



Chaise longue LC4, Le Corbusier, Pierre Jeanneret, Charlotte Perriand, Collezione Cassina I Maestri (1965).

Panton Chair Classic, design/designed by Verner Panton (1959/60), Vitra.



were far-reaching consequences for all those involved in the design world since the old principle of severability (which protected only so-called two-dimensional design) was quashed. This opened up the possibility of combining the protection of registered models and designs with the protection of individual designer rights for all works (including three-dimensional) with recognized artistic value and creative traits. Discussion opened immediately around the need to safeguard the rights of all those third parties (enterprise in general) who had relied on the lack of copyright protection after enactment of the reform (19 April 2001). In good faith these companies had begun manufacturing and marketing of products based on models and designs that had already entered the public domain, that is to say whose intellectual property rights had expired or had never been registered. Italian legislation, vigilant in ensuring existing economic and legal equilibrium, immediately included a transitional provision in art. 239 of the Industrial Design Rights Code, subject to numerous changes and afterthoughts over the years. A ten-year 'tolerance' period was initially introduced, for the benefit of production and sales existing in 2001, but was then eliminated by Decree Law 10/2007, until the amendment to art. 239 of the Industrial Design Rights Code enacted with Law 99/2009. This effectively authorized those companies who began production and sale of historic industrial design and

designer items before 2001 to continue these activities for an indefinite period, with the simple proviso of previous use. The most obvious result of this new legislative framework was an unreasonable discrimination between protection of historic design and more recent design, in marked contrast with the guidelines of EU Directive 98/71/EC. Thus the issue was brought before the European Court of Justice in relation to the famous Arco lamp case. The Court concluded that Member States could not be left to determine independently whether industrial design rights should be applied to models and designs now in the public domain. The ruling had a decisive influence on the recent reformulation of art. 239 of the Industrial Design Rights Code enacted by art. 123 of Legislative Decree 131, 13.08.2010 (amending the Industrial Design Rights Code). This regulatory approach seems to close definitively the thorny question of transitional industrial design rights protecting items of recognized artistic value and creative traits. Unlike the situation of just a few months ago, revised art. 239 of the Industrial Design Rights Code actually provides that protection of copyright (valid for 70 years from time of death, thus far lengthier than industrial design rights) also be applied to industrial design works that entered the public domain prior to April 19, 2001. Only the transitional period is excluded and its expiry was defined as April 2006 for the third parties who started to manufacture

## LEGISLAZIONE/LEGISLATION



Codice della Proprietà Industriale, D.lgs. n. 30/2005, come modificato dall'art. 123 del D.lgs. n. 131/2010

**Art. 239** La protezione accordata ai disegni e modelli ai sensi dell'art. 2 n. 10 della legge 22/4/1941, n. 633, comprende anche le opere del disegno industriale che, anteriormente alla data del 19/4/2001, erano, oppure erano divenute, di pubblico dominio. Tuttavia i terzi che avevano fabbricato o commercializzato, nei 12 mesi anteriori al 19/4/2001, prodotti realizzati in conformità con le opere del disegno industriale allora in pubblico dominio non rispondono della violazione del diritto d'autore compiuta proseguendo questa attività anche dopo tale data, limitatamente ai prodotti da essi fabbricati o acquistati prima del 19/4/2001 e a quelli da essi fabbricati nei 5 anni successivi a tale data e purché detta attività si sia mantenuta nei limiti del preuso.

"Industrial Design Rights Code, Legislative Decree 30/2005, as amended by art. 123 of Legislative Decree No 131/2010" Protection afforded to designs and models by art. 2 no. 10 of Law 633 of 22/4/1941, also cover industrial design works that prior to 19.04.2001 were in the public domain. However, third parties who, in the 12 months prior to 19.04.2001, had manufactured or marketed products made in compliance with industrial design works in the public domain, are not considered to be in breach of copyright if they continue beyond that date for products manufactured or acquired prior to 19.04.2001 and those they produced in the five years following that date, provided the enterprise complied with the proviso of previous use.

or market products imitating industrial design works already in the public domain in the 12 months prior to the introduction of aggregated protection. Consequently, with effect from April 19 2006, full copyright protection was granted to so-called "historic design" in the event of its meeting the artistic and creative criteria required by copyright law (art. 2, no. 10, Law 633/1941). **Now, companies must always apply for the necessary permits prior to manufacture and marketing**

**of products that imitate or are inspired by designs in the public domain possessing artistic value and creative traits. In practice, anyone intending to copy or develop these designs for manufacture and marketing of new three-dimensional or two-dimensional design products will require prior authorization via a contract for sale or licensing of copyright ownership rights to be stipulated with the designer or their heirs in the 70 years subsequent to the death of the designer.** © RIPRODUZIONE RISERVATA