

## INTELLECTUAL PROPERTY

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# A L E R T

## IMPACT OF BREXIT ON INTELLECTUAL PROPERTY

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Now that the dust is settling on the UK's decision to leave the EU, our clients are asking what this means for them. Change always brings opportunities, as well as challenges, and we are focused on helping our clients understand how these changes can benefit their business during the period of transition ahead.

### **Overview**

We do not know when the exit will actually happen, but once the UK officially notifies the EU of its intention to leave, negotiations will need to be completed within two years. The two-year period can be extended, but only if all the other 27 EU countries agree to extend the deadline. So, there will be no dramatic change overnight. However, now the hard work begins to assess the implications of the decision - and there are a lot of legalities to work through, not the least of which is the election of a new Prime Minister.

In the meantime, and while things are still "business as usual," here are our initial thoughts on how this development may impact intellectual property ownership and data privacy protections.

### **Intellectual Property and Data Privacy**

The vote to leave the EU raises many questions about what will happen with the UK and its future relationship with the EU trade mark, patent and design system as well as the on-going applicability of the EU data protection laws.

### **Trademarks**

Trade mark and design owners need not panic. European Union Trade Marks and Registered Community Designs remain valid in the UK, and there is no immediate loss of IP protection. Once the UK formally gives notice to exit the EU, negotiations will begin on the status of EU marks in the UK and whether any transitional provisions will be required to grandfather trade mark and registered design rights across EU into the UK. It should be emphasized that there is no definitive plan at this time to grandfather and extend EU registrations to UK country protection. Many commentators believe that this is likely to happen but there are no guarantees.

For any client where activity in the UK is essential to its business success, a more aggressive approach than "wait and see" might be prudent. Since there is no certainty that UK rights and/or priorities will automatically flow from an EU registration, we recommend that new UK country applications be considered where UK protection is critical. With only a relatively modest investment of up to a few thousand dollars, it is better to be safe than sorry. At best, you will preserve your priority during a time of uncertainty. At worst, you may end up with duplicative registrations and will allow one to go abandoned. You must weigh the cost against the risk and make the decision that is best for you.

## **Patents**

The European Patent is not derived from the EU regime, and the treatment of European Patents in the UK will not be affected. The UK referendum also will not affect the UK's current membership in the European Patent Organization. However, the position regarding the forthcoming European Unitary patent is less clear. The UK had intended to participate and host a court; however, only member EU states can participate in this system.

## **Copyright and Trade Secret Protection**

Copyright and trade secret protection is based on domestic law, but with elements of EU harmonization. For example, the recent Trade Secrets Directive will harmonize EU law in this area beginning June 9, 2018. It is still unclear to what extent EU harmonization will continue to affect these unregistered UK IP rights.

## **Data Protection**

So far as data protection is concerned, the legal transfer of personal data to the UK under EU rules may be subjected to higher standards once the exit is complete. If the UK negotiates access to the EU's single market, it would have to accept the application of the General Data Protection Regulation ("the GDPR"), currently set to be implemented on May 25, 2018. Since this implementation date is fewer than two years away, the UK will need to comply with the GDPR while it remains a member state. This fact, coupled with the UK's common history with the EU in addressing data protection issues, may signal that continued adherence to the GDPR is a logical approach. Alternatively, the UK may need to negotiate an agreement similar to the US-EU Privacy Shield, a much stricter regime than what is applicable to EU member states.

If you have specific questions, let us know. We will work with our law firm partner in the UK to get you the answers you need. ♦

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