One”, 2018, https://www.imdb.com/title/tt1677720/?ref=nm_sr_srsrg_8_tt_3_nm_5_q_read, accessed 24/04/15.

Business of Fashion, Biography Benoit Pagotto, 2020, <https://www.businessoffashion.com/community/people/benoit-pagotto>, accessed 24/04/16.

M.McDowell, Vogue, Nike and RTFKT take on digital fashion with first “cryptokick” sneaker, 2022, <https://www.voguebusiness.com/technology/nike-and-rtfkt-take-on-digital-fashion-with-first-cryptokick-sneaker>, accessed 24/04/16.

RTFKT, What we do?, 2024, <https://101.rtfkt.com/rtfkt/what-we-do> , accessed 24/04/16.

RTFKT, Meet the team, 2024, <https://101.rtfkt.com/rtfkt/meet-the-team> , accessed 24/04/16.

P.Tassi, Forbes, “Fortnite” has actually made the metaverse after everyone else quit, 2023, <https://www.forbes.com/sites/paultassi/2023/12/10/fortnite-has-actually-made-the-metaverse-after-everyone-else-quit/?sh=6ded632045e8> , accessed 24/04/21.

Fortnite, Epic Games, 2024, <https://www.fortnite.com>, accessed 24/04/21.

J.Taylor, Dexerto, every single Fortnite collab & crossover in battle royales history, 2024, <https://www.dexerto.com/fortnite/every-fortnite-collab-crossover-battle-royale-history-1645672/> , accessed 24/04/21.

J.Taylor, Dexerto, Fortnite Nike Airphoria vol.2 event: How to play creative 2.0 map in Fortnite, <https://www.dexerto.com/fortnite/fortnite-airphoria-event-when-is-the-nike-event-in-creative-2-0-2182067/>, accessed 24/04/21.

Disney, Disney and Epic Games to create expansive and open games and entertainment universe contend to Fortnite, 2024,

- <https://thewaltdisneycompany.com/disney-and-epic-games-fortnite/> , accessed 24/04/21.
- Roblox, About us, Reimagining the way people come together, 2023, <https://corp.roblox.com> , accessed 24/04/21.
- D.Sturman, Roblox, Blog, How Roblox avatar tech is evolving, 2023, <https://blog.roblox.com/2023/10/how-roblox-avatar-tech-is-evolving/> , accessed 24/04/21.
- A virtual Gucci bag sold for more money on Roblox than the actual bag, 2021, <https://hypebeast.com/2021/5/virtual-gucci-bag-roblox-resale>, accessed 24/04/21.
- Roblox, The Gucci garden experience land on Roblox, 2021, <https://blog.roblox.com/2021/05/gucci-garden-experience/>, accessed 24/04/21.
- Gucci, Gucci garden on Roblox, 2021, <https://www.gucci.com/us/en/stories/article/gucci-gaming-roblox>, accessed 24/04/21
- Fortnite, High digital fashion drop into Fortnite with Balenciaga, 2021, <https://www.fortnite.com/news/high-digital-fashion-drops-into-fortnite-with-balenciaga?lang=en-US> , accessed 24/04/21.
- Epic Games, Balenciaga brings high fashion to Fortnite, 2021, <https://www.epicgames.com/site/en-US/news/balenciaga-brings-high-fashion-to-fortnite> , accessed 24/04/21
- D.Trainer, Forbes, Disneys strategy is working, 2019, <https://www.forbes.com/sites/greatspeculations/2019/12/11/disneys-strategy-is-working/?sh=60c0963f56b0>, accessed 24/04/22.
- J.Sonnefeld &S.Tian, Fortune, Why Bob Igers strategy for the next decade of growth at Disney promises a magic carpet ride for the magic kingdoms future, 2024, <https://fortune.com/2024/04/02/bob-iger-strategy-next-decade-growth-disney-ceo-challenge-leadership/> , accessed 24/04/22.
- J. Taylor, Dexerto, how to get Coachella 2024 skins in Fortnite: Horizon, Cosma and inferno skeleton Balvin, 2024, <https://www.dexerto.com/fortnite/how-to-get-coachella-skins-in-fortnite-2641974/>, accessed 24/04/22.
- P.Tassi, Forbes, Fortnite is doing another Star Wars event, here are the remaining skins it needs, 2024, <https://www.forbes.com/sites/paultassi/2024/04/15/fortnite->

[is-doing-another-star-wars-event-here-are-the-remaining-skins-it-needs/?sh=6ae69871789b](#) , accessed 24/04/22.

