

Copyright if there's no Brexit deal

Summary

How cross-border copyright would be affected if the UK leaves the EU in March 2019 with no deal.

Detail

If the UK leaves the EU in March 2019 without a deal, find out how this would affect cross-border copyright.

This is one of four notices covering intellectual property. The other notices cover:

- [EU Trade Marks and Community designs](ADD WEBLINK)
- [patents](ADD WEBLINK)
- [exhaustion](ADD WEBLINK)

A scenario in which the UK leaves the EU without agreement (a 'no deal' scenario) remains unlikely given the mutual interests of the UK and the EU in securing a negotiated outcome.

Negotiations are progressing well and both we and the EU continue to work hard to seek a positive deal. However, it's our duty as a responsible government to prepare for all eventualities, including 'no deal', until we can be certain of the outcome of those negotiations.

For two years, the government has been implementing a significant programme of work to ensure the UK will be ready from day 1 in all scenarios, including a potential 'no deal' outcome in March 2019.

It has always been the case that as we get nearer to March 2019, preparations for a no deal scenario would have to be accelerated. Such an acceleration does not reflect an increased likelihood of a 'no deal' outcome. Rather it is about ensuring our plans are in place in the unlikely scenario that they need to be relied upon.

This series of technical notices sets out information to allow businesses and citizens to understand what they would need to do in a 'no deal' scenario, so they can make informed plans and preparations.

This guidance is part of that series.

Also included is an [overarching framing notice](<https://www.gov.uk/government/publications/uk-governments-preparations-for-a-no-deal-scenario/>) explaining the government's overarching approach to

preparing the UK for this outcome in order to minimise disruption and ensure a smooth and orderly exit in all scenarios.

We are working with the devolved administrations on technical notices and we will continue to do so as plans develop.

Purpose

If the UK leaves the EU in March 2019 without a deal, find out in this notice how this would affect cross border copyright.

Before 29 March 2019

The UK and other EU member states are party to the main international treaties on copyright and related rights. Under the rules of these treaties, countries provide copyright protection for works originating in or made by nationals of other countries. These rules underpin the copyright legislation in all member states of the EU and do not depend on the UK's membership of the EU.

There is also a body of EU law on copyright and related rights that goes beyond the provisions of the international treaties, including several cross-border copyright mechanisms. These mechanisms are unique to the EU and provide reciprocal protections and benefits between EU member states. They include:

- Sui generis database rights. Under the Database Directive (Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases, extended to the EEA in paragraph 9a, Annex XVII of EEA Agreement), nationals, residents, and businesses of EEA member states are eligible for database rights in all EEA member states. These rights are unique to the EEA and do not arise in relation to databases created or owned by non-EEA citizens, residents, or businesses.
- Portability of online content service. The Portability Regulation (Regulation (EU) 2017/1128 of the European Parliament and of the Council of 14 June 2017 on cross-border portability of online content services in the internal market) allows consumers to access their online content services when they are temporarily in an EU member state other than their home state.
- Country-of-origin principle for copyright clearance in satellite broadcasting. The Satellite and Cable Directive (Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable

retransmission, extended to the EEA in paragraph 8, Annex XVII of the EEA Agreement) simplifies the clearance of rights for cross-border satellite broadcasting. Under the Directive, a satellite broadcaster can broadcast a work protected by copyright into any EEA member state after having cleared the copyright requirements for the member state in which the broadcast originates. Wider country-of-origin issues in relation to broadcasting are covered in [Broadcasting and video on demand if there's no Brexit deal](<https://www.gov.uk/government/publications/broadcasting-and-video-on-demand-if-theres-no-brexite-deal/broadcasting-and-video-on-demand-if-theres-no-brexite-deal>).

- Orphan works (works without documented owners) copyright exception. The Orphan Works Directive (Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works, extended to the EEA in paragraph 10, Annex XVII of the EEA Agreement) allows cultural heritage institutions established in the EEA to digitise orphan works in their collection and make them available online across the EEA without the permission of the right holder.
- Collective management of copyright. The Collective Rights Management Directive (Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market, extended to the EEA in paragraph 11, Annex XVII of the EEA Agreement) places obligations on EEA Collective Management Organisations – bodies that manage the licensing of copyright works on behalf of right holders. Among these is a requirement that EEA Collective Management Organisations that offer multi-territorial licensing of online rights of musical works must represent on request the catalogues of EEA Collective Management Organisations that do not offer such licences.
- Cross-border transfer of accessible format copies of copyright works. The Marrakesh Directive (Directive (EU) 2017/1564 of the European Parliament and of the Council of 13 September 2017 on certain permitted uses of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled and amending Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society) and Regulation (Regulation (EU) 2017/1563 of the European Parliament and of the Council of 13 September 2017 on the cross-border exchange between the Union and third countries of accessible format copies of certain works and other subject matter protected by copyright and related rights for the benefit of

persons who are blind, visually impaired or otherwise print-disabled) implement the Marrakesh Treaty (the Marrakesh VIP Treaty, previously the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled) in EU law and allow the cross-border transfer of accessible format copies of copyright works between EU member states and with other countries that have ratified the Treaty.

The Portability and Marrakesh Regulations take effect directly in the UK. The remainder of the cross-border mechanisms have been or will be implemented in UK legislation.

