
Brexit and the future of the European Union

ASHLEY PARDBUCK

TALLINN UNIVERSITY OF TECHNOLOGY, ESTONIA

ASHLEYPARDBUCK@OUTLOOK.COM

***Abstract:** The United Kingdom leaving the European Union has been a long and rather complicated process. This article intends to analyse the process, with closer look at the main events since the referendum on leaving the EU and predicts possible impact of Brexit on the future the EU and the UK itself.*

***Keywords:** Article 50, Brexit, European Union, United Kingdom.*

This paper critically examines the issue of Brexit and the potential impact on the EU and the United Kingdom themselves. Brexit is the name given to the United Kingdom European Union membership referendum which occurred on 23rd of June 2016 which sparked a lot of debate from two sides named leave and remain¹. It ended in a simple majority result of 51.9% being in favour leaving the EU with the remaining 48.1% wanting to remain in the EU. The referendum legally was actually non-binding and only advisory but government at the time promised to follow through on whatever the result was and initiated the act of invoking article 50 of the Treaty on European Union, which began the United Kingdom's withdrawal from the EU by 30th of March 2019 after negotiating the Brexit terms.

The problem with this outcome is that it has caused a lot of uncertainty over the future for both the EU and the United Kingdom and whether that this result was a good thing to follow through on. The problems, as advocated by many critics lies within the boundaries and rules previously created and have been set in stone since the UK originally joined into the EU in 1973 and have been expanded upon ever since. These problems stem from the economical and legal relationship between the EU and the UK as the UK originally joined to be a part of the single market which itself has a lot of strict rules that all member states have to follow before being allowed to enter it, though when they entered back when it was just the European Economic Community the EU had begun to expand and tried to bring all the member states into one community that fall into and follow the same rules and regulations which led to EU creating legal rules that would bind to member states when put into power. This aspect of the EU the United Kingdom particularly disliked² as they felt it was an act of giving up their own sovereignty over their own land and letting the EU dictate what they can and can't do.

The negotiating between the EU and the UK can go multiple different routes on how this could end like for example the UK could follow the route of Norway³, but the two main options are at the moment a soft Brexit or a hard Brexit⁴. The hard Brexit is what the leave voters want but the Government still want some sort of access to certain areas of the EU like the single market. The EU however are not going to make it easy for the UK to stay in the single market without also wanting

¹ "Brexit: the pros and cons of leaving the EU" The week, May 22, 2018, accessed November 22 2018, <https://www.theweek.co.uk/brexit-0>

² "Margaret Thatcher on the European Union (National Press Club, Washington DC, 1995)", filmed 1995, Youtube Video, 2:28, posted by "Steven Woolfe MEP", April 9, 2018

³ Traub Florian and M.Dennis Gillian. 'Brexit—What Could Happen to My IP Rights?' (2017) Vol 29, Intellectual Property & Technology Law Journal, pg 20, pg 1

⁴ George Alexandra. 'RESTRUCTURING INTELLECTUAL PROPERTY JURISDICTION POSTBREXIT: STRATEGIC CONSIDERATIONS FOR THE EUROPEAN UNION AND BRITAIN' (2017) Vol 43, Brooklyn Journal of International Law 43 Brook. J. Int'l L., pg 131, pg10 – 11

something in return, for example keeping the freedom of movement which the UK do not want to keep due to fearing the lack of proper border controls will lead to an increasing problem with immigrants and terrorist fears due to lack of proper screening⁵ of those coming in. Depending on the outcome of the Brexit negotiations, there will be consequences for both sides with differing levels of impacts for either side.

On an economical aspect, already the Brexit vote has shown damage to the UK economy⁶ as the pound which was already weakened by the previous 2008 recession and was on a road to recovery, dropped once again but to new all-time lows⁷. This is happening whilst the UK is still inside the EU and abides by the same rules and regulations as usual until they finally leave. The EU at the moment haven't really been affected but for them it seems to be more about the long term implications as right now the UK is still in the EU so they will still benefit from the fact that the UK have the 2nd highest economy⁸ out of all the member states and that they will still benefit from their contribution to the EU budget. Now whilst this is happening at the moment, in the future this could completely turn around when the UK does leave the EU but it comes down to what kind of deal the UK can strike. As previously mentioned there are multiple different routes the UK could take in leaving the EU which include multiple ways of a hard and soft Brexit⁹. Neither the UK and the EU are going to make it easy as the UK are going to try gain every advantage of the EU whilst trying to drop all the disadvantages like paying into the EU budget, but the EU will also be trying everything to make it as hard as possible for the UK to gain a deal without having severe restrictions laid onto them as the EU right now are not willing to give up freedom of movement just so they can avoid having low skilled immigrants coming into the country but then they can have access freely to the single market¹⁰. If we treat the UK as if it were outside the EU already, they are the EU's largest single export market in goods¹¹. So if we think about the Post-Brexit scenario and whatever the negotiation deal maybe, the EU seem to benefit either way as the UK may still continue to import from the EU a lot of their goods from these member states despite the deal in place as they could be certain brands that the UK citizens like, for example BMW, Mercedes, Audi etc or it could be due to the fact that even with the increase in customs due to no free movement of trade, the deal may still be better than offered elsewhere, though that is yet to be seen as the UK are trying to use Brexit as a way of attracting other countries in creating trade deals with them and the US being one of the first¹².