WIPO, IP is key for incentivizing Metaverse investments and innovation, WIPO DG Says, 2023. https://www.wipo.int/about-ip/en/frontier_technologies/news/2023/news_0001.html, accessed 24/04/22.

Meta, introducera Meta:A social Technology company, 2021, <https://about.fb.com/news/2021/10/facebook-company-is-now-meta/>, accessed 24/04/22.

Meta, Founders letter, 2021, <https://about.fb.com/news/2021/10/founders-letter/> , accessed 24/04/22.

Dictionary, Meta, 2024, <https://www.dictionary.com/browse/meta> , accessed 24/04/22.

I. Bashir, Forbes, Metaverse, NFT and the inventability of Web3, 2022, <https://www.forbes.com/sites/forbestechcouncil/2022/04/15/the-metaverse-nfts-and-the-inevitability-of-web3/?sh=3e50bf3c28d0>, accessed 24/04/23.

M. James & T. Li, Investopedia, 2024, <https://www.investopedia.com/web-20-web-30-5208698> , accessed 24/04/23.

R.Sharma, D. Clemon, & Y.Perez, ,Investopedia, Non funnel token (NFT): What it means and how it works, 2024, <https://www.investopedia.com/non-fungible-tokens-nft-5115211>, accessed 24/04/26.

L.DeNicole & T.Campell, Business Insider, What is an NFT and should you be investing? Everything you need to know about these popular digital assets, 2023, <https://www.businessinsider.com/personal-finance/nft-meaning> , accessed 24/04/26.

Paddle, What is a product value & how can it boost market share, 2022, <https://www.paddle.com/blog/product-value-pricing> , accessed 24/04/27.

S.Anderson & S. Kvilhaug, Investopedia, Companies and Products with outstanding brand equity, 2021, <https://www.investopedia.com/ask/answers/020915/what-are-some-examples-companies-or-products-have-outstanding-brand-equity.asp> , accessed 24/04/27.

- J. Anderson & J.Narus, Harvard business review, Business marketing: understand what customers value, 1998, <https://hbr.org/1998/11/business-marketing-understand-what-customers-value> , accessed 24/04/27.
- Britannica, What is the value of the Mona Lisa, 2024, <https://www.britannica.com/question/What-made-Renaissance-art-revolutionary> , accessed 24/04/27.
- Louvre, From the Mona Lisa to the wedding feast at Cana, 2024, <https://www.louvre.fr/en/explore/the-palace/from-the-mona-lisa-to-the-wedding-feast-at-cana> , accessed 24/04/27.
- Omega, Speedmaster moonwatch professional, 2024, <https://www.omegawatches.com/watches/speedmaster/moonwatch-professional/product> , accessed 24/04/27.
- Omega, Planet Omega our space legacy, 2024, <https://www.omegawatches.com/planet-omega/space/our-space-legacy>, accessed 24/04/27.
- R.Pearlman, NBC news, Omega watch flown to moon sells for 245.000 dollars, 2015, <https://www.nbcnews.com/tech/tech-news/omega-watch-flown-moon-sells-245k-n482611>, accessed 24/04/27.
- A.Traina, Hodinkee, Could astronaut Wally Schirra omega speedmaster set a speedy record?, 2022, <https://www.hodinkee.com/articles/could-astronaut-wally-schirras-omega-speedmaster-set-a-speedy-record> , accessed 24/04/27.
- N.Dailey, Business Insider, Watch Beeple react to his crypto art selling for 69 million dollar, making him the third most valuable living artist, 2021, <https://www.businessinsider.com/beeple-response-to-nft-selling-for-69-million-reaction-video-2021-3>, accessed 24/04/27.
- EUIPO, IP and metaverse, 2022, <https://euiipo.europa.eu/ohimportal/en/-/news/ip-and-the-metaverse-new-problems-new-rules-1>, accessed 24/04/28.
- WIPO, NFTs at the heart of WIPOs IP moot competition problem, 2024, <https://www.wipo.int/web/youth-engagement/w/news/2024/nfts-at-the-heart-of-wipo-ip-moot-competition-problem> Accessed 24/04/28.
- WIPO, a brief history, <https://www.wipo.int/about-wipo/en/history.html>, accessed 24/04/29.

