

Brexit risk register

Intellectual Property



As the date for the end of the transition period looms ever closer our legal experts have pulled together a must-read risk register for all organisations. Our register pulls out the vital issues that you need to be thinking about now in the run-up to the end of the transition period on 31 December 2020.

The risk	How to mitigate it
<p>Potential delay in UK protection for newly filed applications for EU-wide registered rights like EU trade marks and Community designs. Existing registrations registered before the end of the transition period will be replicated in the UK after the end of the transition period, but pending applications will need to be re-filed.</p>	<ul style="list-style-type: none">• Review your portfolios to assess the level of risk• Consider filing duplicate UK applications for important rights• Be prepared to re-file any pending applications that are not final by the end of the transition period
<p>IP-related agreements such as licences may not work properly after the end of the transition period.</p>	<ul style="list-style-type: none">• Review important agreements to identify elements that will no longer work effectively, such as references to EU territory or EU-wide rights• Consider amending agreements to remedy defects
<p>Some rights held by UK entities (such as database right) may no longer be recognised in the EU.</p> <p>The UK will not have access to the unitary patent and Unified Patent Court.</p>	<ul style="list-style-type: none">• Consider alternative forms of protection where existing rights may fall away.• Consider engaging UK-based representatives to manage UK rights
<p>Cross-border enforcement of IP rights after the end of the transition period will become more complex, time-consuming and costly.</p> <p>Ongoing UK proceedings may no longer give rise to EU-wide injunctions.</p>	<ul style="list-style-type: none">• Prepare for more complex and costly proceedings where there is an EU-UK cross-border element• Consider commencing proceedings in an EU27 country to obtain EU-wide remedies

The risk

Import and export of genuine products from the UK to EU may infringe IP after the end of the transition period. After the end of the transition period, the UK will unilaterally continue to implement the EEA-wide exhaustion regime, so that parallel imports from the EEA into the UK will still not infringe. However, it is very unlikely that the EU will reciprocate, so parallel imports from the UK into the EEA, without consent of the rights owner, will infringe.

How to mitigate it

- Consider where products that you deal in are first marketed, and what regime applies. You may need to obtain new permissions to continue cross-border activity like imports, broadcasting and use of online content.



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