



Doing Business Abroad


# Protecting your IP in the United Kingdom



Innovation, Science and  
Economic Development Canada  
Canadian Intellectual Property Office

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Cat.No.lu71-4/106-2023E-PDF  
ISBN 978-0-660-67733-0



**Doing Business Abroad**

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Doing Business Abroad

# Protecting your IP in the United Kingdom

**Intellectual property (IP)** is a valuable asset that can support your business expansion abroad. A Canadian patent, trademark or industrial design does not secure your rights outside Canada. You should consider obtaining IP protection in the countries where you plan on doing business, including selling products over the Internet and/or manufacturing products overseas.

Following the withdrawal of the United Kingdom (UK) from the European Union (EU) and the end of the transition period on December 31, 2020, commonly referred to as “Brexit,” the UK’s IP laws and system are, with certain exceptions for Northern Ireland, no longer governed by EU regulations and directives. So, it is prudent for Canadian companies doing business in the UK to understand the impacts of any post-Brexit changes to UK IP laws and regulations, to ensure their IP assets remain protected.

Canada and the UK enjoy a long and robust commercial relationship. The UK is Canada’s most important commercial partner in Europe and 4th largest globally. Both countries also have strong partnerships in science, technology and innovation, with thriving networks of researchers, universities and R&D-intensive companies. Given the significance of the UK market, it is important to know how to recognize, register and enforce your IP rights in the UK.





# Where is IP registered?

The **Intellectual Property Office of the United Kingdom (UKIPO)** is the official UK government body responsible for IP rights, including patents, industrial designs, trademarks and copyright. The UKIPO is an executive agency sponsored by the Department for Business, Energy and Industrial Strategy and supported by the Company Names Tribunal. It is headquartered in Newport, South East Wales.

- IP registered in the UK is protected in England, Scotland, Wales and Northern Ireland (although some EU legislation continues to apply in Northern Ireland as of January 1, 2021 in accordance with the Northern Ireland Protocol). The Republic of Ireland is a sovereign country and a member state of the European Union, and therefore not governed by UK legislation, including for IP.
- Applications for patents, trademarks and industrial designs can be filed electronically at [ipo.gov.uk](http://ipo.gov.uk). The website also has online searchable databases of patents, trademarks and designs.
- English is the official language when submitting IP applications in the UK, although Welsh and Gaelic are also accepted.
- The UK follows a “first-to-file” system for trademark, patent and industrial design rights.
- Like Canada, the UK is a contracting party to the Patent Cooperation Treaty, the Hague Agreement Concerning the International Registration of Industrial Designs, and the Madrid Agreement Concerning the International Registration of Marks.



**UK**





# IP changes following Brexit

- As of January 1, 2021, EU-wide IP rights no longer grant protection in the UK and the UK is not deemed to form part of any relevant EU-wide regime (with the exception of Northern Ireland in accordance with the Northern Ireland Protocol). Note, however, that the UK remains a contracting member to the European Patent Office (EPO), which grants European patents in all 38 EPO member countries, including all 28 EU Member States.
- Brexit has particular implications for UK-registered trademarks, as well as both registered and unregistered designs.
- Trademarks and designs that were already registered in the UK through the European Union Intellectual Property office (EUIPO) or through an international filing system were copied into a comparable UK system for IP rights.

IP rights	Before Brexit and during the transition period (Before January 1, 2021)	After Brexit (After January 1, 2021)
<b>Trademarks</b>	<p>Applicants seeking to register a trademark in the UK could do so by:</p> <ul style="list-style-type: none"> <li>• filing a trademark registration application nationally with the UKIPO</li> <li>• filing an international application designating the UK through the Madrid System</li> <li>• filing for a EU-wide trademark with the EUIPO</li> </ul>	<p>EU-wide trademarks are no longer protected in the UK.</p> <p>To register a trademark in the UK, filing directly with the UKIPO or through the Madrid System, designating the UK.</p>
<b>Geographical indications (GIs)</b>	<p>Applicants seeking to register a GI in the UK could do so by registering the name of a product with the European Commission and designating the UK.</p> <p>Foreign GIs could not be registered in the UK directly.</p>	<p>All previously registered EU GIs continue to have effect, including those with UK-based origins.</p> <p>To protect GIs in Great Britain (England, Scotland and Wales) after January 1, 2021, applications must be sent directly to the Department for Environment, Food and Rural Affairs (DEFRA) for registration under the UK Scheme.</p> <p>To protect GIs in Northern Ireland, a separate application must be made for registration under the EU Scheme in accordance to the Northern Ireland Protocol.</p>
<b>Designs</b>	<p>Design owners received automatic unregistered rights for certain shapes and configuration of 3D designs as “UK design rights” and EU “unregistered Community designs” (UCD).</p> <p>Applicants seeking to register a design in the UK could do so by:</p> <ul style="list-style-type: none"> <li>• filing a design registration application nationally with the UKIPO</li> <li>• filing an international application designating the UK through the Hague System</li> <li>• filing for a registered Community design (RCD) through the EUIPO</li> </ul>	<p>New RCDs and UCDs in the EU do not provide protection nor are they enforceable in the UK.</p> <p>Existing UCDs automatically retain UK protection either as a continuing unregistered design (CUD) or a supplementary unregistered design (SUD).</p> <p>Existing RCDs were automatically copied into a UK designs register.</p> <p>No changes to “UK design rights” for the shape and configuration of unregistered designs.</p> <p>Designers that need both UK and EU-wide protection need to file 2 separate applications: one for an RCD and one for a UK registered design.</p>

