Lying on a copyrightable chaise longue?

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The saga of copyright protection of industrial design works continues.
Historically, Italian courts had been very reluctant to recognize copyright protection to industrial design works due to a provision (now abrogated) contained in the Copyright Law that clearly excluded copyrightability of creative works whereas the artistic value of the work was not separable from the industrial nature of the product (for example, on this basis, a Supreme Court decision in 1994 had denied copyright protection to the famous chaise longue by master LeCorbusier).

The approach radically changed with the implementation of Directive 71/98/EC in Italy, that introduced art. 2 n. 10) of the Copyright Law, recognizing copyright protection to industrial design works that have creative nature and artistic value. Notwithstanding the provision, design works with those characteristics but that were in public domain on 19th April 2001 (because they have never been registered as design or their design registration had expired before that date) remained outside the scope of copyright protection until art. 239 of the Industrial Property Code has been amended in 2010.

The legislative amendment of 2010 de facto extended copyright protection to industrial design works characterized by creative nature and artistic value that were (or entered) in public domain before 19th April 2001 and it has been welcomed by major design companies that had acquired from famous designers the exclusive manufacturing and distribution rights of classical design items. Such companies in fact found in the new provision a strong juridical basis for preventing unauthorized production and sale of copies of those products.

In the meantime, courts had elaborated criteria for establishing when an industrial design work has artistic value. According to the case law of the Tribunal of Milan such value can be found in the circumstance that the work has been recognized, not only by its sellers or purchasers, but also by a wider collectivity including museums and cultural institutions, as representative of an esthetic taste and as belonging to an artistic movement, beyond the intention of its author. On this basis, the Tribunal of Milan, changing the precedent set years before by the Supreme Court, has recently recognized that LeCorbusier's chaise longue is protected by copyright (decision of 26th April 2011). To be noted that protection has been granted despite the fact that LeCorbusier's masterpiece had never been registered as design in Italy.

The scenario is about to radically change again.

A few days after the decision of the Tribunal of Milan, the Government has enacted Law Decree n. 7 of 13th May 2011 that significantly amended art. 239 of the IP Code. The provision, in its new version, clarifies that the protection of art. 2 n. 10) of Copyright Law covers also industrial design works, having creative nature and artistic value, that before 19th April 2001 had entered in public domain due to the expiration for their registration as design. In practice, the new provision excludes from copyright protection those works that, although creative and with artistic value, have never been registered as design and were in public domain before 19th April 2001.

As it is obvious, the enactment provoked a strong reaction by the major design companies that now see their revived rights fading away. The Government has 60 days to get the Parliament convert the decree into law and it is likely that during the conversion process the text of art. 239 will be further amended taking into account the interests of the design industry.