

IP & Data

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Preparing for Brexit IP and Data Privacy

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Content

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When will Brexit happen?

- Exit day – 31 October 2019 at 23:00 GMT.
- Deal – there will be a transition period till 31 December 2020.
- No deal – the UK will leave on exit day without a transition period.
- European Union (Withdrawal) Act 2018:
 - UK domestic legislation will continue to apply;
 - EU derived legislation will continue to apply; and
 - EU directly applicable legislation will continue to apply.

Intellectual Property

Copyright and Trade Marks

Copyright – what is copyright?

- Copyright, Designs and Patents Act 1998.
- Copyright protects original creative works and stops others using your work without your permission.
- The author or creator of the work owns the copyright.
- Employer/employee relationship – employer owns copyright.
- Copyright protection is automatic.
- There is no UK register of copyright works.

Copyright – what is protected?

- You get copyright protection when you create:
 - original literary, dramatic, musical and artistic work, including illustrations and photography;
 - original non-literary written work, such as software, web content and databases;
 - sound and music recordings;
 - film and television recordings;
 - broadcasts; and
 - the layout of published editions of written, dramatic and musical works.

Copyright – how is your work protected?

- Copyright prevents someone else from:
 - copying your work;
 - distributing copies of it;
 - renting copies of your work;
 - performing, showing or playing your work in public;
 - making an adaption of your work; and
 - putting it on the internet.

Copyright – how long does it last?

- Copyright protection starts when you create the work.
- Once copyright has expired, anyone can use your work.

Type of work	How long does copyright last
Written, dramatic, musical and artistic work	70 years from the author's death
Sound and music recordings	70 years from when it's first published
Films	70 years after the death of the director, screenplay author and composer
Broadcasts	50 years from when it's first broadcast
Layout of published editions of written dramatic or musical works	25 years from when it's first published

Copyright – impact of Brexit

- International treaties on copyright:
 - Berne Convention; and
 - TRIPS Agreement.
- Treaties require all treaty countries to protect works from another treaty country to a minimum standard.
- Both the UK and all EU countries are signatories.
- UK and EU copyright works will continue to be protected in the UK and EU, respectively.
- UK/EU cross-border arrangements for copyright will cease, for example:
 - video-on-demand streaming services; and
 - collective rights management.

Trade marks – what is a trade mark?

- Trade Marks Act 1994.
- Trade marks allow customers to differentiate the goods and services of one trader from another.
- You can register your trade mark to protect your brand (e.g. your logo, or the name of your product or service).
- UK trade marks – registered with the UK Intellectual Property Office.
- Trade marks in other countries:
 - country specific trade marks (national IPOs);
 - EU trade marks (EUIPO); and
 - International trade marks (WIPO – Madrid System).

Trade marks – what is protected?

- Your trade mark must be unique. It can include:
 - words;
 - sounds;
 - logos;
 - colours;
 - a combination of any of the above.
- Trade marks cannot be offensive, misleading, common and non-distinctive, or describe the goods or services to which they relate.
- You must select the class you want your trade mark to be registered in (for example, class 41 (entertainment)).
- Trade marks last for 10 years, after which they can be renewed.

Trade marks – impact of Brexit

- UK trade marks will be unaffected.
- EU trade marks will no longer provide protection in the UK.
- Current EU trade marks:
 - an equivalent trade mark will be created on the UK register;
 - EU filing dates will be retained by the equivalent UK trade mark; and
 - equivalent UK trade marks can be assigned, challenged and licensed independently of the EU trade mark.
- Pending EU trade marks:
 - pending EU trade mark holders can apply for a comparable UK trade mark;
 - UK trade mark application must be made within 9 months of exit day; and
 - UK application must relate to same trade mark and classes as EU mark.

Trade marks – impact of Brexit

- Opt-out of equivalent UK trade mark:
 - EU trade mark holders have the right to opt-out of the creation of an equivalent UK trade mark; and
 - an opt-out cannot be exercised if you have used the trade mark in the UK, or entered litigation based on it.
- Licenses, security interests and assignments:
 - a license or security recorded against an EU trade mark will continue to have effect in the UK; and
 - such licenses and security interests will be treated as applying to the comparable UK trade mark.

