

A map of Europe where the United Kingdom is highlighted in a dark blue color, while the rest of the continent is shown in a light grey color. The map includes major geographical features like the British Isles, Scandinavia, and the Mediterranean region.

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IP after Brexit

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What is Intellectual Property?

- Legal Protection of investment in branding, design, technology and works of art and literature.
- Examples include patents for new inventions, trade marks for brands, copyrights for works of art and literature and design registration for the appearance of products.
- Some rights are monopolies while others prohibit specific acts such as copying or filming or taping.
- Most IP rights are granted by national governments or regional authorities like Hong Kong

Objectives of the European Union

IP is important to achieving one of the principal objectives of the EU:

“Art 3 (3) The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.

Harmonization of National IP Rights

- Early in its history, the Commission found that national IP laws tended to restrict unnecessarily the free movement of goods and services from one member state to another and competition between undertakings,
- Initially the Court of Justice restricted reliance on national IP rights to the extent that they were incompatible with EU law.
- On 21 Dec 1988 the European Council adopted Council Directive No. 89/104/EEC which harmonized national trade mark law
- On 13 Oct 1998 the Council adopted Directive 98/71/EC which harmonized registered design law

EU Intellectual Property Office

- Established by Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark
- Community trade mark Regulation provided for a unitary trade mark valid in all 29 member states member states
- On 12 Dec 2001 the Council adopted Regulation 6/2002 of 12 December 2001 on Community designs which established registered Community designs and unregistered Community designs.

Summary of EU Legislation on IP

- Extensive harmonization of national trade mark, registered design, copyright and related rights and patent law.
- New EU wide rights such as the EU trade mark, registered Community designs, unregistered Community designs, plant variety rights, geographical indications.
- Agreement on a Unified Patent Court and a unitary patent.
- New doctrines such as exhaustion of rights whereby authorized marketing of a patented or other IP protected product in one member states precluded further reliance on the right.

Art 50 TEU

“(2) A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union.....

(3) The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period”.

European Union (Withdrawal) Act 2018

- S.1 repealed the European Communities Act 1972/
- S.3 (1) incorporated regulations such as EU Trade Mark and Community Design Regulations into English law.
- S.6 (1) relieves English courts from their obligation to follow decisions of the Court of Justice that are made after EU law ceases to apply to the UK.
- S.6 (2) enables English courts to follow decisions of the European Courts after that date.
- S.6 (3) requires courts to follow cases decided before that date.
- S.8 (1) entitles ministers to amend incorporated regulations.

The Withdrawal Agreement

- After several extensions, a “withdrawal agreement” within meaning of art 50 (2) TEU was negotiated and signed at the end of Jan 2020.
- The agreement provided for the UK to leave the EU at 23:00 on 31 Jan 2020 but art 126 provided for a transition or implementation period in which EU law would continue to apply until 23:00 on 31 Dec 2020.
- Arts 54 to 61 provided for intellectual assets that had been protected by EU trade marks, Community designs and plant varieties to continue to be protected as UK trade marks, registered designs or plant breeders’ rights.

The Withdrawal Agreement

- The UK would continue to protect food and drink products from specific areas or made in traditional ways with its own geographical indications law.
- It would continue to protect new designs having individual character as supplementary unregistered designs.
- The UK would continue to protect databases with database rights and the EU would protect databases made by UK nationals.
- The UK would continue to offer supplementary protection certificates for certain patented pharmaceutical and plant protection products.
- The doctrine of exhaustion of rights would cease to apply to rights that were exhausted before the end of the implementation period.

European Union (Withdrawal Agreement) Act 2020

- The statute ratified the withdrawal agreement.
- S.1 suspended the repeal of the European Communities Act 1972 until 23:00 on 31 Dec 2020.

Implementation Period

- The UK left the EU at 23:00 on 31 Jan 2020
- Before it was known whether the withdrawal agreement would be ratified, HMG prepared several statutory instruments arranging for the continued protection of intellectual assets that had been protected by EU IP rights after the UK's withdrawal.
- The Intellectual Property (Amendment etc.) (EU Exit) Regulations 2020 amended those statutory instruments in order for them to come into effect at 23:00 on 31 Dec 2020.
- HMG negotiated a Trade and Cooperation Agreement with the EU that provisionally came into effect upon the expiry of the implementation period.

State of Play

- EU trade marks, registered Community designs and Community plant varieties granted before 31 Dec 2020 no longer apply to the UK but they continue to protect intellectual assets in the remaining member states.
- Holders of those rights acquire corresponding British IP rights automatically without any charge or action on their part.
- Applicants for EU trade marks, registered Community designs and plant varieties that have not yet been granted can apply for corresponding UK IP rights.
- Courts in the UK no longer have jurisdiction to grant transborder injunctions and declarations.

State of Play

- UK withdrew from the Unified Patent Court even though it did not need to. Patent litigation in London is more expensive than anywhere else in the world even though the jurisdiction of the courts is more limited than ever.
- Businesses requiring trade marks or registered designs in the whole EU or individual member states may apply directly to the relevant registry or through the Madrid Protocol or Hague agreement.
- UK remains party to the World Trade Organization so TRIPS continues to apply.
- UK remains a party to the EPC and the main WIPO treaties and conventions,
- TCA requires UK and EU to cooperate in protecting rights of IP holders.

Further Information

- [How Brexit has changed IP Law](#) NIPC Brexit 17 Jan 2021
- [How Brexit has changed IP Law](#) Presentation (70 slides) 27 Jan 2021
- [How Brexit has changed IP Law: IP after Brexit](#) Handout 27 Jan 2021
- [SUDs \(Supplementary Unregistered Designs\)](#) NIPC Law 13 Feb 2021
- [Geographical Indications in the UK after 31 Dec 2020](#) NIPC Law 30 Sep 2020
- [The Draft EU-UK Trade and Cooperation Agreement: What We Know So Far](#)
NIPC Brexit 26 Dec 2020
- [The IP Provisions of the EU-UK Trade and Cooperation Agreement](#) NIPC Law
30 Dec 2020

Any Questions?



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