

# The Brexit

A Tale of Intellectual Property Intrigue

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*By Kandis Koustenis & Antigone Peyton, Protora Law PLLC*

# The Story

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- Act I: Business, as usual
- Act II: A wrench in the works (otherwise known as the British Exit, AKA *Brexit*)
- Act III: A *trademark* borne from any other EU country smells so sweet
- Act IV: A *patently* sticky situation
- Act V: Is there a *copyright* conundrum?
- Act VI: Preparing for the storm

# **Act I: Business, as usual**

# Act I: Trademarks

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- Current Trademark Regimes
  - UK Trademark (National Regime)
  - Madrid Protocol (Int'l Streamlined Procedure)
  - EU Trademark

# Act I: Registered Designs

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- Registered Design Regimes
  - UK system
  - Hague Agreement - International Design Registration
  - Registered Community Design (RCD)

# Act I: Patent Protection

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- Current Protection Regimes:
  - National UK Filing
  - European Patent Convention Filing (Centralized EPO Filing & Grant Procedure)
    - 38 Contracting States
    - Bundle of National Patents
    - Not Part of EU Law
    - Centralized Patentability Law & Standards
    - Art 69 Provides General Guidance on Claim Interpretation
  - Paris Convention (Streamlined Priority Procedure)

# Act I: Patent Enforcement

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- Current Enforcement System:
  - Multiple Litigations
  - Infringement Laws & Systems Vary
- \*Future Enforcement System: Unitary Patent/UPC System)
  - Coming 2017/2018?, Or Never
  - Unitary Patent & One Enforcement Proceeding
  - Builds on EPC & Provides Post Grant Option for EPO Patents
  - 25 EU Member States Participating
  - Covers Existing Patents and New EPO Patents (7 Year Opt Out Period)

# Act I: Copyright

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- Copyright Regimes
  - International Treaties and Agreements - Berne Convention
  - EU Copyright Directives - member by member implementation



## **Act II: A wrench in the works**

# Act II: The Brexit

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- 1957-European Economic Community Created, UK Joined in 1973
- 2009-EU Treaties Developed Rights and Process for Withdrawal
- June 23, 2016-The Brexit Referendum
- March 29, 2017-UK Invoked Article 50 of Lisbon Treaty
  - Notified European Council of Intention to Withdraw from EU
  - Triggered 2-Year Negotiation Period
  - Extension Possible if Remaining 27 Member States Agree
  - Over 80,000 Pages of EU Agreements in Play

# Act II: The Brexit

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- Great Repeal Bill-Ends Supremacy of EU Law and Converts EU Law Into Domestic Law
- Court of Justice of the European Union (CJEU)
  - Case law as of exit date given same precedent in UK Courts as UK Supreme Court Law
  - CJEU Jurisdiction Ends

**“The first thing we do, let’s kill all the  
lawyers.”**

–Shakespeare’s Henry VI

**Act III:**

***A trademark* borne from  
any other EU country  
smells so sweet**

# Act III: Trademark

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- EUTM will no longer apply to the UK
- Options:
  - Do nothing - EUTM owners lose rights in UK (not commercially feasible)
  - Negotiate to enable UK to remain part of EUTM system (not politically feasible)
  - Enact national legislation to enable EUTM owners to continue owning effective UK rights

- Legislation Models? Too early to know but
- Variations on a theme
  - EUTM system amended to permit access to non-EU countries
  - UK unilaterally honors EUTM registrations as if UK remained in EU
  - UK enacts procedure to convert EUTM to UKTM

# Act III: Registered Designs

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- Registered Community Designs (RCDs)
  - EU design rights no longer apply in UK
  - Similar options as trademarks
  - UK is currently working to join Hague Agreement for International Design Registration (in place by next year is goal)



## **Act IV: A patently sticky situation**

# Act IV: Patents

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- The Future of the Unitary Patent/UPC System
- Ratification Issue: 13 of 25 signatory members required, including top 3 (Germany, France, UK)
- UK Can Block for a Period of Time
- Members Can Renegotiate & Re-Ratify?
- What Can UK-Based Counsel Do?

**Act V: Is there a copyright conundrum**

# Act V: Copyright

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- Berne Convention and others will continue to protect UK copyrights around the world - little impact by Brexit

# Act VI: Preparing for the storm

# Act VI: The To-Do List

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- Trademarks & Designs
  - make a list
  - identify and prioritize
  - non-use issues?
  - new applications - avoid uncertainty with double protection

# Act VI: The To-Do List

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- Agreements
  - Review and spot issues
    - Territory
    - Identification of IP rights
    - Choice of Law
    - Termination

# Act VI: The To-Do List

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- Litigation & Enforcement
  - Oppositions & validity attacks based on EU/UK prior rights
  - Parallel imports / Exhaustion of Rights
  - Cross border enforcement - injunctions
  - Consider potential limitations on patent counsel



Questions?

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# Contact Information

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Presenters:

Antigone Peyton, Esq.

[apeyton@protoraelaw.com](mailto:apeyton@protoraelaw.com)

+1 (703) 639-0929

Twitter: @AntigonePeyton

Kandis Koustenis, Esq.

[kkoustenis@protoraelaw.com](mailto:kkoustenis@protoraelaw.com)

+1 (703) 639-0994

Master of Ceremonies:

Jerry Boykin, Esq.

[jboykin@protoraelaw.com](mailto:jboykin@protoraelaw.com)

+1 (703) 942-6748