

Written evidence submitted by UK Intellectual Property Office (FRE0065)

Ongoing negotiations between the UK and the EU

The UK has a balanced intellectual property (IP) framework which ensures high-quality IP protection and services. The UK and EU IP regimes are both well-regarded and their economies are highly IP-intensive. HMG has published its approach to negotiations and draft legal text and the European Commission has published their mandate and draft legal text as well.

We are looking to negotiate a chapter that secures mutual assurances to provide high standards of protection for IP rights, including registered IP rights such as patents, trade marks and designs; and unregistered rights such as copyright and trade secrets.

These provisions should reinforce and, where appropriate, exceed the standards set out in international agreements such as the WTO agreement on Trade-Related Aspects of Intellectual Property (TRIPs) and World Intellectual Property Organization (WIPO) treaties. The UK is open to discussing mechanisms for cooperation and exchange of information on IP issues of mutual interest.

While we want to seek an agreement with the EU that reflects the high standards of protection for IP rights available in our respective territories, we will still wish to preserve domestic flexibility for both sides, including on rest of world trade negotiations.

We want the UK to be the best place in the world to do business. A strong relationship between Government and industry is critical as we negotiate with the EU. Facing up to challenges together, but also harnessing the opportunities that will become open to us, will be vital for the future of UK economic growth. This applies as much to IP as to any other sphere and is how we can best serve businesses in this industry during negotiations.

Audio-visual Services

The position of the EU in relation to audio-visual services and the current UK-EU trade negotiations is a matter for them. We advise that the committee refers to publicly available material on the EU's stance on audio-visual, for example the European Commission's press release dated 3 February following publication of their draft negotiating directives. Based on precedent and the draft legal text published by the EU, there is no suggestion that audio-visual services will not be covered by the IP chapter of any UK-EU trade agreement.

In terms of the link between audio-visual services and IP, both the UK and EU published draft texts with high standards of protection for authors of original works, producers of sound recordings, performers and broadcasters. These provisions, which build on protections for rights-holders guaranteed under the multilateral treaties on copyright, would have effect across the creative sector, including copyright in audio-visual services. Regardless of whether audio-visual services are expressly dealt with elsewhere in the FTA, the audio-visual sector will benefit from the copyright protections which currently feature in the draft provisions in the IP – just as is the case for the music, publishing, and other copyright-intensive industries.

No Further Negotiated Agreement and the Withdrawal Agreement

If no further negotiated agreement were reached between the UK and the EU, the arrangements in the IP section of the Withdrawal Agreement would take effect at the end of the transition period. These arrangements provide legal certainty and protect the interests of rightsholders and users of the IP framework.

The Withdrawal Agreement ensures continued protection of existing EU-level IP rights in the UK after the end of the transition period. This will ensure existing UK IP rights can be managed appropriately in line with existing domestic arrangements in the event of no further negotiated agreement. In this scenario, the UK would uphold its international obligations as outlined in a number of international treaties, including WIPO treaties and TRIPs which the UK are independent signatories to.

Intellectual Property Right Enforcement Mechanisms

The UK recognises the key role that an effective enforcement regime for IP rights has in avoiding economic harm and supporting innovation. We have robust controls and enforcement of IP rights through delivery partners such as Trading Standards, Border Force and the police.

The UK legal framework for IP is self-contained in that protection of rights will continue and mechanisms for intervention at the border will be in place before the end of the transition period. This will ensure that the UK remains committed to upholding our international obligations in the key international treaties in this area. We are fully committed to maintaining the UK's strong and effective enforcement regime.

COVID-19 Impact on Intellectual Property in the UK

The lockdown has had an impact on both the UK Intellectual Property Office (IPO) and our customers, many of whom no longer have access to their offices. Despite our main office site being closed to staff, we were clear from the outset that the IPO remained open for business and that our high quality services would continue, with the possibility of some delays. Our IT infrastructure (mobile devices) and ability to get additional equipment out to our staff meant we quickly moved to a remote working operation for over ninety five percent of our staff.