Other IP Rights

- Designs.
- Patents.

Data Privacy

Data protection – what is it?

- General Data Protection Regulation (GDPR).
- Data Protection Act 2018.
- Applies to the processing of “personal data”.
- Applies to:
 - “data controllers” – those who determine the purpose and means of processing;
 - “data processors” – those that process personal data on behalf of controllers.
- The GDPR imposes obligations on those that deal with personal data:
 - to process data fairly, transparently and legally;
 - to keep personal data secure;
 - to ensure the rights of data subjects; and
 - to ensure certain safeguards are put in place when sharing data with others, particularly those outside the EU.

Data protection – marketing

- Data protection also covers marketing activities. This includes marketing carried out through:
 - post;
 - electronic means (email, or online marketing); and
 - telephone, SMS or fax.
- There are also specific rules for the use of cookies and similar technologies:
 - you must give website users information about cookies; and
 - you must obtain consent before using non-essential cookies.

Data protection – international transfers

- You are free to transfer personal data from the UK to the EEA.
- You can only transfer EEA personal data outside the EEA where:
 - the recipient country has been issued with an “adequacy decision” from the EU (e.g. Japan, New Zealand, Switzerland and the US under Privacy Shield);
 - “appropriate safeguards” are put in place, such as EU Standard Contractual Clauses; or
 - one of the international transfer derogations under GDPR applies (e.g. the data subject has consented to the transfer, or the transfer is necessary to perform a contract).

Data protection – impact of Brexit

- Data protection law will remain largely the same following Brexit:
 - Data Protection Act 2018 will remain in place in the UK; and
 - the GDPR will be incorporated into UK law.
- However, the UK will be considered a “third country” country (non-EEA country) by the EU.

Data protection – impact of Brexit

UK organisations with no EEA customers

- If you are based in the UK and have no EEA contacts to whom you send personal data, you will not be affected by a no-deal Brexit.
- You will be required to comply with the Data Protection Act 2018 and the UK GDPR, as you currently are.
- Make sure you review your privacy information and documentation for any minor amendments.

Data protection – impact of Brexit

UK organisations sending and receiving data to or from the EEA

- Transfers from the UK to the EEA will not be restricted following Brexit. You can continue to send data to the EEA as you presently do.
- If an EEA organisation is sending you data, they will still need to comply with EU data protection rules. You must take action with your EEA contacts to ensure data still continues to flow to you after Brexit.
- For most UK organisations receiving EEA data, EU Standard Contractual Clauses will be the best way to keep data flowing to the UK.
- Make sure you review your privacy information and documentation for any amendments.

Data protection – impact of Brexit

UK organisations sending data to non-EEA countries

- The UK will recognise the current EU adequacy decisions and EU approved transfer safeguards. You can continue to send data to “adequate” countries after Brexit.
- A list of countries with adequacy decisions can be found on the European Commission website at https://ec.europa.eu/info/law/law-topic/data-protection/international-dimension-data-protection/adequacy-decisions_en
- If no adequacy decision exists for the recipient country, then you may continue to use EU Standard Contractual Clauses.

Data protection – impact of Brexit

UK organisations operating in the EEA, or with EEA customers

- You will need to comply with both the UK and EU data protection rules following Brexit:
 - your UK activities will be covered by UK data protection law; and
 - your EEA activities (i.e. activities of your branches, offices or establishments in the EEA) will be covered by EU data protection law.
- If you are based in the UK with no EEA presence, but offer goods or services to EEA individuals, you will:
 - still need to comply with EU data protection requirements;
 - mostly likely also have to appoint an EEA representative to act as a local contact for EEA data subjects and supervisory authorities.
- Make sure you review your privacy information and documentation for any amendments.

Further information

- Intellectual Property
 - UK Government Guidance on Intellectual Property and Brexit
 - <https://www.gov.uk/guidance/intellectual-property-and-brexit>
- Data Privacy
 - Information Commissioner's Office Guidance on Brexit
 - <https://ico.org.uk/for-organisations/data-protection-and-brexit/>

Contact us



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