

## “Bripxit” – IP impacts of UK’s referendum results

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Just over a week ago, the population of the UK voted in a referendum to leave the European Union. This was something of a shock, particularly for those of us in the legal profession who get to appreciate the effects that EU harmonisation of law can bring for our clients.

The result is starting to sink in, so I thought I would let you have my thoughts on what effect I think this is going to have on intellectual property rights in the UK.

The first thing to point out is that nothing is going to change for **at least** two years, and probably quite a bit longer. The UK Government is required to give two years’ notice of its wish to exit the EU, and as we are currently without an effective government, it is very unlikely that the notice is going to be served until late 2016, meaning that the exit will not take effect until late 2018 or, more likely, early 2019. In the short term, therefore, not much is going to change. It is also worth remembering that the UK is leaving

the European Union, not ripping up every international convention that it has ever signed, so we will continue to be a member of the Berne Convention, the Madrid Convention, TRIPS, the EPO system etc.

In the meantime, the UK (or possibly what is left of it) will negotiate a new deal with the EU which will determine to what extent the UK remains as part of the European “club” despite its withdrawal from full EU membership. We don’t yet know what that deal will look like.

There is bound to be a question mark, however, over any new legislation that comes out of Brussels in the intervening period, particularly where directives would need to be transposed into UK law. Will the UK Government decide not to implement measures with which it disagrees, on the basis that its obligation to do so will be coming to an end? I have to say, I think this is unlikely and I suspect that the UK Government will simply adopt the policy of full compliance until there is a formal exit.

So, before the UK exit, and probably for quite a while afterwards, the UK is very likely to simply continue to modify its IP law to comply with EU directives and will continue to comply with direct effect EU regulations as well.

What does this therefore mean for individual IP rights?

### *Patents*

The UK will still have its own Patent Office which will still be part of the EPO system. Perhaps one of the biggest headline changes is on the European Union’s “Unitary Patent” programme. It seems likely that the UK will now never ratify the final treaty in the Unitary Patents Scheme, and the plan for the Unified Patent Court to be based partly in London is likely to be abandoned.

### *Trade marks*

It remains to be seen whether there is any scope for the UK to negotiate a deal which allows it to remain a member of the EUTM scheme, but I suspect that this is unlikely. The more likely scenario is that EUTMs will cease to have effect in the UK with effect from the exit date, but with a process by which EUTM holders can convert/extend EUTMs into national UKTMs without loss of priority.

### *Designs*

I think the situation for EU registered designs will be very similar to the EUTM system. Unregistered design law is harmonised and this is likely to remain in place until 2019. Indeed, after that date, there is little incentive for the UK Government to significantly change the legislation.

### *Confidential information/know-how*

The EU is in the process of finalising the Directive on Trade Secrets, which was agreed in May 2016. Once it is finalised, Member States will have two years in which to implement the terms of the directive into their national laws. A number of commentators have made the point the directive will not change UK law significantly, so it is open to question whether the UK Government will take any steps to implement it on the basis that it is only likely to become binding on the UK Government a few months before the exit date.

### *Copyright*

Copyright is one area where the European Commission has been in the vanguard of dragging the law into

the digital age, and tackling issues raised by new technology. All of this legislation is done by directive, meaning that the UK implements the EU directives into its national law, so even on the exit date those provisions will remain in full and will not change, unless the Government of the day decides to amend the legislation. The bigger question, again, comes as to how much amendment to the legislation the UK Government will agree to undertake in the intervening period before exit. Again, my suspicion is that it will do so (assuming that it has had some say in the legislation itself) to stay current, but obviously its imperative to do so will fall away upon the exit date.

### *Interpretation*

All in all, with the possible exception of the Unitary Patent, there is unlikely to be a great deal of divergence between the UK and the rest of the EU until 2019 and, even after that date, the legislation is likely to remain in full force and effect until such time as the UK considers whether to amend its legislation as it wishes. One key thing that will change on the exit date, is that decisions of the Court of Justice of the European Union, which is the ultimate arbiter on interpretation of European Union legislation, will cease to have any binding effect on UK courts, so the decision on interpretation of EU-derived laws, as they affect the UK, will revert to the UK's own courts up to and including the UK's Supreme Court. In the IP field, I suspect that many judges will want to interpret the law so that it is consistent with those in other countries, but there will come a point when we will see a break and, at that point, businesses will no longer have the reassurance that compliance with EU law will be a good yardstick for compliance in the UK.

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