A significant impact was how quickly we transitioned to email instead of post for incoming correspondence and for much of our outgoing correspondence, which reduced the need for customers and staff to physically attend offices. Filing volumes for registered rights remain high and we have continued to ensure that UK businesses can secure the IP rights they need.

To further assist customers we declared a period of interrupted days under the relevant legislation^[1]. This means that any deadlines for registered IP rights and applications for these rights which fall on an interrupted day will be extended to the next non-interrupted day. We have recently confirmed that the period of interruption will end on 29 July, giving customers five weeks' notice to allow them time to manage their work.

Specifically, on the enforcement of IP rights during the pandemic, the IPO's IP Crime Intelligence Hub has been monitoring the movement of traditional counterfeiters into COVID-19 related products including PPE, test kits and other medical supplies. Bulletins produced by the team are distributed weekly to a wide range of enforcement agencies throughout the UK.

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^[1] Rule 110 of the Patents Rules 2007, rule 75 of the Trade Marks Rules 2008, and rule 40 of the Designs Rules 2006.



Committee on the Future Relationship with the European Union

House of Commons, London, SW1A 0AA

Email: freucom@parliament.uk Website: <https://committees.parliament.uk/committee/366/committee-on-the-future-relationship-with-the-european-union/>

11 June 2020

Mr Adam Williams
Director of International Policy
UK Intellectual Property Office

Dear Mr Williams,

The House of Commons Committee on the Future Relationship with the European Union is inquiring into the progress of the negotiations between the UK and the EU. Under normal circumstances, the Committee holds regular oral evidence sessions in Westminster. However, measures to prevent the spread of the coronavirus make this difficult.

The Committee is keen to gather as much evidence as possible to inform its deliberations so I am writing to you to ask whether you would be willing to help us with our work by making a written submission. We welcome general responses to our [call for evidence](#), which was published on 4 March. We also hope that you would be willing to answer some of the more specific questions set out below on issues that fall within your area of expertise. Submissions need not address every bullet point and can include other matters that you think are relevant to the negotiations and should be drawn to the attention of the Committee.

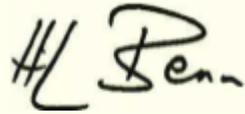
For the purposes of this letter on intellectual property, we are concerned with trademarks, designs, copyright, database rights, patents and trade secrets. Please therefore take references to intellectual property in the questions to exclude geographical indications and plant varieties. We intend to cover these separately at a later stage.

- What are the current provisions covering intellectual property in the Withdrawal Agreement?
- How do the UK and the EU's positions in the negotiations compare with regard to intellectual property?
- What are the key concerns of your clients regarding intellectual property matters in the negotiations between the UK and the EU?
- Why do you think the EU does not want to include audio-visual services in any agreement? How might the EU's reluctance to consider audio-visual services in the negotiations impact on the intellectual property of the UK's audio-visual services industry?
- Based on the parameters set out by the UK and EU draft legal texts, could reaching an agreement with the EU restrict the UK's ability to pursue agreements on intellectual property matters with third countries? If so, how?
- Could you sketch out a possible compromise between the UK and the EU on intellectual property and how it might be achieved?
- What would happen if agreement was not reached between the UK and the EU on intellectual property matters? What would be the international legal baseline they would fall back on?
- What are the mechanisms for the protection and enforcement of intellectual property rights across Europe beyond those governed by the legal order of the EU and the jurisprudence of the CJEU? Will the UK need to accede to these mechanisms after the Transition Period if it wanted to take advantage of them, or has it already done so?

- Has COVID-19 had any impact on the administration and enforcement of intellectual property in the UK? What lessons can be learned from this that could assist in preparations for a new intellectual property regime after the Transition Period ends?

The Committee staff will be happy to discuss the inquiry, any issues raised, or the process for submitting written evidence. You can contact them at freucom@parliament.uk.

Yours,

A handwritten signature in black ink, appearing to read 'H/ Benn'.

Hilary Benn
Chair of the Committee