

Brexit: Impacts for IP, Trade and Commercialisation Agreements

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Brexit and the IT Industry

- What the Withdrawal Agreement says about Intellectual Property
- Known divergences between European and UK Law
- Exhaustion of Rights
- Effect on Parallel Imports
- Effect on GDPR

What the Withdrawal Agreement says about Intellectual Property

- Articles 54 – 61
- Why most European Law is now irrelevant
- 60% law is European law
- Interpretation on a European basis
 - The European Court of Justice
- Significance of official languages
- Number of official languages

Known divergences between EU and UK Law

- Copyright or Design Rights?
 - British Leyland v Armstrong, 1986, HoL
 - Non-derogation of grant
- LucasFilms v Ainsworth
 - 2011, SC
 - para 49
 - “Different periods of protection are accorded to different classes of work”
- Section 52: Exploited artistic works → 25 only years protection; repealed 28.7.16

LucasFilms v Ainsworth (1)

- “Artistic works of art (sculpture and works of artistic craftsmanship) have the fullest protection;
- “then come works with “eye app(AMP Inc v Utilux Pty Ltd [1971] FSR 572);
- and under Part III of the 1988 Act a modest level of protection has been extended to purely functional objects (the exhaust system of a motor car being the familiar example)”

LucasFilms v Ainsworth (2)

- “There are good policy reasons for the differences in the periods of protection,
- and the Court should not, in our view, encourage the boundaries of full copyright protection to creep outwards”

Directive 98/71 (the Designs Directive)

- A design protected ... in accordance with this Directive shall also be eligible for protection under the law of copyright ... the extent to which, and the conditions under which, such a protection is conferred, including the level of originality required, shall be determined by each Member State"

Infopaq Case

- Danske Dagblades Forening
- C-5/08, decided on 16 July 2009
- Capture of keywords in newspaper article + five words before and after
- ECJ: an eleven word extract was (always) a breach of copyright
- Cf: in English law copy of whole or a substantial part
- Shetland Times case: "some (8 word) headlines could be literary works"

Two ECJ Cases (from Italy)

- C-168/09 (January 2011)
- Flos SpA v Semeraro Casa e Famiglia SpA
- Cannot exclude copyright protection for [registered] "designs"
- Term directive → 70 years protection
- Case C-683 (17 September 2019)
- Cofamel v G-Star Raw
- "cannot exclude from copyright protection designs which ... meet all the requirements to be eligible for copyright protection"

Exhaustion of Rights

- Intellectual property rights which were exhausted both in the Union and in the United Kingdom before the end of the transition period under the conditions provided for by Union law shall remain exhausted both in the Union and in the United Kingdom
- Post transition period position
- Effect on parallel imports

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