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REV3 – replaces the notice (REV2) dated
22 November 2019

NOTICE TO STAKEHOLDERS

WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES IN THE FIELD OF COPYRIGHT AND RELATED RIGHTS

Since 1 February 2020, the United Kingdom has withdrawn from the European Union and has become a “third country”.¹ The Withdrawal Agreement² provides for a transition period ending on 31 December 2020.³ Until that date, EU law in its entirety applies to and in the United Kingdom.⁴

During the transition period, the European Union and the United Kingdom will negotiate an agreement on a new partnership, providing notably for a free trade area. However, it is not certain whether such an agreement will be concluded and will enter into force at the end of the transition period. In any event, such an agreement would create a relationship which in terms of market access conditions will be very different from the United Kingdom’s participation in the internal market,⁵ in the EU Customs Union, and in the VAT and excise duty area.

Moreover, after the end of the transition period the United Kingdom will be a third country as regards the implementation and application of EU law in the EU Member States.

Therefore, all interested parties, and especially economic operators, are reminded of the legal situation after the end of the transition period (Part A below). This notice also explains certain relevant separation provisions of the Withdrawal Agreement (Part B below).

¹ A third country is a country not member of the European Union.

² Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, OJ L 29, 31.1.2020, p. 7 (“Withdrawal Agreement”).

³ The transition period may, before 1 July 2020, be extended once for up to 1 or 2 years (Article 132(1) of the Withdrawal Agreement). The UK government has so far ruled out such an extension.

⁴ Subject to certain exceptions provided for in Article 127 of the Withdrawal Agreement, none of which is relevant in the context of this notice.

⁵ In particular, a free trade agreement does not provide for internal market concepts (in the area of goods and services) such as mutual recognition, the “country of origin principle”, and harmonisation. Nor does a free trade agreement remove customs formalities and controls, including those concerning the origin of goods and their input, as well as prohibitions and restrictions for imports and exports.

Advice to stakeholders:

Stakeholders are in particular advised to assess the consequences of the end of the transition period in view of this notice.

Please note:

This notice does not address:

- EU rules on other intellectual property rights;
- EU rules on exhaustion of intellectual property rights;
- EU rules on customs enforcement of intellectual property rights;
- EU rules on audiovisual and media services;
- EU rules on geoblocking;
- EU rules on electronic commerce and net neutrality.

For these aspects other notices are in preparation or have been published.⁶

A. LEGAL SITUATION AFTER THE END OF THE TRANSITION PERIOD

After the end of the transition period, the EU rules in the field of copyright and related rights no longer apply to the United Kingdom. This has in particular the following consequences:

1. GENERAL CONSEQUENCES: THE APPLICATION OF THE MAIN MULTILATERAL INTERNATIONAL COPYRIGHT AGREEMENTS TO THE EU-UNITED KINGDOM RELATIONSHIP IN THE FIELD OF COPYRIGHT AND RELATED RIGHTS

The United Kingdom and the European Union are contracting parties to many of the main multilateral international copyright agreements, such as the World Intellectual Property Organization (WIPO) Copyright Treaty (WCT), the WIPO Performances and Phonograms Treaty (WPPT)⁷ and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).^{8,9}

⁶ https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/future-partnership/preparing-end-transition-period_en

⁷ <http://www.wipo.int/treaties/en/>

⁸ https://www.wto.org/english/tratop_e/trips_e/trips_e.htm

⁹ The United Kingdom is furthermore a party to the Berne Convention for the Protection of Literary and Artistic Works, which the European Union is not. However, the European Union is required pursuant to Article 1(4) WCT to apply Article 1-21 and the Appendix of the Berne Convention.

After the end of the transition period, in accordance with the obligations under these multilateral international agreements and in particular the principles of “national treatment” and “most favoured nation” of nationals and legal persons that meet the criteria of eligibility for protection within the scope of the TRIPS Agreement, these multilateral international agreements will apply to the EU-United Kingdom relationship in the field of copyright and related rights in respect of the following issues:

- the protection of copyright and related rights (e.g. exclusive rights of reproduction, distribution, rental, communication and making available for authors; and where applicable also to holders of related rights, such as phonogram producers, performers and broadcasting organisations);
- the term of protection of copyright and certain related rights;
- obligations concerning technological protection measures and rights management information;
- databases, except as set out below;
- computer programs;
- semiconductor topographies;
- enforcement of copyright (as one of the intellectual property rights in part three of the TRIPS Agreement), including border measures.