After March 2019 if there's no deal

The UK's continued membership of the main international treaties on copyright will ensure that the scope of protection for copyright works in the UK and for UK works abroad will remain largely unchanged.

The EU cross-border copyright mechanisms extend only to member states of the EU or EEA. On exit, the UK will be treated by the EU and EEA as a third country and the reciprocal element of these mechanisms will cease to apply to the UK.

The EU Directives and Regulations on copyright and related rights will be preserved in UK law as retained EU law under the powers in the EU Withdrawal Act 2018. The government will make adjustments under the powers of the Act to ensure the retained law can operate effectively.

Implications

In respect of the cross-border mechanisms, in a 'no deal' scenario for:

- Sui generis database rights. There will be no obligation for EEA states to provide database rights to UK nationals, residents, and businesses. UK owners of UK database rights may find that their rights are unenforceable in the EEA.
- Portability of online content service. The Portability Regulation will cease to apply to UK nationals when they travel to the EU. This means online content service providers will not be required or able to offer cross-border access to UK consumers under the EU Regulation. UK consumers may see restrictions to their online content services when they temporarily visit the EU.

- Country-of-origin principle for copyright clearance in satellite broadcasting. UK-based satellite broadcasters that currently rely on the country-of-origin copyright clearance rule when broadcasting into the EEA may need to clear copyright in each member state to which they broadcast.
- Orphan works copyright exception. UK-based Cultural Heritage Institutions that make works available online in the EEA under the exception may be infringing copyright.
- Collective management of copyright. UK Collective Management Organisations will not be able to mandate EEA Collective Management Organisations to provide multi-territorial licensing of the online rights in their musical works.
- Cross-border transfer of accessible format copies of copyright works. The UK intends to ratify the Marrakesh Treaty after exit but ratification will not have taken place before 29 March 2019. Between exit and the point of ratification, businesses, organisations or individuals transferring accessible format copies between the EU and UK may not be able to rely on the EU Regulation.

Actions for businesses and other stakeholders

Businesses and other interested parties may wish to seek legal advice on how these arrangements could affect their business model or intellectual property rights, for example:

- Sui generis database rights. UK owners may want to consider relying on other forms of protection (e.g. restrictive licensing agreements or copyright where applicable) for their databases.
- Portability of online content service. UK consumers may see restrictions to their online content services when they temporarily visit the EU.
- Country-of-origin principle for copyright clearance in satellite broadcasting. UK-based satellite broadcasters may need to clear copyright in each member state to which they broadcast. Broadcasters may want to consider whether they need to seek additional copyright permissions.
- Orphan works copyright exception. Institutions that currently use the exception may want to consider whether they need to remove works from their websites or limit access to content on a geographical location basis in the EEA.

- Collective management of copyright. UK Collective Management Organisations that currently rely on this right may want to consider seeking to continue existing arrangements with EEA Collective Management Organisations via new contractual arrangements.
- Cross-border transfer of accessible format copies of copyright works. Businesses, organisations or individuals transferring accessible format copies between the EU and UK may want to consider whether they need to seek the permission of the relevant right holders or cease the cross-border transfer of accessible copies.

More information

The government will be working closely with business representatives, trade associations and other stakeholders on the implications of our plans.

In order to prepare the UK's statute book for its exit from the EU the UK government will be passing technical changes through statutory legislation in Parliament over the coming months, using powers under the EU Withdrawal Act 2018. The government will be publishing detailed guidance alongside any legislative changes and will work closely with business representatives, trade associations and stakeholders on the implications.

The Intellectual Property Office has also published a [factsheet on intellectual property rights and EU exit](<https://www.gov.uk/government/news/ip-and-brex-it-the-facts>).

This notice is meant for guidance only. You should consider whether you need separate professional advice before making specific preparations.

It is part of the government's ongoing programme of planning for all possible outcomes. We expect to negotiate a successful deal with the EU.

The UK government is clear that in this scenario we must respect our unique relationship with Ireland, with whom we share a land border and who are co-signatories of the Belfast Agreement. The UK government has consistently placed upholding the Agreement and its successors at the heart of our approach. It enshrines the consent principle on which Northern Ireland's constitutional status rests. We recognise the basis it has provided for the deep economic and social cooperation on the island of Ireland. This includes North-South cooperation between

Northern Ireland and Ireland, which we're committed to protecting in line with the letter and spirit of Strand two of the Agreement.

The Irish government have indicated they would need to discuss arrangements in the event of no deal with the European Commission and EU member states. The UK would stand ready in this scenario to engage constructively to meet our commitments and act in the best interests of the people of Northern Ireland, recognising the very significant challenges that the lack of a UK-EU legal agreement would pose in this unique and highly sensitive context.

It remains, though, the responsibility of the UK government, as the sovereign government in Northern Ireland, to continue preparations for the full range of potential outcomes, including no deal. As we do, and as decisions are made, we'll take full account of the unique circumstances of Northern Ireland.

Norway, Iceland and Liechtenstein are party to the Agreement on the European Economic Area and participate in other EU arrangements. As such, in many areas, these countries adopt EU rules. Where this is the case, these technical notices may also apply to them, and EEA businesses and citizens should consider whether they need to take any steps to prepare for a 'no deal' scenario.