

**TITLE V (INTELLECTUAL PROPERTY) OF THE TRADE AND COOPERATION AGREEMENT
BETWEEN THE EUROPEAN UNION AND THE UNITED KINGDOM**

INTA BREXIT POSITION	<p>The INTA Brexit position is set out in the following:</p> <ul style="list-style-type: none">• INTA Brexit position paper• INTA letter on exhaustion of rights• INTA comments on international registration• INTA's input to the UK public consultation on the new proposed UK GI Scheme• INTA paper on enforcement• INTA paper on .eu domain names• INTA's position on the UK's Draft Trademarks (Amendment etc.) (EU Exit) Regulation 2018
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Chapter 1: General provisions			
Article IP.1: Objectives	<p>The objectives of this Title are to:</p> <p>(a) facilitate the production, provision and commercialization of innovative and creative products and services between the Parties by reducing distortions and impediments to such trade, thereby contributing to a more sustainable and inclusive economy; and</p> <p>(b) ensure an adequate and effective level of protection and enforcement of intellectual property rights.</p>	N/A	N/A
Article IP.2: Scope	<p>1. This Title shall complement and further specify the rights and obligations of each Party under the TRIPS Agreement and other international treaties in the field of intellectual property to which they are parties.</p> <p>2. This Title does not preclude either Party from introducing more extensive protection and enforcement of intellectual property rights than required under this Title, provided that such protection and enforcement does not contravene this Title.</p>	N/A	N/A
Article IP.3: Definition	<p>For the purposes of this Title, the following definitions apply:</p> <p>(a) "Paris Convention" means the Paris Convention for the Protection of Industrial Property of 20 March 1883, as last revised at</p>	N/A	N/A

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	<p>Stockholm on 14 July 1967;</p> <p>(b) "Berne Convention" means the Berne Convention for the Protection of Literary and Artistic Works of 9 September 1886 revised at Paris on 24 July 1971 and amended on 28 September 1979;</p> <p>(c) "Rome Convention" means the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations done at Rome on 26 October 1961;</p> <p>(d) "WIPO" means the World Intellectual Property Organization;</p> <p>(e) "intellectual property rights" means all categories of intellectual property that are covered by Articles IP.7 [Authors] to IP.37 [Protection of plant varieties rights] of this Title or Sections 1 to 7 of Part II of the TRIPS Agreement. The protection of intellectual property includes protection against unfair competition as referred to in Article 10bis of the Paris Convention;</p> <p>(f) "national" means, in respect of the relevant intellectual property right, a person of a Party that would meet the criteria for eligibility for protection provided for in the TRIPS Agreement and multilateral agreements concluded and administered under the auspices of WIPO, to which a Party is a contracting party.</p>		
Article IP.4:	1. The Parties affirm their commitment to	The UK (but not the EU) is a party to the following	INTA comments on international