It should be noted that the multilateral international agreements mentioned above do not provide for the same type or level of protection in relation to certain rights and, where applicable, exceptions or limitations to those rights as that set out today in the EU rules in the field of copyright and related rights. In addition, EU rules in the field of copyright and related rights provide for certain forms of *lex specialis* or particular cross-border measures for the benefit of rightholders or users in the internal market and/or the management of rights, which have no counterpart in these multilateral international agreements.

2. SPECIFIC CONSEQUENCES IN THE FIELD OF COPYRIGHT AND RELATED RIGHTS

In addition, the end of the transition period will have in particular the following consequences in the field of copyright and related rights.

2.1. Broadcasters

Directive 93/83/EEC on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission¹⁰ provides *inter alia* that the act of communication to the public by satellite occurs solely in the Member State where the broadcast signals are introduced, thus localising the copyright relevant acts for the

¹⁰ 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, OJ L 248, 6.10.1993, p. 15.

purpose of licensing. Consequently, in order to broadcast a work or other subject matter, broadcasters only have to clear rights in the Member State where the signal is introduced.

After the end of the transition period, broadcasters in the United Kingdom will no longer benefit from the mechanism provided for by the Directive when providing cross-border satellite broadcasting services to EU customers and they will have to clear rights in all Member States where the signal reaches. Correspondingly, broadcasters in the European Union will no longer be able to benefit from the mechanism provided for by EU law when providing cross-border satellite broadcasting services to customers in the United Kingdom and they may have to secure clearance of the rights of all relevant rightholders if they wish to broadcast to the United Kingdom.

2.2. Collective Rights Management (online rights in musical works)

Article 30 of Directive 2014/26/EU on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market¹¹ provides for an obligation on a collective management organisation to represent another collective management organisation for multi-territorial licensing (for the online rights in musical works) in certain cases.

After the end of the transition period, EU collective management organisations will not be subject to the obligation to represent collective management organisations based in the United Kingdom for multi-territorial licensing in accordance with Article 30 of Directive 2014/26/EU and vice versa.

2.3. Orphan Works

Certain cultural institutions in the European Union can benefit from a system of mutual recognition of orphan works in Directive 2012/28/EU on certain permitted uses of orphan works.¹² This system allows them to digitise and make a work available online in all Member States once it is recognised as an orphan work in one Member State.

After the end of the transition period, the mechanism of mutual recognition provided for by Directive 2012/28/EU will no longer apply between the United Kingdom and the European Union. Consequently, orphan works which have been recognised in the United Kingdom by the end of the transition period will no longer be recognised in the European Union under Directive 2012/28/EU and the same will apply for orphan works recognised in the European Union, as the system of mutual recognition under Directive 2012/28/EU will no longer be available in the United Kingdom. As a consequence, this means that the uses of orphan works from the United

¹¹ 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, OJ L 84, 20.3.2014, p. 72.

¹² Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works, OJ L 299, 27.10.2012, p. 5.

Kingdom allowed under the Directive, notably as regards making them available online, will no longer be allowed for cultural institutions in the European Union and vice versa.

2.4. Access to published works for persons who are blind, visually impaired or otherwise print-disabled

Directive (EU) 2017/1564 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-disabled¹³ introduces a mandatory exception for the benefit of persons who are blind, visually impaired or otherwise print-disabled and for authorised entities operating on behalf of these persons. The Directive furthermore provides that such authorised entities may rely on the exception for a beneficiary person or another authorised entity established in other Member States and that beneficiary persons and authorised entities may have access to accessible format copies from an authorised entity established in any Member State.

After the end of the transition period, beneficiary persons and authorised entities in the United Kingdom will no longer be able to obtain accessible format copies from authorised entities in the European Union under the framework provided for by Directive (EU) 2017/1564. Conversely, beneficiary persons and authorised entities in the European Union will not be able to obtain accessible format copies from authorised entities in the United Kingdom either.

