

Are your IP agreements Brexit proof?

The UK's exit from the EU may have an effect on all types of intellectual property (IP) where there are existing agreements or licences in place. We are currently in a transition period until 31 December 2020, but it is important to get ahead now and ensure that your interests are secure.

An IP agreement, whether it's a compromise agreement or a licence will usually be defined by territory and by reference to the relevant IP rights. As it stands, reference to the European Union will take effect across the whole of the EU including the UK but this will not be the case when the transition period ends. It is therefore important to ensure that the UK's exit does not cause your agreements to fall short.

Scope of IP rights

An agreement or licence typically revolves around one or a collection of IP rights. These are often defined in the body of the agreement or in 'Schedules'. Where these are unitary EU rights that will be split after Brexit, i.e. EU trade mark or design registrations, the referenced rights will not extend to the UK when the transition period ends. Separate UK rights will be created, but it may be necessary to amend or redraft agreements to reflect this.

Territory

If the geographical reach of an agreement is defined as the 'European Union' with no further definition or specific mention of the UK, the benefit of that agreement may no longer apply to the UK when the transition period ends. This could have an effect in terms of the management of licence arrangements, freedom to operate, or the ability to rely on restrictions imposed in settlement/co-existence agreements.

There are other considerations such as royalty payments and customs duties that may come in to play but there is still time to review and ensure that your agreements and licences are clear and will hold up in the post-Brexit landscape.

Action

Take the time to review your IP and licence agreements now; it may be that a simple addendum or redraft is required. Make sure that any new agreements are drafted to provide a full definition of 'territory' where the EU is involved and refer to the UK specifically. Our team is more than happy to advise or provide more information.

If you have any questions, please contact your usual Mathys & Squire adviser, or for more information on this topic, please contact brexit@mathys-squire.com.