

# News story: IP and BREXIT: The facts

This guide offers information on the future of intellectual property (IP) laws following the decision that the UK will leave the European Union (EU).

The Intellectual Property Office (IPO) continues to contribute fully to the government's work towards exiting the EU. It has a clear goal of ensuring an effective IP regime that supports UK innovation and creativity. The UK will remain one of the best places in the world to obtain and protect your IP.

In March 2017 the Prime Minister formally started the process of the UK's withdrawal from the EU.

The government has published the Withdrawal Agreement and Political Declaration on the future relationship between the UK and the EU. This has been endorsed by leaders at a special meeting of the European Council on 25 November 2018. As set out in the Withdrawal Agreement, we will continue to protect all existing registered European Union Trade Marks, Registered Community Designs, and Unregistered Community Designs as we leave the EU. We will do so by creating over 1.7 million comparable UK rights, which will be granted automatically and free-of-charge.

The European Union (Withdrawal) Act received Royal assent on 26 June 2018 and is now law. The Withdrawal Act will ensure that the UK exits the EU with certainty, continuity, and control. It is in no one's interests for there to be a cliff edge, and so the laws and rules that we have now will, so far as possible, continue to apply. The government has been clear that the Withdrawal Act and any further secondary legislation made under the Act will not aim to make major changes to policy or legislation beyond those which are necessary to ensure the law continues to work properly on day one.

The government published a White Paper on the Future Relationship Between the United Kingdom and the European Union on 12 July 2018, setting out an important vision for elements of the future relationship between the UK and EU on intellectual property. In particular, the White Paper proposes that the UK should continue to participate in the unitary patent system and the Unified Patent Court that underpins it.

Furthermore, the UK looks forward to exploring other arrangements on IP cooperation that will provide mutual benefits to UK and EU rights holders. This will all require negotiation with the EU and we look forward to discussing the possibilities with our European partners.

A scenario in which the UK leaves the EU without an agreement (a 'no deal' scenario) is highly unlikely. However, in the event of a 'no deal' scenario, the government has published a series of technical notices. This information helps businesses and citizens understand what they need to do, so they can make informed plans and preparations.

The technical notices on intellectual property were published on 24 September

2018:

The notices cover the government's plans for continued recognition of existing rights in the UK by recreating protections in UK law. This applies both to registered and unregistered rights. They also cover wider mechanisms and arrangements relating to IP, such as cross-border copyright and exhaustion.

For these mechanisms and arrangements, the government intends to provide continuity where possible. However, businesses and other stakeholders might need to consider whether and how the changes required will affect them.

## **Statutory legislation and business guidance**

To prepare the UK's statute book for its exit from the EU the UK government will be passing technical changes through statutory legislation in Parliament over the coming months, using powers under the EU Withdrawal Act 2018.

Where appropriate, the government may publish detailed guidance alongside these legislative changes and will work closely with business representatives, trade associations and stakeholders on the implications.

To ensure UK copyright law functions properly if the UK leaves the EU without a deal, we have introduced [The Intellectual Property \(Copyright and Related Rights\) \(Amendment\) \(EU Exit\) Regulations 2018](#). This legislation was laid in Parliament on 26 October 2018.

We have published guidance on the [changes to UK law in the event of no deal](#). This complements the recent 'technical notice' on copyright and EU exit and covers the impacts on UK right holders, businesses, cultural heritage institutions and other organisations, and consumers. (insert hyperlink to document when available)

Please note this document is meant for guidance only. You should consider whether you need separate professional advice before making specific preparations.

## **Trade marks**

The existing UK system for protecting trade mark rights will remain largely unaffected by the UK's decision to leave the EU. While the UK remains a full member of the EU then EU Trade Marks (EUTM) continue to be valid in the UK. When the UK leaves the EU, in any scenario, an EUTM will continue to be valid in the remaining EU Member States and UK businesses will still be able to register an EU trade mark, which will cover all remaining EU Member States.

We recognise that owners of existing EU trade marks want clarity over the coverage of those rights when the UK leaves the EU. In any scenario, including one which does not involve a deal between the UK and the EU, the government will seek to minimise disruption for business and to provide for a smooth transition. For existing EU trade marks, this means that for all scenarios, the government aims to ensure continuity of protection and avoid

the loss of those rights. In doing so, our overall objective is to provide maximum clarity and legal certainty for right holders and third parties. The government is looking at various options and is discussing the best way forward with users of the system.

In addition, the UK is a member of the international trade mark system called the Madrid System. This allows users to file one application, in one language, and pay one set of fees to protect trade marks in up to 113 territories including the EU.

UK businesses will continue to have access to the Madrid System when looking to protect their trade marks.

For our future relationship with the EU, the UK looks forward to exploring arrangements on IP cooperation that will provide mutual benefits to UK and EU rights holders. Such arrangements will all require negotiation with the EU and we look forward to discussing the possibilities with them, including on trade marks.

## **Designs**

The UK system for protecting registered and unregistered designs is not affected by the decision to leave the EU.

While the UK remains a full member of the EU, Registered Community Designs (RCD) continue to be valid in the UK. When the UK leaves the EU, an RCD will cover the remaining EU Member States.

We recognise that owners of existing RCDs want clarity over the coverage of those rights when the UK leaves the EU. In any scenario, including one which does not involve a deal between the UK and the EU, the government will seek to minimise disruption for business and to provide for a smooth transition. For existing RCDs this means that in all scenarios, the government will aim to ensure continuity of protection and avoid the loss of those rights. In doing so, our overall objective is to provide maximum clarity and legal certainty for right holders and third parties. The government is looking at various options and is discussing the best way forward with users of the system.