⁵ Jessica Elgot and Jamie Grierson, "May says EU immigrants will lose priority status after Brexit", *The Guardian*, October 2, 2018, accessed on November 22, 2018, <https://www.theguardian.com/uk-news/2018/oct/02/eu-citizens-lose-priority-under-post-brexit-immigration-plans>

⁶ Chris Giles, "What are the economic effects of Brexit so far?" *Financial Times*, June 24, 2018, accessed November 22, 2018 <https://www.ft.com/content/dfafc806-762d-11e8-a8c4-408cfba4327c>

⁷ Ben Chu, "The pound has hit a 31-year low – it's time to accept that Brexit will definitely make us poorer" *Independent*, October 4, 2016, accessed November 22, 2018 <https://www.independent.co.uk/voices/brexit-sterling-pound-record-low-31-years-theresa-may-tory-conference-make-us-poorer-a7344626.html>

⁸ Oliver Patel and Christine Reh, "Brexit: The Consequences for the EU's Political System", UCL Constitution Unit Briefing Paper, <https://www.ucl.ac.uk/constitution-unit/research/europe/briefing-papers/Briefing-paper-2>

⁹ Charles P. Ries, Marco Hafner, Troy D. Smith, Frances G. Burwell, Daniel Egel, Eugeniu Han, Martin Stepanek, Howard J. Shatz "Examining Economic Outcomes After Brexit", Rand Corporation, December 11, 2017, accessed November 22, 2018, <https://www.rand.org/randeuropa/research/projects/brexit-economic-implications.html>

¹⁰ Daniel Boffey, "EU anger over May's post-Brexit immigration plan", *The Guardian*, October 2, 2018, accessed on November 22, 2018, <https://www.theguardian.com/uk-news/2018/oct/02/eu-anger-over-mays-post-brexit-immigration-plan>

¹¹ "Where does the EU export to?", January 26, 2016, accessed on November 22, 2018, <https://fullfact.org/europe/where-does-eu-export/>

¹² Nicholas Frakes, "US 'Ready' for post-Brexit UK trade deal – Congress to prepare for 'Cutting Edge' pact", *Express*, October 17, 2018, accessed on November 22, 2018, <https://www.express.co.uk/news/politics/1032524/brexit-news-us-trade-deal-eu-negotiation-donald-trump>

Too show how much the EU influences the UK on the legal level, I have picked one area of law which is Intellectual Property as that is a very important part of law, not just for the UK and the EU but even on an international level and how Brexit has large implications on that stage on just this one area. The UK and the EU values Intellectual property as an essential part of law for the success of the Internal Market of the EU, which is why a Directive was adopted on the enforcement of Intellectual property rights¹³. This Directive recognises the importance of intellectual property rights in promoting innovation and creativity and in developing employment and improving competitiveness, it does this by seeking to strike a balance between providing inventors and creators with the opportunity to realise a legitimate profit and encouraging the widest dissemination of works, ideas and new know-how whilst not hampering freedom of expression, freedom of information and the protection of personal data on the internet. The scope of the directive is wide in that it applies to all intellectual property rights covered by EU provisions in the field. In addition to the legislation regarding the issue at hand, the EU has shown a remarkable and ever-growing amount of case law on IP issues that has gone a long way in implementing the law.

Intellectual property law has long been set up on an international stage, which makes it not surprising that the UK's membership of the EU has had a great influence on copyrights, patents, trademarks and the like.

Three issues mark the impact of the EU on Intellectual property law:

The drive towards greater harmonisation of the laws of individual Member States

The move to community-wide intellectual property rights

The impact of the TFEU¹⁴ on the use and abuse of intellectual property rights

Harmonisation deals with Intellectual property rights implemented in each Member States are alike, meaning that the internal market of the EU is reinforced and trade between Member States is facilitated. Harmonisation of national laws in the field of Intellectual Property has been happening for some time and hasn't been restricted to the EU countries, patent law was affected through the harmonisation process as the European Patent Convention was implemented and didn't just affect the UK. UK patent law was changed on 1 June 1978 as a result of this convention and Patents Act 1977 came into force. EU directives are instrumental in changing domestic law protecting registered designs, copyright law and rights in performances. An example of this is the right of artists to a royalty on the resale of their works was introduced into the UK in 2006¹⁵ as a result of a Directive¹⁶. Significant changes to trademark law were made by a European Directive¹⁷ also as they attempted to achieve a limited harmonisation of trademark law throughout the EU, this formed the basis of Trade Marks Act 1994 which replaced the outdated Trade Marks Act 1938. Since then trademark law has been integrated into a community-wide rights system. An example of case law of this would be

