

How will a no-deal Brexit affect Intellectual Property Rights in the sport and recreation sector?

Intellectual Property (IP) Rights (especially patents, trademarks and broadcasting rights) lie at the heart of the huge commercial opportunities offered by the world of sport. They help to secure the economic value of sport, enabling sports organisations to finance high-profile sports events and provide the means to promote sports development. Business transactions related to sponsorship, merchandising, broadcasting and media deals are all built on IP rights.

Accordingly, all entities working within the sport and recreation sector must take a proactive approach to reviewing, amending or re-filing (where necessary) and prioritising the maintenance and protection of their Intellectual Property portfolio.

This guide will take you through the key issues associated with a no-deal Brexit and each of the main IP rights. This does not constitute legal advice.

EU Trade Marks and Designs

- Trade marks protect distinctive business names, words, logos, sounds, shapes or colours. Consider any famous sporting brand and it's likely a registered trade mark is one of the first things that springs to mind: the Nike "swoosh", for example, or Manchester City's crest on its shirts. Design rights protect the shape and appearance of products. A no-deal Brexit would mean that EU trade marks and design rights will no longer extend to the UK. However, existing EU laws will be transposed into UK law by the Withdrawal Act.
- If you own an EU trade mark or registered design, you will be given standalone UK national rights that mirror the existing EU rights. These will be called "comparable trademarks" and "re-registered designs". You will **not** need to take any action to obtain these "cloned" rights as they will be issued automatically and without charge.
- If you have an EU application that is still pending on the date of Brexit you will not be granted a "comparable trademark" or "re-registered design". You will need to re-file pending applications in the UK (subject to standard filing charges) to ensure that you receive protection in the UK.
- If you are party to any existing licences, contracts and security arrangements that refer to the EU right, this will be deemed to include the "cloned" UK right too. This means there will not be a gap in your existing licences and agreements, as they will automatically be considered to include the new UK rights.
- **However**, you may need to register licences and security interests within a certain period, to maintain full protection for the "cloned" right. In practice, it may make sense for you to do this promptly after the details of your "cloned" rights are confirmed.

See here for further guidance: <https://www.gov.uk/guidance/changes-to-trade-mark-law-after-brexit> or contact Gateley Legal.

Disputes

In the event of a no-deal Brexit, EU trade marks and designs will not extend to the UK and will not be enforceable in the UK and remainder of the EU through a judgment from a single court. Following a

no-deal Brexit, a pan-EU injunction will not be available in UK courts, and separate litigation in the UK will be necessary.

Community Unregistered Design Rights

This right provides automatic 3-year protection relating to the shape or appearance of products. However, this right currently only exists at EU level. If you have a Community unregistered design right, then it will continue to be recognised in the UK for the remainder of the 3-year term and be known as a "continuing unregistered community design". An equivalent UK right will automatically come into existence for designs published after exit day and these will be known as "supplementary unregistered designs".

Patents

Patents protect technical innovations and inventions. Patents in the UK are governed by national law and international (rather than EU) conventions and so will not be significantly affected by Brexit.

Copyright

Copyright protects photographs, art, words, software, film, and music. A number of sports organisations, notably in the dance industry for example, leverage their IP by allowing others to use their copyright in the dramatic, musical and artistic works that makes up a dance or movement class. Again, as copyright is a national right, copyright will not be significantly affected by Brexit.

Domain names

As the .eu domain is only available to EU and EEA residents and businesses/organisations established in the EU or EEA, UK parties will no longer be entitled to register .eu domain names in the event of a no-deal Brexit.

At the expiry of a compliance period your domain names will be withdrawn if you have not demonstrated your eligibility (i.e. that despite being a UK party, you are also established in the EU or EEA). This means that your domain will no longer function and will not be capable of supporting your websites or email. Ultimately, your domain could become available for registration by others.

The government has published guidance for those with an .eu domain name at: <https://www.gov.uk/guidance/eu-domain-names-what-you-need-to-do-to-get-ready-for-brexit>.

Broadcasting Rights

One key thing for both rights holders and broadcasters to keep their eye on is the *European Commission's Digital Single Market Strategy* which, aims to ban unjustified geo-blocking in the EU. Whilst this doesn't include, within its remit, the licensing of sports broadcasting across the EU, it does allow consumers to view online sports content which they have legally acquired in one-member state, while they are abroad in another. In the event of a no-deal Brexit customers of SKY and BT Sports may be prevented from accessing the channels abroad and any UK-based broadcasters may need to obtain copyright clearance for each EU member state that they broadcast into. This is still to be decided, but it would result in further planning for broadcasters and an increase in price in any broadcasting agreements to account for the extended applications to be made in each member state to allow the content to be broadcast. With little influence on the future direction of policy on the Digital Single

Market Strategy once, a no-deal Brexit could therefore have implications for rights being sold into EU markets.

In addition, Brexit may have an impact on the 'listed events regime'. The Broadcasting Act 1996 makes provision for the Secretary of State to designate a key sporting or other event as a "listed event". Listed events consist of events such as the Olympic Games, the FIFA World Cup and the Wimbledon Tennis Finals for example and the right to broadcast listed events must be offered to a broadcaster whose service is free to at least 95% of the UK population. The listed events regime, although enshrined in UK legislation flows from the EU *AudioVisual Media Services Directive* and there is the possibility that following Brexit, the UK may not decide to retain such a regime. This could then result in, certain EU jurisdictions, following a Brexit, making particular UK events 'listed' in their own countries diminishing broadcasting rights value in those countries because the UK government would lack the influence to argue against such decisions.

From a practical perspective, what can you do now to try and mitigate risk?

1. Review your EU trade marks and design rights and be aware of which rights will no longer be protected in the UK.
2. Await grant of new UK "comparable marks" and "re-registered designs" – bring them into your portfolio and diarise new renewal deadlines.
3. Review licences, agreements, or security interests deemed to include the new UK rights and consider whether registration of any interests is required.
4. Check if you have any pending applications for EU trade marks or designs and be aware of the time limit to refile in the UK.
5. Review trade mark disputes relating to EU rights, including oppositions, revocations or cancellations at the EUIPO, and be aware that they may fail if based solely on UK rights.
6. Check whether you own any .eu domain names and consider whether you can transfer them to EU/EEA group companies. If not, be ready to lose the domains.

Each business has its own different IP requirements, and you should take focused advice from an IP specialist. If you have any questions, Gateley Legal's intellectual property team will be happy to help.