Once the UK leaves the EU, UK businesses will still be able to register a Community Design, which will cover all remaining EU Member States.

The government has ratified the Hague Agreement and has joined this international system in a national capacity. The Hague System for the International Registration of Industrial Designs allows for registration of up to 100 designs in over 68 territories through filing one single international application.

UK businesses will continue to have access to the Hague System when looking to protect their designs.

## **Unregistered designs**

While the UK remains a member of the EU, designs, two- and three-dimensional designs (including, for example, clothing designs and patterns) can be automatically protected in the EU as 'unregistered Community designs'. This gives a design 3 years protection from copying.

Once the UK leaves the EU, unregistered protection for designs will continue to exist through the UK unregistered design right which provides a longer term of protection for a different scope of design features. In addition to this, where the UK does not have existing domestic legislation to protect certain types of rights, it will establish new schemes, which will preserve the full scope of the unregistered Community design right in the UK.

## **Rights of representation**

The UK government recognises the concerns IP professionals have about their future rights to represent clients before the EU Intellectual Property Office. We welcome views on how to address these concerns and are involving stakeholders in consideration of these issues.

In the meantime, the UK and EU have agreed that UK practitioners who are representing clients before the CJEU and EUIPO in cases that are pending at the end of the implementation period will be able to continue acting in those cases until their conclusion.

As set out in our White Paper, the UK will be seeking to establish a joint practice arrangement whereby UK and EU legal representatives will be able to jointly support clients with cases before EU institutions, including before the EUIPO and the CJEU.

For our future relationship with the EU, the UK looks forward to exploring arrangements on IP cooperation that will provide mutual benefits to UK and EU rights holders. Such arrangements will all require negotiation with the EU and we look forward to discussing the possibilities with them, including on registered and unregistered designs.

## **Patents**

### **European patents**

The UK's exit from the EU will not affect the current European patent system, which is governed by the (non-EU) European Patent Convention.

UK businesses can continue to apply to the European Patent Office for patent protection which will include the UK. Existing European patents covering the UK are also unaffected.

European patent attorneys based in the UK will continue to be able to represent applicants before the EPO [see EPO and CIPA: no impact of Brexit on UK membership of EPO](#) for more information.

## **Supplementary Protection Certificates**

While the UK remains a full member of the EU, businesses can continue to apply for and be granted Supplementary Protection Certificates (SPCs) for patented pharmaceutical and plant protection products using the current SPC system. Existing UK SPCs granted under that system continue to be valid.

Once the UK leaves the EU, UK businesses will still be able to apply for SPCs in all remaining EU Member States under the existing system.

As far as the UK's own SPC regime is concerned, our intention is to provide maximum certainty and clarity for businesses operating in this important area of innovation. We will do this by maintaining the current SPC legal framework in the UK as we leave the EU.

## **Unified Patent Court**

The UK ratified the Unified Patent Court Agreement (UPCA) on 26 April 2018. Our ratification brings the international court one step closer to reality.

The UK intends to stay in the Unified Patent Court and unitary patent system after we leave the EU. The UPC and unitary patent project are an important means of simplifying the protection of innovative products throughout Europe. This Agreement sets the bar for the level of constructive cooperation that the UK seeks with European partners in the future.

The Agreement on the Unified Patent Court (UPC) is an international treaty. The international court will have jurisdiction over patent disputes across its contracting states.

It will deliver a single judgment in cross-border disputes between private parties over patents granted under the current intergovernmental system, including the future Unitary Patent.

## **Copyright**

While the UK remains in the EU, our copyright laws will continue to comply with the EU copyright directives, and we will continue to participate in EU negotiations.

The UK is a member of a number of international treaties and agreements protecting copyright. This means that the majority of UK copyright works (such as music, films, books and photographs) are protected around the world. This will continue to be the case following our exit from the EU. When we leave the EU, certain cross-border copyright mechanisms will no longer work in the way they are intended.

For our future relationship with the EU, the UK looks forward to exploring arrangements on IP cooperation that will provide mutual benefits to UK and EU rights holders. Such arrangements will all require negotiation with the EU and we look forward to discussing the possibilities with them, including copyright.

## **Enforcement**

The UK is widely seen as a world leader in enforcement of IP. By working in partnership with law enforcement and industry, the government can deliver an IP environment where legitimate businesses thrive and consumers are protected.

For the time being the UK's enforcement framework remains unchanged. We are still part of the EU and we continue to play a part at the EU Observatory, and in bodies like Europol. The process for intercepting counterfeits and other infringing goods at the border remains unchanged. We also continue to play an active role in the follow up to the review of the Enforcement Directive, and the Commission's work on tackling commercial-scale infringement.

The UK is ready to engage constructively to establish an approach to enforcement cooperation that best suits the needs of the UK and EU and facilitates frictionless trade in goods to avoid a hard border between Northern Ireland and Ireland. This may involve sharing information and research on IPR enforcement, working closely with the EU Observatory on the infringement of IP Rights.

## **Exhaustion of IP rights**

While the UK remains a full member of the EU, intellectual property rights remain exhausted after the first sale of a good, with the right holders permission, within the territory of the European Economic Area (EEA).

The UK looks forward to exploring arrangements on IP cooperation that will provide mutual benefits to UK and EU rights holders and we are ready to discuss issues the EU wishes to raise in the negotiations on our future relationship, including exhaustion of IP rights.

The IPO is keen to hear your views on these issues. Please speak to your usual contact or email [EUenquiries@ipo.gov.uk](mailto:EUenquiries@ipo.gov.uk) and we will ensure your comments are taken onboard.