

PLANNING FOR UNCERTAIN TIMES

Helen Brain, Commercial, Information Technology (IT) and Intellectual Property (IP) partner at Square One Law, previously worked for K&L Gates in London and for the government in Dubai. Here, she highlights the key areas businesses should be aware of in the post-Referendum IT and IP landscape.

Leaving the EU will create significant challenges for all businesses, not least expected currency fluctuations, the mobility of staff across borders which is particularly relevant for the region's digital economy and the level of finance available to assist growth plans. Business decision makers would be prudent to include potential effects on long term contracts, intellectual property rights and data protection legislation in their top areas of future risk planning. The main issues are:

Supply chain changes: The majority of UK businesses will see their commercial relationships across supply and distribution chains change as the UK starts the process of leaving the EU. This is especially pertinent to those who currently have longstanding supply contracts; even those who are UK-based and trade solely in this country need to consider their suppliers up and down the chain and whether they trade outside of our borders. Equally, long term agreements may be adversely affected by termination provisions agreed without Brexit and its consequences in mind.

Secure storage of data: There are new data protection regulations coming into force which represent a major change, and risk, for most businesses so the upgrading of IT security is essential to ensure that you have adequate data subject consents in place for the secure storage of employee and customer information. This new legislation will introduce a mandatory 'reporting of breach' for companies as well as fines of up to 4% of a business' worldwide turnover, so planning now could save significant sums in the future.

Copyright: Any effect on commercial copyright may depend on the way in which the UK exits Europe. There are imminent reviews of existing legislation under the EU's Digital Single Market Strategy, but depending on the timing of an exit from the EU the UK could lose any input into the reform of EU laws on copyright and further plans for e-Privacy reform in Europe. This could be a major issue for those

operating in, or marketing to Europe and has the potential to create a two tier system.

Protect your brand: IP legislation in the UK encompasses everyday concerns for businesses such as patents, design rights and new trade mark registration, or enforcement of current trade marks. The current legal framework surrounding them is fairly standardised across Europe which gives a good level of protection to UK companies if rights become infringed. It is not yet agreed how existing Community Trade Marks and Community Registered Designs will be dealt with, but such existing registrations may simply cease to provide protection for the UK, leaving owners to apply for equivalent protection, or could even create non-tariff barriers to trading with the EU in the future.

Key considerations for the future include budgeting for additional costs of securing these separate UK registrations.

Transitioning: all businesses should expect a period of post-Brexit transition where the UK government re-negotiates our rights. Due to the complexity, volume and inter-connectivity of the subjects being discussed at the negotiating table, the external environment is likely to be highly changeable. It is therefore vital that any professional advice businesses take is from a suitably placed adviser and should be reviewed regularly.

Preparation is key: the future of IT and IP law is an area which is likely to receive increasing attention as we start to understand the full extent of when and how the UK will leave the EU. Although the business implications will ultimately be shaped by the exit model the UK adopts, it is vital that those wishing to prepare as fully as they can for such an uncertain environment will embrace planning as a positive action to secure their business' future. The North East IT industry may indeed see some benefit from Brexit in the form of additional human resources availability if the feared exodus from London-based institutions becomes a reality.



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