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DSM and Brexit

Brexit means ... possibly not the DSM

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AIJA

The European Digital Single Market – Breaking Down Barriers, Click by Click

Dublin, 30 March 2017

“We do not approach these negotiations expecting failure, but anticipating success. Because we are a great, global nation with so much to offer Europe and so much to offer to the world.”

Theresa May

The United Kingdom’s exit from and new partnership with the European Union

February 2017

What's being served



- Article 50 TEU
- 2-year negotiation
- What Brexit?
 - Soft: UK to be part of EEA
 - Hard: outside single market; not bound by EU legislation, nor CJEU decisions
 - 'Crash'

Contents

- What Brexit might mean for
 - Trade marks
 - Designs
 - Patents
 - Copyright
- UK and the Digital Single Market Strategy
- What awaits the UK?

What Brexit might mean for principal IPRs

- Different legislative instruments and degrees of harmonization
- Regulations vs directives

Trade marks

- a. Do nothing: EUTM owners to lose rights in the UK
- b. Make a deal with EU: UK remains within EUTM system
- c. Adopt UK legislation to give EUTM owners rights in post-Brexit UK

□ **015585649 - BREXIT** [+ info](#)

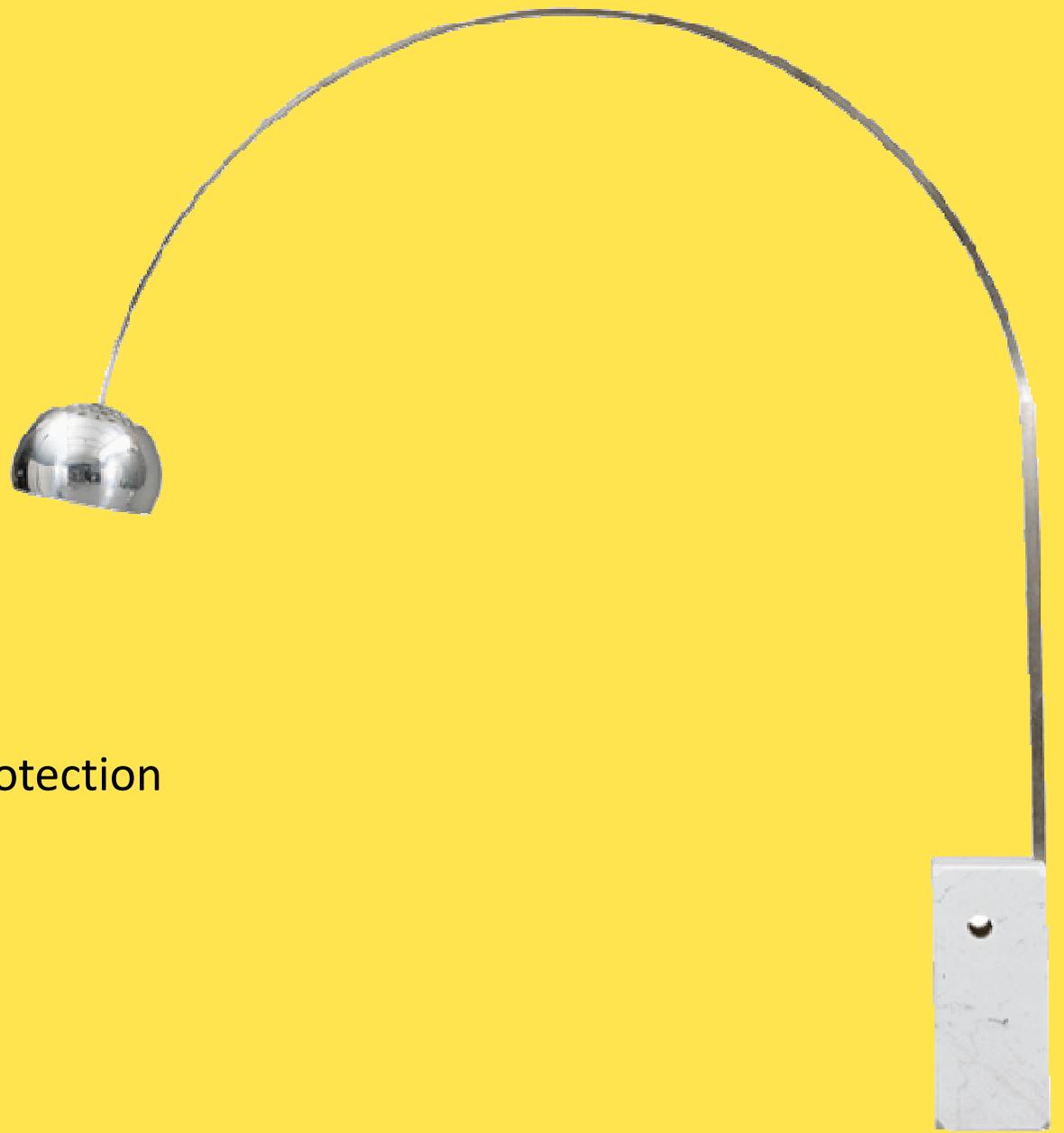


Trade mark information

Trade mark number	015585649
Type	Word
Filing date	28/06/2016
Registration date	
Nice Classification	33
Trade mark status	Application under examination
Basis	EUTM
Reference	Pt-GOELL/04999