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International agreements	<p>comply with the international agreements to which they are party:</p> <p>(a) the TRIPS Agreement;</p> <p>(b) the Rome Convention;</p> <p>(c) the Berne Convention;</p> <p>(d) the WIPO Copyright Treaty, adopted at Geneva on 20 December 1996;</p> <p>(e) the WIPO Performances and Phonograms Treaty, adopted at Geneva on 20 December 1996;</p> <p>(f) the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, adopted at Madrid on 27 June 1989, as last amended on 12 November 2007;</p> <p>(g) the Trademark Law Treaty, adopted at Geneva on 27 October 1994;</p> <p>(h) the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, adopted at Marrakesh on 27 June 2013;</p> <p>(i) the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs, adopted at Geneva on 2 July 1999.</p> <p>2. Each Party shall make all reasonable efforts to ratify or accede to the following international agreements:</p>	<p>international agreements:</p> <ul style="list-style-type: none"> • the Rome Convention • the Berne Convention • the Singapore Treaty on the Law of Trademarks <p>Both the UK and the EU are parties to the following international agreements:</p> <ul style="list-style-type: none"> • the TRIPS Agreement • the WIPO Copyright Treaty • the WIPO Performances and Phonograms Treaty • the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks • the Trademark Law Treaty • the Marrakesh Treaty • the Geneva Act of the Hague Agreement <p>The UK and the EU have signed but not acceded to/ratified the Beijing Treaty on Audio-visual Performances.</p>	<p>registration states, with reference to (the then) Article 52 of the Withdrawal Agreement, that rights acquired by virtue of an international registration designating the EU should enjoy the same protection as those acquired through a direct filing with the EUIPO, and the measures applicable under the draft withdrawal agreement should in no way be less favorable to holders of international registrations protected in the EU than those applicable to EUTMS and RCDs.</p> <p>Article 56 of the Withdrawal Agreement provides that United Kingdom shall take measures to ensure that natural or legal persons who have obtained protection before the end of the Brexit transition period on 31 December 2020 (“Brexit Transition End”) for internationally registered trademarks or designs designating the EU pursuant to the Madrid system for the international registration of marks, or pursuant to the Hague system for the international deposit of industrial designs, enjoy protection in the United Kingdom for their trademarks or industrial designs in respect of those international registrations.</p>

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	<p>(a) the Beijing Treaty on Audio-visual Performances, adopted at Beijing on 24 June 2012;</p> <p>(b) the Singapore Treaty on the Law of Trademarks adopted in Singapore on 27 March 2006.</p>		<p>The Trade and Cooperation Agreement make no other provision for international registrations.</p> <p>The UK Designs and International Trade Marks (Amendment etc.) (EU Exit) Regulations 2019 provides that international registrations designating the EU as at Brexit Transition End are dealt with on the same basis as EUTMs and RCDs as at Brexit Transition End.</p> <p>Nevertheless, the “address for service” rules allowing EEA-based addresses for 3 years from 1 January 2021 do not apply to cloned international registrations designating the EU, only cloned EUTMs and RCDs.</p>
Article IP.5: Exhaustion	This Title does not affect the freedom of the parties to determine whether and under what conditions the exhaustion of intellectual property rights applies.	<p>Both the UK and the EY are free to determine their own exhaustion regime.</p> <p>The UK has unilaterally maintained the EEA-wide exhaustion regime under The Intellectual Property (Exhaustion of Rights) (EU Exit) Regulations 2019.</p> <p>However, this is a “stop gap” measure pending a decision by the UK which exhaustion regime to adopt (likely to be either national or international) and it is expected that this will be put out to consultation by the UK government in 2021.</p>	<p>In the INTA Brexit position paper and the INTA letter on exhaustion of rights</p> <p>INTA strongly supports the adoption of a national (UK only) exhaustion regime, and should the UK adopt the principle of international exhaustion, INTA requests that, at the very least, a “material difference” standard should be adopted to exclude parallel imports that are materially different than their authorized domestic counterparts.</p>

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		So far as the EU is concerned, the UK as a third country is now excluded from the EEA-wide regional exhaustion regime.	The Trade and Cooperation Agreement leaves each of the UK and the EU free to determine their respective exhaustion regimes.
Article IP.6: National treatment	<p>1. In respect of all categories of intellectual property covered by this Title, each Party shall accord to the nationals of the other Party treatment no less favorable than the treatment it accords to its own nationals with regard to the protection of intellectual property subject where applicable to the exceptions already provided for in, respectively, the Paris Convention, the Berne Convention, the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits, done at Washington on 26 May 1989. In respect of performers, producers of phonograms and broadcasting organizations, this obligation only applies in respect of the rights provided for under this Agreement.</p> <p>2. For the purposes of paragraph 1 of this Article, "protection" shall include matters affecting the availability, acquisition, scope, maintenance, and enforcement of intellectual property rights as well as matters affecting the use of intellectual property rights specifically addressed in this Title, including measures to prevent the circumvention of effective technological measures as referred to in Article IP.16 [Protection of technological measures] and measures concerning rights management information as referred to in</p>	N/A	N/A