The exchange of accessible format copies between the European Union and third countries that have ratified the Marrakesh ¹⁴Treaty is governed by Regulation (EU) 2017/1563¹⁵ 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. In this context it is important to note, that the United Kingdom is currently not a party to the Marrakesh Treaty.

2.5. Online content Portability

Regulation (EU) 2017/1128 on cross-border portability of online content services in the internal market¹⁶ establishes that the provision of an online

¹³ 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, OJ L 242, 20.9.2017, p. 6.

¹⁴ Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled.

¹⁵ 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, OJ L 242, 20.9.2017, p. 1.

¹⁶ 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, OJ L 168, 30.6.2017, p. 1.

content service to a subscriber who is temporarily present in a Member State, as well as the access to and the use of that service by the subscriber, shall be deemed to occur solely in the subscriber's Member State of residence.

After the end of the transition period, persons residing in the United Kingdom will no longer benefit from their digital content subscriptions when travelling to the European Union and a provider of online content services established in the United Kingdom will need to comply with the rules of the relevant EU Member State or States where it wishes to offer services to its subscribers – including the need to clear all relevant rights for that or those Member States.

2.6. *Sui generis* database right

Article 7 of Directive 96/9/EC on the legal protection of databases¹⁷ grants under certain conditions protection to the makers of databases in the EU Member States ("*sui generis* database right"). Article 11 of Directive 96/9/EC restricts the beneficiaries of protection under the *sui generis* right to the database makers (or rightholders) that are nationals of an EU Member State, have their habitual residence in the territory of the European Union or are companies/firms formed in accordance with the law of an EU Member State (and having their registered office, central administration or principal place of business within the European Union).

After the end of the transition period, United Kingdom nationals (unless they have their habitual residence in the European Union) and companies/firms formed in accordance with the law of the United Kingdom will no longer be entitled to obtain a *sui generis* database right in respect of databases in the European Union.¹⁸ Conversely, EU Member States nationals and companies/firms will not be entitled, on the basis of EU law, to obtain a *sui generis* database right in respect of databases in the United Kingdom.

B. RELEVANT SEPARATION PROVISIONS OF THE WITHDRAWAL AGREEMENT

Article 58 of the Withdrawal Agreement provides for the continued protection of existing *sui generis* database rights in the United Kingdom and in the European Union after the end of the transition period.

1. CONTINUED PROTECTION OF SUI GENERIS DATABASE RIGHTS IN THE UNITED KINGDOM

Article 58(1) of the Withdrawal Agreement provides that the holder of a right in relation to a database in respect of the United Kingdom in accordance with Article 7 of Directive 96/9/EC which arose before the end of the transition period is to, in relation to that database, maintain an enforceable intellectual property right in the United Kingdom, under the law of the United Kingdom, that affords the same level of protection as that provided for in Directive 96/9/EC, provided that the holder of

¹⁷ Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases, OJ L 77, 27.3.1996, p. 20.

¹⁸ For databases protected before the end of the transition period, see Part B of this notice.

that right continues to comply with the requirements of Article 11 of that Directive. The term of protection of that right under the law of the United Kingdom is to be at least equal to the remaining period of protection under Article 10 of Directive 96/9/EC.

2. CONTINUED PROTECTION OF SUI GENERIS DATABASE RIGHTS IN THE EUROPEAN UNION

Article 58(2) of the Withdrawal Agreement provides that the following persons and undertakings are to be deemed to comply with the requirements of Article 11 of Directive 96/9/EC and can therefore maintain their *sui generis* database rights:

- (a) United Kingdom nationals;
- (b) natural persons with a habitual residence in the United Kingdom;
- (c) undertakings established in the United Kingdom, provided that where such an undertaking has only its registered office in the United Kingdom, its operations are genuinely linked on an ongoing basis with the economy of the United Kingdom or of a Member State.

The website of the Commission on EU rules on Digital Single Market (<https://ec.europa.eu/digital-single-market/en/policies/copyright>) provides general information concerning Union legislation applicable to copyright and related rights. These pages will be updated with further information, where necessary.

European Commission
Directorate-General Communications Networks, Content and Technology