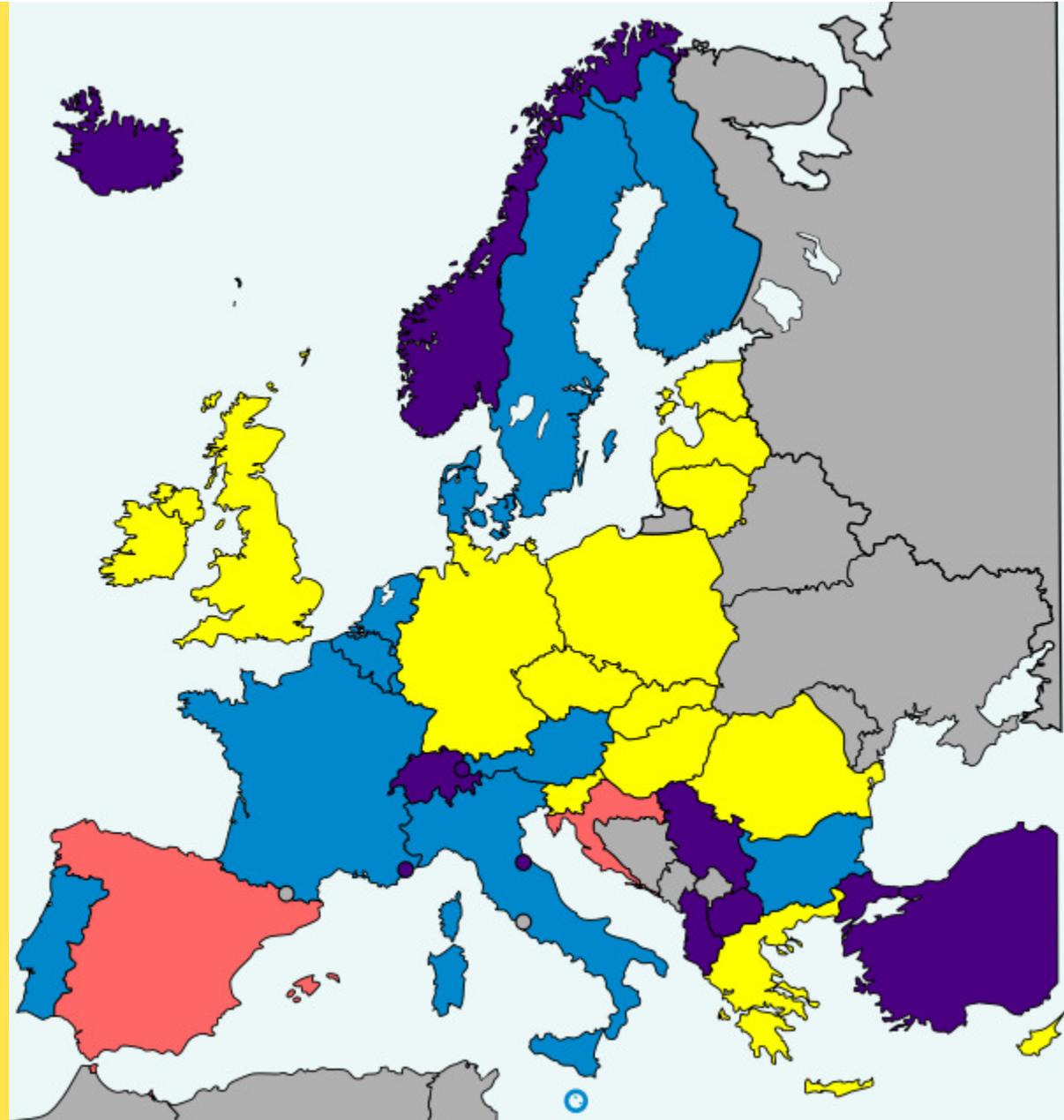
Designs

- Similar to trade marks
- Possibility to reinstate s52 CDPA
 - CJEU decision in *Flos*, C-168/09
 - Cumulate copyright and design protection



Patents

- EPC unaffected
- Unitary patent
 - Established by means of international (not EU) agreement
 - UK Gov't said it intends to ratify UPC agreement
 - But what about CJEU jurisdiction?



Copyright

- Implementation of EU directives: CDPA amendments or regulations
- Certain provisions already out-of-sync with EU law
- Certain provisions add more than what EU law requires
- Certain EU law provisions not even transposed
- References to 'other EU Member States'