IP rights	Before Brexit and during the transition period (Before January 1, 2021)	After Brexit (After January 1, 2021)
<b>Patents</b>	<p>Applicants seeking to apply for patent protection in the UK could do so by:</p> <ul style="list-style-type: none"> <li>• filing a patent application nationally with the UKIPO</li> <li>• filing an international application designating the UK through the Patent Cooperation Treaty (PCT)</li> <li>• Filing for a European patent designating the UK through the EPO</li> </ul>	<p>No changes post-Brexit to the application process, with the exception of having a valid UK address for service.</p>
<b>Copyright</b>	<p>Works of authorship continue to be eligible for automatic copyright protection in the UK and EU, as provided under the Berne Convention.</p>	<p>No changes post-Brexit to traditional forms of copyright protection.</p>

## Trademarks

- In the UK, as in Canada, a trademark distinguishes your company's goods or services from those of others in the marketplace, and can take many forms, including words, logos, colours, sounds or a combinations of these.
- Registering a trademark in the UK only protects your brand in the UK. For protection in all EU Member States, you must file separately for a EU trademark with the EUIPO.
- You must specify the classes of goods and services under the Nice Classification system for which you intend to use the brand on your application.
- Different variations of your trademark might qualify as a series, which consists of up to 6 marks in a single application. For a series to be acceptable, the marks should look, sound and/or mean the same.
- The term of protection of a UK trademark is 10 years from the registration date. Protection may be renewed indefinitely every 10 subsequent years.
- Registration of a UK trademark can be cancelled on the grounds of non-use if it has not been used for 5 years from registration.
- Before applying for registration, consider conducting a "clearance search" in order to search the UK and international trademark registry databases to see if there are any existing registered rights that could conflict with your trademark, or that cover identical or similar goods or services.
- **For additional information** on trademarks and applying for trademark registration in the UK, visit [trademarks.ipo.gov.uk](https://trademarks.ipo.gov.uk).

## Patents

- A patent in the UK gives you the right to take legal action against anyone who makes, uses, sells or imports your invention without your permission.
- To be granted a patent, your invention must be something that can be made or used, new and inventive (not just a simple modification to something that already exists).
- A patent filed in the UK is valid only in the UK, whereas a European patent is valid in all 38 EPO Member States, including the UK.
- A patent provides protection for 20 years from the filing date.
- To file an application, you may:
  - send it directly to the UKIPO (UK patent)
  - apply through the EPO (Europe-wide patent application designating national jurisdictions)
  - apply through the PCT (international application designating national jurisdictions)
- For an application filed through the UKIPO, you must pay for a patent search and a “substantive examination.” Requesting a patent search must be made within 12 months of your filing or priority date. Requesting a substantive examination must be made within 6 months of publication. Keep in mind that if you request these at the same time, the application will be processed more quickly.
- The UKIPO operates a “first-to-file” system, so the applicant with the earliest priority date will normally be entitled to be granted the patent.
- The “Green Channel” is a service that allows applicants to request accelerated processing of a patent application if the invention has an environmental benefit.
- The Patent Prosecution Highway may be used by Canadian applicants to speed up the examination process for corresponding patent applications filed with the UKIPO.
- In contrast to other European countries, there is no protection available for utility models in the UK.
- **For more information** on patents and applying for patent protection in the UK, visit [patents.ipo.gov.uk](http://patents.ipo.gov.uk).

## Industrial designs

- Industrial designs can protect the appearance, shape, configuration or decoration of the whole or part of a product. Requirements for protection include that the design is new, and creates a different overall impression to any earlier design in the market.
- In the UK, there are 2 types of protection for designs: unregistered designs and registered designs.