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	<p>Article IP.17 [Obligations concerning rights management information].</p> <p>3. A Party may avail itself of the exceptions permitted pursuant to paragraph 1 in relation to its judicial and administrative procedures, including requiring a national of the other Party to designate an address for service in its territory, or to appoint an agent in its territory, if such exceptions are:</p> <p>(a) necessary to secure compliance with the Party's laws or regulations which are not inconsistent with this Title; or</p> <p>(b) not applied in a manner which would constitute a disguised restriction on trade.</p> <p>4. Paragraph 1 does not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.</p>		
Chapter 2: Standards concerning intellectual property rights			N/A
Section 1: Copyright and related rights			
Article IP.7:	Each Party shall provide authors with the	This is consistent with sections 16 to 27 of the UK	N/A

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Authors	<p>exclusive right to authorize or prohibit:</p> <p>(a) direct or indirect, temporary, or permanent reproduction by any means and in any form, in whole or in part, of their works;</p> <p>(b) any form of distribution to the public by sale or otherwise of the original of their works or of copies thereof;</p> <p>(c) any communication to the public of their works by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them;</p> <p>(d) the commercial rental to the public of originals or copies of their works; each Party may provide that this point does not apply to buildings or works of applied art.</p>	<p>Copyright, Designs and Patents Act 1988 (“UK CDPA”). However, the UK CDPA does not provide a commercial rental exception for buildings or works of applied art.</p> <p>This is also consistent with:</p> <ul style="list-style-type: none"> • Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonization of certain aspects of copyright and related rights in the information society (the “EU Copyright Harmonization Directive”); and • Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (the “EU Rental Directive”). <p>Therefore, no amendments are required to UK or EU legislation.</p>	
Article IP.8: Performers	<p>Each Party shall provide performers with the exclusive right to authorize or prohibit:</p> <p>(a) the fixation of their performances;</p> <p>(b) the direct or indirect, temporary, or permanent reproduction by any means and in any form, in whole or in part, of fixations of their performances;</p> <p>(c) the distribution to the public, by sale or otherwise, of the fixations of their performances;</p>	<p>This is consistent with sections 182 to 184 of the UK CDPA.</p> <p>This is also consistent with the EU Copyright Harmonization Directive and the EU Rental Directive.</p> <p>Therefore, no amendments are required to UK or EU legislation.</p>	N/A

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	<p>(d) the making available to the public of fixations of their performances, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them;</p> <p>(e) the broadcasting by wireless means and the communication to the public of their performances, except where the performance is itself already a broadcast performance or is made from a fixation;</p> <p>(f) the commercial rental to the public of the fixation of their performances.</p>		
Article IP.9: Producers of phonograms	<p>Each Party shall provide phonogram producers with the exclusive right to authorize or prohibit:</p> <p>(a) the direct or indirect, temporary, or permanent, reproduction by any means and in any form, in whole or in part, of their phonograms;</p> <p>(b) the distribution to the public, by sale or otherwise, of their phonograms, including copies thereof;</p> <p>(c) the making available to the public of their phonograms, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them;</p> <p>(d) the commercial rental of their phonograms to the public.</p>	<p>A phonogram constitutes a sound recording as defined by section 5A of the UK CDPA.</p> <p>This is consistent with sections 16 to 27 of the UK CDPA.</p> <p>This is also consistent with the EU Copyright Harmonization Directive and the EU Rental Directive.</p> <p>Therefore, no amendments are required to UK or EU legislation.</p>	N/A