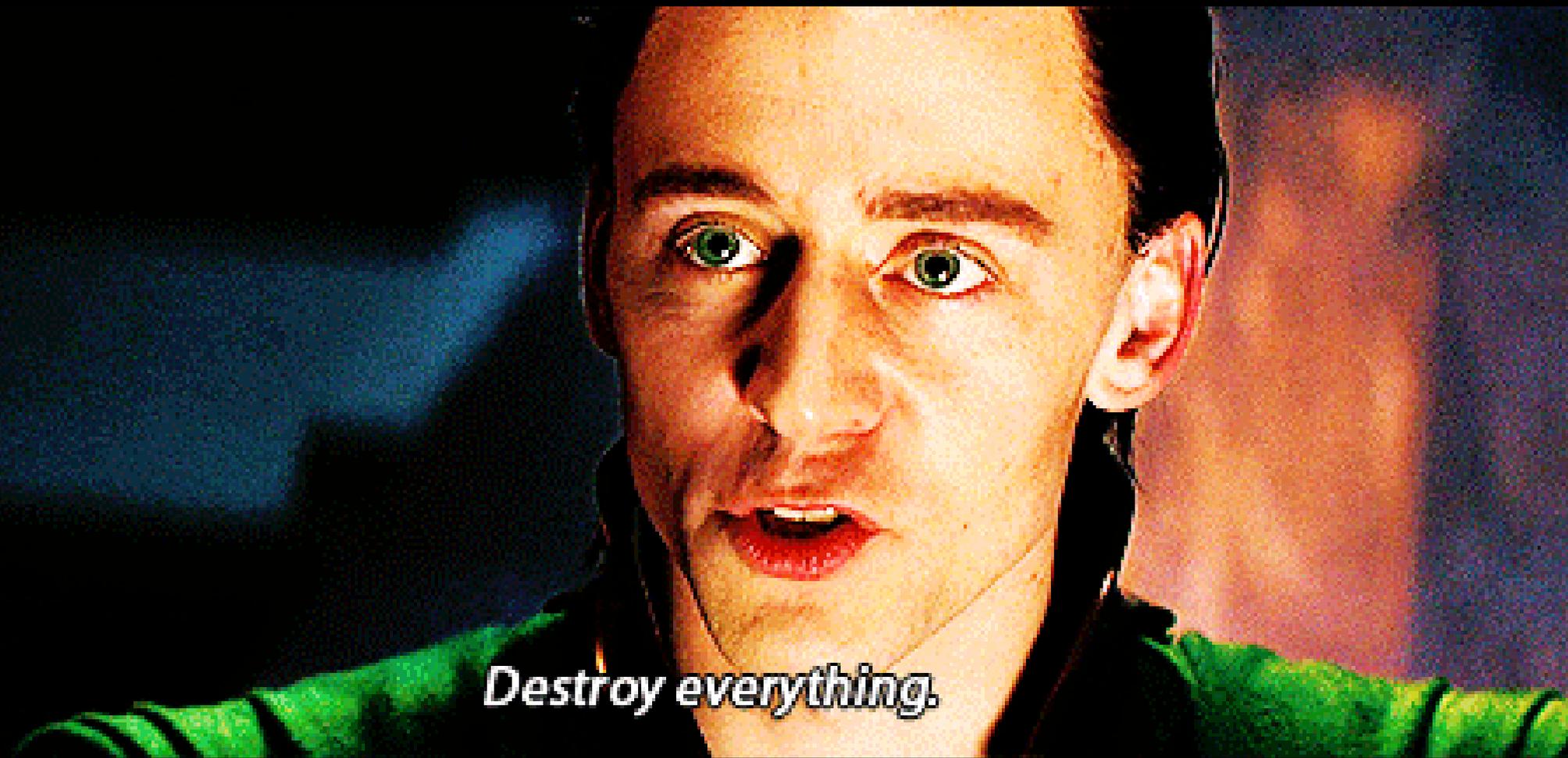
CJEU copyright case law

- Originality and subject-matter categorization
- Infringement standard
- Construction of exclusive rights

UK and the Digital Single Market Strategy

- The forthcoming EU regulations
- The forthcoming proposal for a Directive on copyright in the DSM

What awaits the UK?



Destroy everything.

What will change with Brexit

- EU directives possibly no longer applicable (if outside EEA) but will UK law change overnight?
