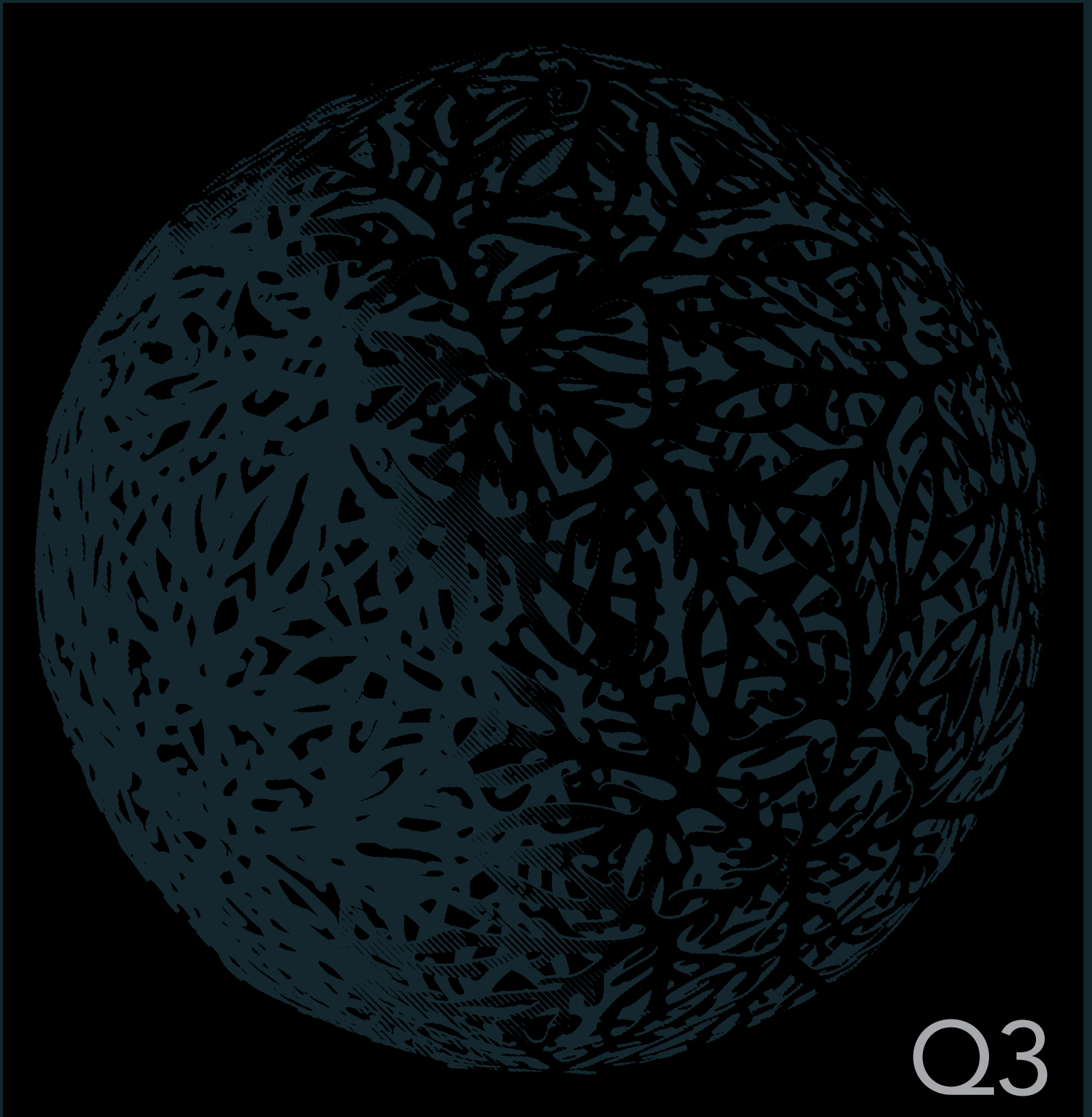


# SUPERYACHT DESIGN

INTERIORS ■ DESIGN ■ EXTERIORS ■ ARCHITECTURE ■ SPACE



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# IMITATION:

## SINCERE FLATTERY OR DAYLIGHT ROBBERY?



The third event in the SuperyachtDesign Summit series last March invited designer Tim Heywood and Mariacristina Rapisardi from Rapisardi Intellectual Property in Milan (who also happens to be a yacht owner) to explore a thorny issue. Sharing their experiences from both a design and a legal point of view, Tim and Mariacristina discussed the finer points of plagiarism and intellectual property.



The event, lead by Martin Redmayne, Editor-in-Chief and Chairman of The Yacht Report Group, got under way with Tim Heywood who described his disappointment at seeing the reproduction of his designs and the steps he has learnt to take to try and minimise the “theft” of his ideas.

When it came to the legal aspect of the discussion, Mariacristina Rapisardi emphasised the importance of protecting a design or invention from the earliest concept. Examples used to illustrate her point included Swatch watches, Smart cars and the case of Mondomarine’s Pleasant Line superyacht that was accused of looking like Heesen’s *Lady Ingeborg* (now *Necklace II*). Whilst it was decided that Pleasant Line was not a copy of *Lady Ingeborg*, it raised the question, how can designers protect against possible imitations? The interactive morning lead to questions from members of the audience such as John Munford of John Munford Design, Dan Hooton from Spearfish Marine Security, Fiona Diamond from Terence Disdale Design, Rob Humphreys from Humphreys Yacht Design and our own SuperyachtDesign Editor, Justin Ratcliffe.

What follows are selected extracts from the Q&A session that followed the presentations.

## Oliver Sterling

Hi, Oliver Sterling from Andrew Winch Designs. Tim you’re right, our clients tend to be the clients, rather than the shipyards. So we have a contract with the clients who then have a yacht built at a yard. At some point, when we deliver the drawings to the shipyard, they must have some intellectual property over what they are building. So at what point are we infringing potentially the IP of the yard?

