



HM Government

BREXIT 31 OCTOBER 

Intellectual Property

 Prepare for Brexit at [gov.uk/brexit](https://www.gov.uk/brexit)



Overview

- The UK will remain party to a number of international treaties and agreements which protect and enforce IP rights entirely independently of our EU membership e.g. WTO TRIPS.
- In any scenario, including Brexit without a withdrawal agreement, the Government is committed to ensuring that there will be continuity of IP rights for all right holders and that existing IP rights will not be lost as a result of the UK leaving the EU.
- This includes IP rights protected in the UK based on EU law, such as EU trade marks, registered and unregistered Community designs, supplementary protection certificates and sui generis database rights.
- Brexit will bring some changes to the IP framework in the UK which might affect your business e.g. if you currently engage in parallel exports of IP-protected goods to the EEA.
- The government has published business guidance to help you understand what the changes are and how they might affect you. These publications are for guidance only and you should consider whether you need separate professional advice before making specific preparations.



Summary of key actions for businesses

Copyright:

- Broadcasters that transmit from the UK to other EEA states by satellite should review their licences with right holders to ensure they have the necessary copyright permissions for each state to which they broadcast. Additional right holder permissions may be required after Brexit.
- Providers of online streaming and rental services may need to review their licences with right holders or adjust how UK customers access their services while travelling to the EEA. EU rules providing customers temporary cross-border access to their services while abroad will cease to cover UK customers visiting the EEA after Brexit.

Unregistered Community Designs:

- Businesses should consider whether changes in relation to the eligibility for unregistered designs rights in the UK and the EU (which from Brexit onwards will be restricted to the territory in which a design is first disclosed, i.e. UK or EU) will impact their business. They may want to seek legal advice to inform their assessment

Exhaustion of IP Rights

- Businesses that wish to export IP-protected goods to the EEA that have already been legitimately put on the market in the UK may need to seek the IP rights holder's consent to do so after Brexit.



Content

- Copyright
- Unregistered Design rights
- Exhaustion of Intellectual Property Rights
- Trade marks and registered designs
- Patents



Copyright: How things work today

- Copyright protects original artistic, musical, literary, and dramatic works, as well as sound recordings, broadcasts, films, and typographical arrangements.
- UK membership of international agreements on copyright ensure reciprocal protection for signatory countries.
- Some EU legislation on copyright goes beyond these international treaties to further harmonise copyright law within the EU and remove barriers to cross-border access to copyright content.



Some reciprocal cross-border copyright mechanisms between the EU and UK will change or cease

- The following cross-border copyright mechanisms will no longer be reciprocated or will cease altogether:
 - UK-EU portability of online streaming or rental services
 - Mutual recognition of sui generis database rights
 - The country-of-origin rule for copyright clearance in satellite broadcasts
 - The EU-wide copyright exception for orphan works
- Cross-border exchange of accessible format copies of copyright works between the UK and Marrakesh Treaty countries may face restrictions under the law of other Treaty countries until the UK independently ratifies the Treaty



What you need to do in the event of a Brexit without a withdrawal agreement

- Businesses need to consider whether they require professional advice on their current contractual licensing arrangements for broadcasting copyrighted content by satellite from the UK and/or for offering portability of copyrighted content to UK customers travelling to the EEA.
- Depending on the outcome of the professional advice, businesses may need to renegotiate their licensing contracts with right holders or adjust the services they provide to UK customers visiting the EEA.



Unregistered Community designs: How things work today:

- Unregistered Community designs are IP rights governed by EU regulation in the UK and EU
- Unregistered Community designs receive three years of protection in the UK and EU after disclosure
- Separate UK unregistered design rights protect product shape and configuration for up to 15 years in the UK



System for protecting unregistered designs remains unchanged in the UK and EU

- Businesses should consider whether they would prefer unregistered design right protection in the UK or the EU
- Businesses should consider disclosing their designs before 31 October to get unregistered protection in the UK and EU
- Businesses should review their plans for first showing/first disclosure of their designs after exit to ensure that they are eligible for unregistered design right protection in their preferred territory (UK or EU)



New designs disclosed in the UK after Brexit will be protected under terms similar to the current system

- The UK will create a new supplementary unregistered design right
- The supplementary unregistered design right will mirror the scope of protection of the current unregistered Community design, but for the UK only
- Unregistered designs disclosed in the UK after Brexit will be protected in the UK by the new supplementary unregistered design.
- The current UK unregistered design right is unaffected by Brexit.



