

BREXIT: what will happen to your intellectual property rights in a 'no deal' scenario?

To date, it is still quite possible that the United Kingdom (UK) leaves the European Union (EU) without a deal on 31 October 2019. What will happen to your intellectual property rights in a Brexit 'no deal' scenario?

Trade marks

1. You have registered EU trade marks? In order to preserve trade mark protection in the UK, equivalent UK trade marks with the same application, priority and seniority dates will be registered in the UK. These UK trade marks will come into force when the UK exits the EU and will operate like the other existing UK rights. This process will be free of charge and you will be able to opt-out of receiving equivalent UK trade marks, for example because you already have an existing UK right. Lastly, these UK trade marks will receive a registration number composed by the prefix UK009 followed by the last eight digits of your registered EU trade mark.

2. You have pending EU trade mark applications? You will have the possibility to submit applications for equivalent UK trade marks directly to the UK IP Office within nine months of Brexit day (see [here](#) how to apply for a UK trade mark). The advantage is that by doing so, the same application date (as well as the priority and seniority dates) will be kept in the UK. However, you will have to pay an application fee to the UK IP Office and the standard examination process of the UK IP Office will follow.

3. How will the use of your EU trade marks be considered in UK actions? Use of your EU trade marks in the EU, regardless of their use in the UK, before Brexit day, will count as use of the equivalent UK trade marks. However, if the relevant five-year period includes a period after Brexit day, only the use of the equivalent UK trade marks in the UK will be taken into consideration.

4. How will the reputation of your EU trade marks be considered in UK actions? The same approach will apply as for the use of the trade marks.

Designs

The principles for Community designs are similar to the ones for the EU trade marks.

1. You have Registered Community Designs (RCDs)? Equivalent UK designs with the same application, registration and priority dates will be registered in the UK. The equivalent UK designs will come into force when the UK exits the EU and will operate like the other existing UK rights. This process will be free of charge and you will be able to opt-out of receiving equivalent UK designs, for example because you already have an existing UK right. Lastly, these UK designs will receive a registration number composed by the prefix 9 followed by the RCD number.

2. You have pending Community design applications? You will have the possibility to submit applications for equivalent UK designs directly to the UK IP Office within nine months of Brexit day (see [here](#) how to apply for a UK design). The advantage is that by doing so, the same application and priority dates will be kept in the UK. However, you will have to pay an application fee to the UK IP Office and the standard examination process of the UK IP Office will follow.

3. You have Unregistered Community Designs (UCD) before Brexit? If your UCD is protected in the UK before Brexit, it will continue to be protected as a UK continuing unregistered design (CUD) for the remainder of the three-year term of protection.

More details and practical information can be found on the website of EUIPO (see [here](#)) and the UK IP Office (see [here](#) and [here](#)).

Patents

The current European patent system will not be affected by Brexit. The UK will remain bound by the European Patent Convention and the Patent Cooperation Treaty.

For more information on patents see [here](#) (UK IP Office) and [here](#) (EPO).

Copyrights

In principle, the EU directives and regulations on copyright and related rights will be maintained in UK law. As for the recent adoption of the Digital Single Market (DSM) Directive by the European Parliament on 26 March, the question arises whether the UK will transpose the DSM Directive into its own law after Brexit.

For more information on copyrights see [here](#) and [here](#) (UK IP Office).

Exhaustion of rights

The UK will continue to recognise EEA exhaustion of rights. Goods placed in the EU after Brexit will then be recognised as exhausted in the UK. However, goods placed in the UK and entering the EEA market will not be considered exhausted.

Last but not least: some advice before Brexit day

Despite the impact that Brexit will have on businesses, it is also a good occasion to review your intellectual property rights (IPRs) portfolio. Here is a short check list that could help your business before Brexit day:

- check all renewal dates of your trade marks and designs
- identify the countries in which you wish to extend the protection of your IPRs or obtain new protection
- if the UK is a territory of interest, file your trade marks and/or designs directly at the UK IP Office
- if the EU is a territory of interest, you can file your trade marks and/or designs at EUIPO
- verify and, where necessary, amend all your contracts to ensure the UK territory is taken into account
- transfer your domain name .eu to a business based in the EU (more information on domain names can be found [here](#), but please note that Eurid is still waiting for official updates from the European Commission, considering the current delay of Brexit day to October 31).



Carina Gommers (carina.gommers@hoyngrokh.com)

Partner



Eleni Foscolos (eleni.foscolos@hoyngrokh.com)

Associate