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Article IP.10: Broadcasting organizations	<p>Each Party shall provide broadcasting organizations with the exclusive right to authorize or prohibit:</p> <p>(a) the fixation of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite;</p> <p>(b) the direct or indirect, temporary, or permanent reproduction by any means and in any form, in whole or in part, of fixations of their broadcasts, whether those broadcasts are transmitted by wire or over the air, including by cable or satellite;</p> <p>(c) the making available to the public, by wire or wireless means, of fixations of their broadcasts, whether those broadcasts are transmitted by wire or over the air, including by cable or satellite, in such a way that members of the public may access them from a place and at a time individually chosen by them;</p> <p>(d) the distribution to the public, by sale or otherwise, of fixations, including copies thereof, of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite;</p> <p>(e) the rebroadcasting of their broadcasts by wireless means, as well as the communication to the public of their broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.</p>	<p>The UK CDPA does not expressly deal with the fixation of broadcasts and dealing in such fixations, although this appears to be covered by sections 16 to 27 of the UK CDPA.</p> <p>This is consistent with the EU Copyright Harmonization Directive.</p> <p>Therefore, it appears no amendments are required to UK or EU legislation.</p>	N/A

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Article IP.11: Broadcasting and communication to the public of phonograms published for commercial purposes	<p>1. Each Party shall provide a right in order to ensure that a single equitable remuneration is paid by the user to the performers and producers of phonograms, if a phonogram published for commercial purposes, or a reproduction of such phonogram, is used for broadcasting or any communication to the public.</p> <p>2. Each Party shall ensure that the single equitable remuneration is shared between the relevant performers and phonogram producers. Each Party may enact legislation that, in the absence of an agreement between performers and producers of phonograms, sets the terms according to which performers and producers of phonograms shall share the single equitable remuneration.</p> <p>3. Each Party may grant more extensive rights, as regards the broadcasting and communication to the public of phonograms published for commercial purposes, to performers and producers of phonograms.</p>	<p>Section 182D of the UK CDPA provides for payment of equitable remuneration to the performer where a commercially published sound recording of the whole or any substantial part of a qualifying performance is played in public or is communicated to the public. However, this section does not extend to producers of phonograms (i.e., the owners of the copyright in sound recordings) nor does this section provide for payment of a <u>single</u> equitable remuneration. Furthermore, this section does not expressly cover publication or broadcasting although this is arguably covered by communication to the public.</p> <p>An amendment to the UK CDPA will be necessary to bring it into line with Article IP.11.</p> <p>This is consistent with Article 8 of the EU Rental Directive so no amendment to EU law is necessary.</p>	N/A
Article IP.12: Term of protection	<p>1. The rights of an author of a work shall run for the life of the author and for 70 years after the author's death, irrespective of the date when the work is lawfully made available to the public.</p> <p>2. For the purpose of implementing paragraph 1, each Party may provide for specific rules on the calculation of the term of protection of musical composition with words, works of</p>	<p>This is consistent with sections 12 to 15 and section 191 of the UK CDPA.</p> <p>This is also consistent with Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights (the “EU Copyright Term Directive”).</p> <p>Therefore, no amendments are required to UK or</p>	N/A

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	<p>joint authorship as well as cinematographic or audio-visual works. Each Party may provide for specific rules on the calculation of the term of protection of anonymous or pseudonymous works.</p> <p>3. The rights of broadcasting organizations shall expire 50 years after the first transmission of a broadcast, whether this broadcast is transmitted by wire or over the air, including by cable or satellite.</p> <p>4. The rights of performers for their performances otherwise than in phonograms shall expire 50 years after the date of the fixation of the performance or, if lawfully published or lawfully communicated to the public during this time, 50 years from the first such publication or communication to the public, whichever is the earlier.</p> <p>5. The rights of performers for their performances fixed in phonograms shall expire 50 years after the date of fixation of the performance or, if lawfully published or lawfully communicated to the public during this time, 70 years from such act, whichever is the earlier.</p> <p>6. The rights of producers of phonograms shall expire 50 years after the fixation is made or, if lawfully published to the public during this time, 70 years from such publication. In the absence of a lawful publication, if the phonogram has been lawfully communicated to the public during this time, the term of protection shall be 70 years from such act of</p>	EU legislation.	