## Unregistered designs

Unregistered designs in the UK come in 3 ways:

Name	Scope	Duration
UK “design rights”	Automatically protect certain shape and configuration of 3D designs (e.g. packaging).	The length of protection is the earlier of 10 years after it was first sold or 15 years after it was first created. You must allow other people to use your design if they ask during the final 5 years of protection. This is known as a “licence of right.”
Continuing unregistered designs (CUD)	Protect the appearance of a product for 2D and 3D items, such as shapes, colours, textures, materials and ornamentation.	If the design was made public in the UK or EU before January 1, 2021, the CUD provides protection until the end of the 3-year period granted by the former EU-wide right (UCD).
Supplementary unregistered designs (SUD)	Identical to CUD	Applies in the UK after January 1, 2021 to grant protection for a period of 3 years from first disclosure in the UK.

- CUDs will no longer exist in the UK from January 1, 2024.
- Since Brexit, SUDs are now established by first disclosure in the UK in order to be protected as UK-unregistered designs.
- Submitting an application or paying a fee is not required for unregistered designs.

## Registered designs

- Registered designs protect any aspect of a design, which includes the appearance, shape, configuration and decoration. It gives the owner the right to prevent others from using it.
- A registered design is valid for 5 years from the date of registration and can be renewed every 5 years, for up to 25 years.
- After January 1, 2021, designers that need both UK and EU-wide protection need to file 2 separate applications: one for a UK design right, and one for an RCD valid in the EU.
- **For more information** on designs and the application process in the UK, visit [designs.ipo.gov.uk](https://designs.ipo.gov.uk).

## Copyright

- In the UK, copyright protects original creations such as literary, dramatic, musical and artistic works, sound recordings, films, broadcasts, as well as non-literary written works such as software, web content and databases.
- Copyright prevents others from copying one's work, distributing, renting or lending copies of one's work, performing, showing or playing in public one's work, as well as putting it on the Internet.
- Like in Canada, there is no formal requirement to obtain copyright protection in the UK. It arises as soon as certain requirements are met, including the need for the work to be written down, recorded or created in other fixed form. Furthermore, unlike Canada, there is no optional register for copyright works in the UK.
- Generally, the term for copyright protection for works of authorship in the UK is the life of the author, plus 70 years after the author's death, for most types of written, dramatic, musical and artistic works.
- Databases are protected by both copyright and "database rights," which are *sui generis* (one that is of its own kind, unique) rights in the UK. Copyright protects the selection or arrangement of material in a database where this is original. Database rights protect the contents of a database.
- To use copyrighted material in the UK, one can turn to the rights holder to get permission, but this is more often granted by collective management organisations, which are licensing bodies which grant rights in a single licence for a single payment.
- **For more information** on copyright in the UK, visit [copyright.ipo.gov.uk](http://copyright.ipo.gov.uk).

## Geographical indications

- In the UK, GIs refer to food, drink (wines and spirits) and agricultural products with a geographical connection, and that have a quality or reputation (e.g. such as being made using traditional methods) that is essentially attributable to that geographical location. Examples of popular GIs protected in the UK include Canadian Whisky, Scotch Whisky and Stilton cheese, which guarantees product authenticity.
- GIs protect products against misuse or imitation of the protected name and affirm the true origin of the product to customers. They also create consumer confidence regarding both the geographical origin of a product, and, more significantly, the quality of a product.
- Unlike Canada, the UK and EU have 2 schemes for the protection of wines, spirits, agricultural products and foods, known as the protected designation of origin and protected geographical indication, as well as a third related scheme known as traditional speciality guaranteed.

- All product names protected in the EU before January 1, 2021, following successful applications to the EU GI schemes are protected under the UK and EU GI schemes.
- Since January 1, 2021, to gain protection in Great Britain (England, Scotland and Wales) an application must be made under the UK GI scheme. After January 1, 2021, seeking protection in the UK will protect GI names for products sold only in Great Britain, excluding Northern Ireland, and no longer in the 27 EU Member States. For Northern Ireland, the EU GI schemes continue to apply in accordance to the Northern Ireland Protocol, meaning that rights holders should apply separately under the EU GI scheme for protection in Northern Ireland.
- For Canadian responsible authorities (e.g. producer, industry association), in order to apply for GI protection in the UK, you must first protect your product in Canada by means of a protected Canadian GI or by securing a certification mark in Canada in relation to your product. CIPO administers the GI and trademark systems in Canada.
- DEFRA is the competent authority for GI schemes in the UK.
- Once a product is protected in Canada, you can submit an application for protection to DEFRA (including under the EU quality scheme for Northern Ireland), and provide evidence that your product is registered in Canada, as well as being verified or certified for quality and authenticity. Applications for protection in Great Britain (under the UK Scheme) and Northern Ireland and the EU (under the EU Scheme) are done separately and provide protection in only their respective territories.
- With respect to GI protection in the EU, GIs are protected on a EU-wide basis and not registered in individual EU member States. To learn more, visit the [europa.eu](http://europa.eu) website under the geographical indications section.