WIPO, Paris convention for the protection of industrial property, 2024, <https://www.wipo.int/treaties/en/ip/paris/>, accessed 24/04/29.

WIPO, summary of the Paris convention for the protection of industrial property 1883, 2024, https://www.wipo.int/treaties/en/ip/paris/summary_paris.html, accessed 24/04/29.

WIPO, WIPOD – design talks: transcript of episode 1, 2024, <https://www.wipo.int/podcasts/en/design-talks/transcripts/design-talks-01.html> , accessed 24/04/30.

D. Bentley, Fortune, the greatest designs of modern times, 2020, <https://fortune.com/longform/100-best-designs/>, accessed 24/05/01.

Ensemble, 100 years of iconic design, 2023, <https://getensembl.com/blogs/stories/100-years-of-iconic-designs> , accessed 24/05/01.

WIPO, How does the Hague system work?, 2024, https://www.wipo.int/hague/en/how_hague_works.html, accessed 24/05/04.

WIPO, Hague system – the international design system, 2024, <https://www.wipo.int/hague/en/>, accessed 24/05/06.

F.Fischer, WIPO magazine – design law in the European fashion sector, 2008, https://www.wipo.int/wipo_magazine/en/2008/01/article_0006.html, accessed 24/05/06.

WIPO magazine, Designing for business success, 2012, https://www.wipo.int/wipo_magazine/en/2012/06/article_0004.html, accessed 24/05/06.

EUIPO, About us, Who we are, 2024, <https://www.euipo.europa.eu/en/the-office/about-us> , accessed 24/05/10.

UNSW, material that shaped history, 2024, <https://www.unsw.edu.au/science/our-schools/materials/engage-with-us/high-school-students-and-teachers/materials-shaped-history> , accessed 24/05/24.

European Union, EU body, European Economic and social committee (EESC), 2024, https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/search-all-eu-institutions-and-bodies/european-economic-and-social-committee-eesc_en, accessed 24/05/21.

European Parliament, Legislative Train schedule, Revision of the Community Design Regulation, 2024, <https://www.europarl.europa.eu/legislative-train/theme-legal-affairs-juri/file-revision-of-the-design-directive-and-of-the-community-design-regulation>, accessed 24/05/21.

Case law

Decisions / registrations

Case R 887/2008-3 Norman Copenhagen, 2009.

The Tribunal

Judgment of 9 September 2014, Biscuits Poult, T-494/12, ECLI:EU:T:2014:757.

Judgment of 10 September 2015, H&M, T-525/13, ECLI:EU:T:2015:617.

Court of Justice of the European Union

Judgment of 22 June 1999, Loyd Schuhfabrik Meyer, C-342/97, ECLI:EU:C1999:323.

Judgment of 18 June 2002, Philips C-299/99, ECLI:EU:C:2002:377.

Judgement of 12 November 2002, Arsenal , C-206/01, ECLI:EU:C:2002:651.

Judgment of 18 June 2009, L'Oréal., C-487/07, ECLI:EU:C:2009:378.

Judgment of 20 October 2011, PepsiCo, C-281/10, ECLI:EU:C:2011:679

Judgment 16 February 2012, Celaya, C-488/10, ECLI:EU:2012:88.

Judgment 19 June 2014, Karen Millen fashion C-345/13, ECLI:EU:2014:2013.

Judgment of 21 September 2017, Easy sanitary solution.s, C-361/15, ECLI:EU:2017:720.

Judgment of 8 mars 2018, Doceram, C-395/16, ECLI: EU:C:2018:172.

Judgment of 28 October 2021, Ferrari, C-123/20, ECLI:EU:2021:889.

Judgment of 16 February 2023, Monz Handelgesellschaft international., C-472/21, ECLI:EU:C:2023:105.

Judgment of 2 mars 2023, Papierfabriek Doetinechem, C-684/21,
ECLI:EU:C:2023:141.