Community-wide rights deals with Intellectual property rights being recognised and given effect throughout the EU. As mentioned before trademark law is now in a Community-wide system, a Community patent differs from this as a Community patent system is a unitary system, granting patents will take effect throughout the whole of the EU. In the UK, the Patents Act 1977 already has in place the necessary mechanism for recognising Community patents¹⁸. Progress has been made towards this in respect of patent law as a proposal for a Community Patent Convention was first established in 1975¹⁹. Right now in its current state, it's a European Patent Convention which permits

¹³ Directive 2004/48/EC of the European Parliament and of the Council on the enforcement of intellectual property rights

¹⁴ Treaty on the functioning of the European Union

¹⁵ The Artist's Resale Right Regulations 2006

¹⁶ Directive 2001/84/EC of the European Parliament and of the Council

¹⁷ Directive 89/104/EEC

¹⁸ Patents Act 1977 s 130(7)

¹⁹ Community Patent Convention (76/76/EEC)

the application for a bundle of patents but only covers a specified number of Member States including the UK. This route to obtaining patent protection throughout Europe (though not just limited to the countries of the EU) has grown in importance for the EU.

However Britain has signalled its intent to ratify its agreement for the UPC to be put in place in London despite triggering Article 50. Even after Brexit, this would make the process of dealing with patent disputes concerning European patents can be easier as instead of being litigated separately in the domestic courts of each Member State, it can be heard as a single case before the UPC. It is just uncertain whether the UK will remain a member of the UPC post-Brexit as it will be up to the UK Government²⁰. However the UK could standardize its legislation with the international IP legal framework where it is less strict unlike the EU with the likes of WIPO (World Intellectual Property Organisation) which the UK is already a part of.

The impact of the TFEU in Intellectual property rights is to do with the use of Articles 34, 35 and 36 which help promote free movement of goods, Article 101 which prohibits restrictive trade practices and Article 102 which is designed to prevent the abuse of a dominant market position.

Articles 34, 35 and 36 deal with the notion of freedom of movement of goods between the Member States which contains grounds which includes protection of intellectual property rights as they fall within the definition of industrial and commercial property²¹ as it was established in *Musikvertrieb Membran and K-tel International v GEMA*²². The case concerned if copyright was also included within the definition of industrial property, as patents, trademarks and rights in designs were already included. The Court explored the issue of about whether royalties from sound recordings and that if the work was distributed to another Member State, it should benefit from equality in the royalties paid for any distribution of those sound recordings in the German market as the owner of the copyright has legitimate interest in receiving and retaining the benefit of his intellectual or artistic effort regardless of the degree to which his work is distributed and consequently it is maintained that he should not lose the right to claim royalties equal to those paid in the country in which the recorded work is marketed. The ruling²³ in this case should be interpreted in a way that it prevents discrimination of copyright owners from obtaining royalties when their work is put onto another Member States market. The implementation of this ruling show how the EU tries to prevent discriminatory actions being taken place by member states and that they try and make sure that freedom of movement of goods isn't taken advantage upon.

This leads into the principle of exhaustion of rights which means that the holder of intellectual property rights cannot use his rights to prevent the commercialisation of goods that have been placed on the market within the EU by him or with his consent. Exhaustion of rights does not harm rules on ownership, nor does it harm the existence of those rights as it merely controls the exercise of those rights where such exercise conflicts with the freedom of movement of goods. This principle is not absolute however, it will not apply under certain circumstances like if for example the commercialisation involved repackaging the goods or altering them in an unacceptable way which would harm the holder of the intellectual property rights. This is where EU Directives play a part to provide rules on exhaustion of rights, for example Directive 2008/95/EC deals with exhaustion of rights relating to trademarks²⁴.