ER





# IP enforcement

**There are several ways to enforce your rights** against unauthorized use of your IP in the UK:

- Enforcement is administered on a country-by-country basis. Therefore, you must monitor the UK marketplace for any unauthorized use of your IP. Enforcement of your IP rights is your responsibility. The legal system in the UK provides a high level of IP rights protection and enforcement mechanisms.
- It is important to understand that the Canadian government generally cannot enforce IP rights owned by private individuals in the UK. It is the responsibility of the rights holders to register, protect and enforce their rights and, where relevant, retain counsel and advisors.
- With respect to criminal enforcement, the UK government tracks and reports seizures of counterfeit goods and regards the production and subsequent sale of counterfeit goods as a criminal act.
- In the UK, IP rights holders can help protect their rights by making an application for action (AFA). Under the authority of HM Revenue and Customs, this requests Border Force to detain goods suspected of infringing a range of rights including trademarks, copyrights, designs and patents.
- Once the AFA is granted, if Border Force detects suspect goods at the border, it will contact the rights holder to check whether the goods are genuine.
- Border Force may find goods that could infringe IP rights even when there is no AFA. Such goods are called “grey market goods.” Border Force will contact who they think the rights holder is, at which point the rights holder can proceed to have the goods destroyed via an ex-officio AFA, or instead, take the matter to court.
- If you suspect infringement of your IP rights, seek legal counsel and consider your options: getting the other party to stop using your IP, coming to an agreement or using mediation. These are viable alternatives to resolving disputes without going to court.
- If you choose to enforce your rights through formal court proceedings, the Chancery Division of the High Court handles IP disputes related to trademarks. Disputes involving patents, registered designs and plant varieties can be taken to the Patents Court, which is also part of the Chancery Division of the High Court.

- As an alternative, there is the Intellectual Property Enterprise Court (IPEC), which provides individuals and small and medium-sized enterprises with affordable and less complex procedures to settle IP disputes. It handles disputes including registered trademarks, registered designs, patents and copyright. There are 2 avenues for making a claim with IPEC:
  - IPEC small claims tracks (claims less than £10,000)
  - IPEC multi-track (claims capped at £500,000)
- IP investigations and prosecutions are usually conducted by the local Trading Standards authorities, which is the leading agency enforcing criminal IP legislation in the UK.
- With London being one of the world's top fashion capitals, knock-off brands and counterfeit apparel and clothing are a problem and damage the UK economy. To help combat these criminal activities,

there are 2 notable organizations worth mentioning:

- The UK IP Crime Group consists of members from the private sector, enforcement agencies and government departments who have a role in tackling IP crime and infringement in the UK.
  - The UKIPO Intelligence Hub supports enforcement activities relating to pirated and counterfeit goods, aiming to reduce IP infringement and the supply of counterfeit goods in the UK.
- Although some EU IP schemes continue to apply in Northern Ireland under the Northern Ireland Protocol, the UK remains responsible for IP enforcement in Northern Ireland. Specific rules for border enforcement for Northern Ireland may apply and Canadian rights holders using their IP in the region are encouraged to check UKIPO and EUIPO websites for updates.





# Tips:

## Important notes

- IP rights are important, so take the time to determine what IP can be registered and what rights can be enforced.
- Remember that the protection of IP rights (such as patents, trademarks and industrial designs) registered in Canada does not extend to the United Kingdom.
  - However, with respect to copyright, note that this protection remains automatically granted in both Canada and the UK, and that a Canadian registration certificate would not be necessary for protection in the UK.
- Align your IP strategy with your business strategy. Identify business goals, protectable IP, regional requirements, potential partners and the capacity to expand into your target markets.
- Routinely monitor the marketplace for unauthorized use of your IP.
- Before proceeding with any of the enforcement methods outlined previously, consider contacting a qualified legal representative to discuss options, including a “cease and desist” letter.

### For more help

- For information about IP protection in the United Kingdom, check out the UKIPO website at [ipo.gov.uk](http://ipo.gov.uk).
- For material relating to the importation of goods to the United Kingdom, please see the Canadian Trade Commissioner Service website at [tradecommissioner.gc.ca](http://tradecommissioner.gc.ca).
- Visit the Global Affairs Canada website at [international.gc.ca](http://international.gc.ca) for more information about doing business in the UK.
- For IP tools, resources and information for businesses, visit [Canada.ca/ip-for-business](http://Canada.ca/ip-for-business).
- For more information on going global with your IP, visit [Canada.ca/export-ip](http://Canada.ca/export-ip).
- Find more programs and support for foreign businesses and innovators at [innovation.canada.ca](http://innovation.canada.ca).

\* The information provided above is meant as an educational resource only and should not be construed as legal advice.

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