## Tim Heywood

Yes, but when we give a drawing to a yard I specifically am saying “This is what it’s got to look like.” And that’s my intellectual property. If you’re going to put the frames every 60 cm or every 65 cm, that’s down to the engineers of the yard. But I think that I go back to this design licence, which I give them. You know, that I’m saying “You can do it once.” And I feel that I’m protecting myself, I thought I was protecting myself as well as I could, but I’m learning a lot more this morning. But that’s what I do at the moment Oliver. And I would recommend all designers to do the same and I shall send you the wording of this licence. So, yes, the yard are putting in their engineering and that has great value. You know, what the yards do has enormous value, because if they didn’t do what they did we wouldn’t have anything floating, would we? But the yards themselves are driven by the need to make money. They’re driven by the need possibly to cut costs. And we just have to be hard and protect it as much as possible.

## [From the floor]

I’m just wondering if there is a geographical sort of element to registering patents? I mean, is there the best country? You’ve mentioned Italy with its one-year rule. And on the back of that, I was wondering if there was a country best to take action. If you want to sue someone for libel, you do it in the UK. I mean is the UK the best country to tackle patents?

## Mariacristina Rapisardi

You need to file everywhere, because the validity of the patent is only in the country in which you file it. So you need to file the community trademark, community model or European or international patent. You need to file the design and the patent where you want to have protection. And to start a legal action it depends how much you want to spend. There are some countries in which it’s easier to obtain in a short time a decision from the court, and some countries in which it’s much more difficult. So it depends.

## [From the floor]

We’ve spoken a lot about trade licences and patents, which suggest you have a tangible product to take to the courts. Could we take that a step back and look at your experiences of confidentiality contracts or clauses within the contracts, non-disclosure agreements covering the more intangible areas, the conversations, the discussion, etc.? Could you give us an idea of how effective you think those are as a tool to protect the initial stages?



CAROLINE HILLIER

## Tim Heywood

For me personally, it’s a very good tool to protect the client’s interest, the confidentiality. We respect the confidentiality 100 per cent. It may be easier for me, because I have a very small company so if something leaks we know where it’s come from, either me or Vanessa. But I’m in negotiations with one client at the moment and we are developing a new design. And I’ve met three people who know I’m doing it—and two of them are shipyards and they’re nothing to do with the project. And they say, “Oh, we understand you’re doing a new boat for so-and-so.” And I say, “I’ve no idea, do I? I couldn’t say.” And it turns out they know people in his office. They know people in the shipyard that may be going to build it. It’s incredible how small our industry is and how some people do not respect confidentiality. So it’s a worry.



## Mariacristina Rapisardi

And in terms of IP it's very important to have a confidentiality clause, because if somebody files a patent after signing a confidentiality clause, the court can oblige him to give you the patent back.

So, if you show somebody your drawings, your creation, with a confidentiality agreement signed, and if this guy files a patent, you can go to the court and the judge will oblige him to give you the patent back. So it's really important. But you should write in the confidentiality agreement also that it's confidentially on intellectual property, so you have to make a special clause.

## Rob Humphries

I think one of the big problems is that in this industry there's so little that's genuinely new. And I always hark back and think that Hereschoff has been there with a lot of things before anybody else, and so on and so forth. But is there a searchable directory online or anything? Because one of the big worries as a designer is, you know, unintentionally infringing somebody else's IP, which is the last thing you want to do if you're a very fertile design office. How do we know what is out there? We might know one day when somebody throws a writ on your table.

## Mariacristina Rapisardi

Yes, sure, there are a lot of databases. You can find in a database all the patents, all the designs, all the trademarks filed in the world. And it's also a very good idea, and a lot of clients of ours do it, to have surveyance and check every month, every six months, what was filed from other people, from a competitor or from other people generally speaking. Because looking at the database you can understand what is going on in the world, so you can understand what your competitors are doing, because normally people file the patent at the beginning of the creative work. And so you can imagine that if Philippe Starck filed ten patents about a special boat it, means that in two years he will arrive on the market with a boat like this. So it's also about a system to check the market. A lot of our clients do it, because they understand how and where the competitors and the market is going two years before, some years before. But you can check everything and before doing a new design or selling a new design, it's obviously better to look.

## Martin Redmayne

So Rob, on that point, you're saying you would like a source of information of everyone's designs out there?

## Rob Humphreys

The last thing I would want to do is to find that one has accidentally tripped over somebody else's IP. But until you know what's been registered, it's actually quite hard to know whether you can proceed with something.

## Mariacristina Rapisardi

But it's very easy. You can do it, it's free. You can apply to a patent attorney, or you can do it on the Internet. The European Patent Office, for example, has free access.

## Justin Ratcliffe

I don't know of a designer who hasn't complained at some stage that his ideas or her ideas have appeared on other yachts. Does the panel know—or indeed the audience know—of other cases where IP litigation has come about over large yacht copies, let's say?

## Tim Heywood

I've got no experience of litigation, no. And when I worked at Bannenberg's we tried to do it, but it was never successful at that time. So, no, it's something which I've never had to resort to I suppose, I'm pleased to say.

## Justin Ratcliffe

But not just you personally. I mean, do you know of other cases? Or, again, does the audience know of other cases?

## Tim Heywood

There's one case, that I think has been resolved, where a client went to a designer and that designer developed a design for a boat. And then the client fell out with that designer and took the drawings to another designer, and I was that other designer. And I refused to look at them until I had agreement from the original designer. It went onto another designer and I believe certain elements of it were incorporated, I don't know. But I know it ended up in court. So I think it's better to walk away on those occasions. There are lots more clients out there.