²⁰ George Alexandra. 'RESTRUCTURING INTELLECTUAL PROPERTY JURISDICTION POSTBREXIT: STRATEGIC CONSIDERATIONS FOR THE EUROPEAN UNION AND BRITAIN' (2017) Vol 43, Brooklyn Journal of International Law 43 Brook. J. Int'l L., pg 131, pg28 – 30

²¹ Article 36 TFEU

²² 55/80 and 57/80 *Musikvertrieb Membran and K-tel International v GEMA* [1981] ECR 147

²³ Ratio from 55/80 and 57/80 *Musikvertrieb Membran and K-tel International v GEMA* [1981] ECR 147

²⁴ Article 7 of Directive 2008/95/EC

The EU has put a lot of effort in promoting the full harmonisation of copyright and even showing that decisions of cases in other Member States can have an effect in the UK. The main cases in this area being the *Phil Collins v Imtrat Handelsgesellschaft mbH and Patricia Im-und Export Verwaltungsgesellschaft mbH* case²⁵, where German copyright law²⁶ didn't allow non-German nationals to rely on the provisions which prohibited the distribution of unauthorised recordings of performances given outside Germany. Phil Collins and Cliff Richard argued that this German law was breaching Article 7 of the EEC Treaty²⁷ (now Article 18 TFEU) in an action relating to the distribution of bootleg recordings of their performances given in the USA and the UK. It was taken to the European Court of Justice (now the Court of Justice of the European Union) for a ruling under Article 234 of the EC Treaty (now Article 267 TFEU), where it was confirmed that copyright fell within the scope of Article 12 and the principle of non-discrimination applied to those rights. The ruling²⁸ for this case should be interpreted in a way that it stops discriminating authors and performers from other member states and allow them to prohibit marketing of their performance without their consent in other member states when the performance was given outside the performers national territory. The implementation of this ruling shows how the EU does not stand for discriminatory actions by Member States.

Even though there has not yet been a full harmonisation of copyright law throughout the EU, they still fell within the Treaty's provisions because of their effect on trade in goods and services within the EU.

To conclude, the Brexit scenario is going to be a complicated road for both the UK and the EU as both have their own set of goals that they both want to achieve but only one can achieve their goals whilst crippling the other. Another thing that is going to be complicated is when it comes to all the laws that have been put into place through the EU, as already discussed earlier the law on IP itself has been altered massively through the EU which may now see years of work thrown away if a proper Brexit deal is not agreed. Though a strange thing that the UK seems to have done is that they have agreed to join a Community Patent Convention called the Unified Patents Court²⁹ that the EU have been making steps to create as Britain has signalled its intent to ratify its agreement for the UPC to be put in place in London despite triggering Article 50. Even after Brexit, this would make the process of dealing with patent disputes concerning European patents can be easier as instead of being litigated separately in the domestic courts of each Member State, it can be heard as a single case before the UPC. It is just uncertain whether the UK will remain a member of the UPC post-Brexit as it will be up to the UK Government³⁰. However the UK could standardize its legislation with the international IP legal framework where it is less strict unlike the EU with the likes of WIPO (World Intellectual Property Organisation) which the UK is already a part of but then why would they agree to join the UPC in the first place?

²⁵ C-92/92 *Phil Collins v Imtrat Handelsgesellschaft mbH and Patricia Im-und Export Verwaltungsgesellschaft mbH*

²⁶ German Copyright Act 1965, ss 96(1) and 125(1)

²⁷ European Economic Community Treaty

²⁸ Ratio from C-92/92 *Phil Collins v Imtrat Handelsgesellschaft mbH and Patricia Im-und Export Verwaltungsgesellschaft mbH*

²⁹ Cook Trevor. "BREXIT" and Intellectual Property Protection in the UK and the EU' (2016) Vol21, *Journal of Intellectual Property Rights*, pg 355, pg 1

³⁰ George Alexandra. 'RESTRUCTURING INTELLECTUAL PROPERTY JURISDICTION POSTBREXIT: STRATEGIC CONSIDERATIONS FOR THE EUROPEAN UNION AND BRITAIN' (2017) Vol 43, *Brooklyn Journal of International Law* 43 *Brook. J. Int'l L.*, pg 131, pg28 – 30

When it comes down it there would a lot of legislation that will have to be removed if it is a hard-Brexit³¹, which means that the UK Parliament will have a lot of work to do even after the deal even though yes they could join the WPO which would help when it comes to IP law but when it comes to the human rights aspect for example, this was given through the EU as the UK never really law on peoples human rights except for the Magna Carta which is centuries old and is likely to be completely outdated in this day and age.

We can already see this in the economic front as the UK want to rid of the freedom of movement to restrict access of immigrants but then keep in the single market but the EU won't allow that as they clearly do not benefit equally from such a deal. At the same time though this could be a political tactic deployed by the EU to show other Eurosceptics across the member states that maybe thinking about leaving or trying to renegotiate the terms of their EU membership that if the UK are having a hard time to leave, that other countries may think otherwise in trying to attempt their own 'Brexit'. Though at the moment the UK seem to have agreed a draft agreement³² with the EU that the current Prime Minister Theresa May is happy with, though if it actually comes into action in time for the actual leave date of 29th of March 2019, we shall see as the EU parliament have to accept this plan and the members of Parliament all have to agree to it before it can be ratified which at the moment most of them are against this current plan as they don't see it as the Brexit that was promised and more of a in-between soft and hard Brexit which doesn't really benefit the UK at all.

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