- No more CJEU references but what will the value of CJEU judgments be?
- More opportunities?
 - Exceptions: fair use?
 - Going back to 'old' standards?
 - A different trade mark law?

In conclusion

Brexit means ... what?



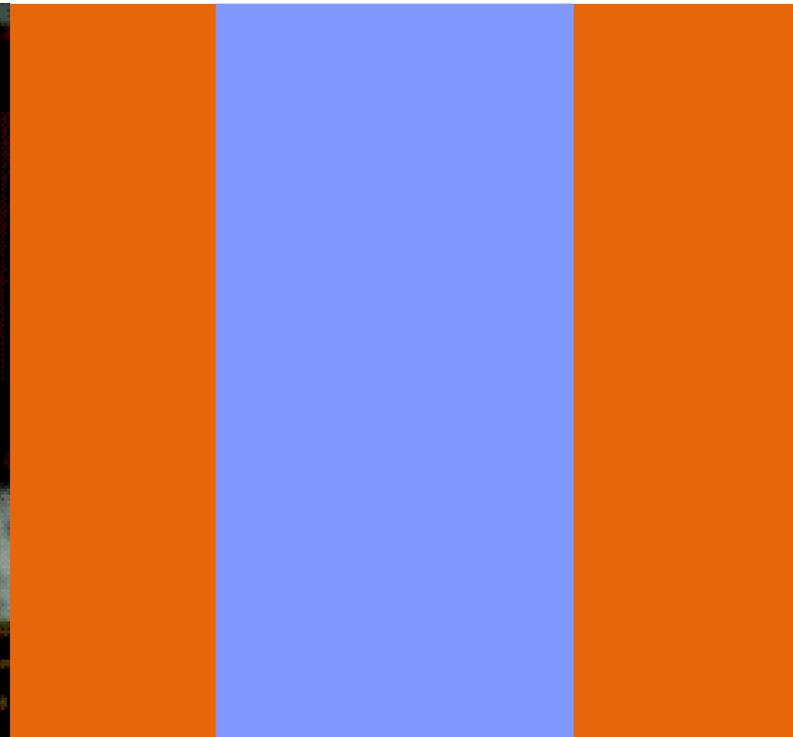
That's not yogurt, that's mayonnaise.

Likely





Don't be defeatist, dear. It's very middle class.



Thanks for your
attention!

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