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What you need to know about exhaustion of IP rights and parallel trade in the event of a Brexit without a withdrawal agreement?



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Exhaustion and parallel trade: How things work today

- At present, parallel trade in the UK/EEA occurs when an IP-protected good has been placed on the market anywhere in the EEA, by or with the permission of the rights holder, and is then subject to onward sale across EEA borders.
- The IP is considered exhausted across the EEA in that area for the good or batch of goods.
- Parallel trade is the import and export of genuine IP-protected goods within the EEA after they have been placed on the market and sold for the first time by or with the permission of the right holder.
- This means that these goods can continue to circulate within the EEA without permission being sought from the rights holder (such as the owner of a brand).
- These goods include everything from toothpaste to spare car parts to real Louis Vuitton handbags.



Businesses may need additional right holder approval to export goods from the UK to the EEA

- Legislation* is in place so that, on Brexit day, a temporary fix will maintain the status quo as far as is possible. This means that exhaustion rules relating to parallel imports will remain the same.
- There may however be restrictions on what can be exported from the UK to the EEA.
- Businesses that parallel export from the UK to the EEA might need the right holder's consent to do so.

*The Intellectual Property (Exhaustion of Rights) (EU Exit) Regulations 2019



What businesses need to do in the event of a Brexit without a withdrawal agreement if they trade in the EEA?

- Businesses first need to identify whether they currently export IP-protected goods to the EEA (for example, goods branded with a trade mark) that have already been placed on the UK market, where they currently do not need to obtain the right holder's permission (i.e. parallel trading).
- Business that want to continue to export these IP-protected goods to the EEA may need to contact the IP right holder to obtain permission to do so. The IP right holder may choose to withhold permission if they do not wish for these goods to be exported to the EEA.
- Exporters of the IP-protected goods may need to review their business arrangements/business model/supply chain based on the outcome of the discussion with the IP right holder.



What you need to do in the event of a Brexit without a withdrawal agreement if you own IP rights

- Businesses that own IP rights (for example, a trade mark) may wish to seek legal advice if their IP-protected goods are parallel exported from the UK to the EEA and consider if they wish such arrangements to continue in the event of a Brexit without a withdrawal agreement.



Trade marks and designs: How things work today

- Businesses can register trade marks and designs via national, EU or international systems (Madrid and Hague systems)
- UK membership of EU means EU trade marks (EUTMs) and Registered Community Designs (RCDs) are currently valid and enforceable in UK.
- International trade marks (Madrid system) and international registered designs (Hague system) can be valid in multiple territories, including UK and EU



Trade Marks and Designs after Brexit

- Existing registered EUTMs and EU RCDs will ***automatically*** receive an equivalent trade mark or design registered in the UK
- These equivalent UK trade marks and designs will come into force on exit day
- These equivalent UK trade marks and designs will be subject to UK law, regulation and renewal fees (where applicable) going forward
- Existing registered EUTMs and EU RCDs will continue to be valid in EU member states and UK businesses will continue to be able to apply for EU trade marks and Registered Community Designs for protection in the EU
- UK businesses will continue to have access to the Madrid and Hague systems following Brexit, when looking to protect their trade marks and registered designs internationally



Patents: How things work today

- The majority of UK patent law is set by the non-EU European Patent Convention.
- EU law provides additional patent protection for pharmaceutical products and agro-chemicals via supplementary protection certificates (SPCs)



European patents will still be available in EU MS and the UK as part of the European Patent Convention

- The current European patent system is governed by the non-EU European Patent Convention
- Brexit will not affect the current European patent system and UK membership thereof
- UK businesses can still apply to the European Patent Office; existing patents unaffected
- Existing patents in the UK will remain in force automatically after Brexit; no action required



Supplementary Protection Certificates (SPCs)

- EU legislation on SPCs will be retained and supported under UK law, so existing UK SPCs will continue to be valid in the UK
- Right holders will continue to be able to apply for SPC protection in the UK for patented pharmaceutical and plant products.
- Existing SPCs in the EU27 held by UK right holders will be unaffected and UK right holders will still be able to apply for new SPCs in the EU27 under the current system



For more information please search:

“IP AND BREXIT: THE FACTS”

<https://www.gov.uk/government/publications/ip-and-brex-it-the-facts/ip-and-brex-it>



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