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Intellectual property law after Brexit

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The European Union (EU) has 27 member states rather than 28 after the European Union (Withdrawal Agreement) Act.¹ The United Kingdom (UK) departed from the EU on January 31, 2020, but has scheduled a transition period from February 1, 2020, to December 31, 2020 (the “transition period”). **EU law, including the Intellectual Property system, will continue to operate as it does now in the UK during the transition period;**² however, as the period progresses, we will begin to see more changes to IP law.

Now that it has been just over a month since the transition period began, global practitioners and applicants/registrants are beginning to get a sense of the notable changes for certain types of IP like trademarks, and the relative status quo for other types like patents and copyrights. Brand owners particularly should consider whether the UK is or will in the future be an important jurisdiction for their businesses. And if so, they should consult with an IP attorney well versed in the effect of Brexit to make sure that any existing registrations or applications will automatically extend to the UK, or that the necessary steps have been taken to prepare new applications for the UK.

Trademarks

Perhaps the most significant change to IP protection as a result of Brexit is the trademark system. The good news is that existing EU trademark registrations as of January 1, 2021, will *automatically* receive a comparable UK registration that mirrors the EU registration.³ Of course, maintenance and renewal of the new UK registration will need to be done separately from the existing EU registration, including payment of renewal fees; but the renewal date of the new UK registration will remain the same as the EU registration.⁴

On the other hand, **applications still pending at the end of the transition period will not automatically convert to UK applications.** Applicants will have nine months from the end of the transition period to apply in the UK for the same protections. Because the UK does not require

¹ <http://www.legislation.gov.uk/ukpga/2020/1/contents/enacted>

² <https://www.gov.uk/government/news/intellectual-property-and-the-transition-period>

³ <https://www.gov.uk/guidance/eu-trademark-protection-and-comparable-uk-trademarks>

⁴ <https://www.gov.uk/guidance/eu-trademark-protection-and-comparable-uk-trademarks#renewing-trade-marks>

actual use in order to secure registration (although a resulting registration could be vulnerable to cancellation in the future if it is *never used*), and because **registration in the UK is required in order to establish trademark rights in that jurisdiction**; we are generally recommending that our clients take advantage of this option when it is available, even if the UK is not yet an important jurisdiction and particularly if their primary jurisdictions of interest are English-speaking.

Patents and copyrights

For the most part, Brexit should not have a significant effect on patent and copyrights.

The European Patent Office (EPO) protects patents in 38 countries in Europe, though it is not an EU agency and 27 countries are members of the EU.⁵ Thus, the UK leaving the EU does not affect the current European patent system nor does it have any effect on existing European patents protected in the UK.

With respect to copyrights, while all countries have their own copyright laws, copyright is largely harmonized internationally by certain copyright treaties.⁶ As such, these international treaties on copyright assure reciprocal protection for copyright works between the UK and the EU, so this *will not change* with Brexit and will continue to apply to works made before and after the end of the transition period. However, there are certain cross-border copyright arrangements in existence for specific types of content (e.g., [cross-border portability of online content services](#) and [reciprocal protection for databases](#)) that are unique to each EU member state. These will continue to apply to the UK until the end of the transition period; but after the transition period, the cross-border arrangement will depend on the future relationship between the UK and EU. So the future is somewhat uncertain at this stage.

Takeaways

IP owners with an interest in the EU and specifically the UK should consult with an attorney to confirm that any current protection will cover the UK. Trademark owners particularly should consider whether they have the protection needed to operate under their brand in the UK, and take any necessary steps to ensure that current filings have been extended to the UK at the end of the transition period. For more information on the content of this alert, please contact your Nixon Peabody attorney or:

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⁵ <https://www.epo.org/law-practice/legal-texts/official-journal/information-epo/archive/20200129.html>

⁶ <https://www.gov.uk/guidance/changes-to-copyright-law-after-the-transition-period>