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	<p>communication. Each Party may provide for effective measures in order to ensure that the profit generated during the 20 years of protection beyond 50 years is shared fairly between the performers and the producers of phonograms.</p> <p>7. The terms laid down in this Article shall be counted from the first of January of the year following the year of the event which gives rise to them.</p> <p>8. Each Party may provide for longer terms of protection than those provided for in this Article.</p>		
Article IP.13: Resale right	<p>1. Each Party shall provide, for the benefit of the author of an original work of graphic or plastic art, a resale right, to be defined as an inalienable right, which cannot be waived, even in advance, to receive a royalty based on the sale price obtained for any resale of the work, subsequent to the first transfer of the work by the author.</p> <p>2. The right referred to in paragraph 1 shall apply to all acts of resale involving as sellers, buyers or intermediaries art market professionals, such as salesrooms, art galleries and, in general, any dealers in works of art.</p> <p>3. Each Party may provide that the right referred to in paragraph 1 shall not apply to acts of resale, where the seller has acquired the work directly from the author less than</p>	<p>This is consistent with the UK Artist's Resale Right Regulations 2006 and Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art (the "EU Resale Right Directive").</p> <p>Therefore, no amendments are required to UK or EU legislation.</p>	N/A

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	<p>three years before that resale and where the resale price does not exceed a certain minimum amount.</p> <p>4. The procedure for collection of the remuneration and their amounts shall be determined by the law of each Party.</p>		
<p>Article IP.14: Collective management of rights</p>	<p>1. The Parties shall promote cooperation between their respective collective management organizations for the purpose of fostering the availability of works and other protected subject matter in their respective territories and the transfer of rights revenue between the respective collective management organizations for the use of such works or other protected subject matter.</p> <p>2. The Parties shall promote the transparency of collective management organizations, in particular regarding the rights revenue they collect, the deductions they apply to the rights revenue they collect, the use of the rights revenue collected, the distribution policy and their repertoire.</p> <p>3. The Parties shall endeavor to facilitate arrangements between their respective collective management organizations on non-discriminatory treatment of right holders whose rights these organizations manage under representation agreements.</p> <p>4. The Parties shall cooperate to support the collective management organizations established in their territory and representing</p>	<p>The following existing legislation should be noted:</p> <ul style="list-style-type: none"> • The UK Collective Management of Copyright (EU Directive) Regulations 2016 • 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 (the “EU CRM Directive”) <p>This UK government guidance notes as follows,</p> <p><i>“EEA CMOs are no longer required by the EU CRM Directive or the UK EU Trade and Cooperation Agreement (TCA) to represent UK right holders or to represent the catalogues of UK CMOs for online licensing of musical rights.</i></p> <p><i>While UK right holders and CMOs are still able to request representation, EEA CMOs may refuse those requests depending on the law in individual member states.</i></p> <p><i>In the UK, existing obligations on UK CMOs have been maintained and include</i></p>	<p>N/A</p>

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	<p>another collective management organization established in the territory of the other Party by way of a representation agreement with a view to ensuring that they accurately, regularly and diligently pay amounts owed to the represented collective management organizations and provide the represented collective management organization with the information on the amount of rights revenue collected on its behalf and any deductions made to that rights revenue.</p>	<p><i>those specific to multi-territorial licensing of musical works for online services.</i></p> <p><i>UK CMOs that offer multi-territorial licensing of online rights in musical works will continue to be required to represent, on request, the catalogue of other CMOs (UK or EEA) for multi-territorial licensing purpose”</i></p> <p>However, Article IP.14 imposes no obligation on the EU to amend the EU CRM Directive to address these issues.</p>	
<p>Article IP.15 Exceptions and limitations</p>	<p>Each Party shall confine limitations or exceptions to the rights set out in Articles IP.7 [Authors] to IP.11 Article [Broadcasting and communication to the public of phonograms published for commercial purposes] to certain special cases which do not conflict with a normal exploitation of the work or other subject-matter and do not unreasonably prejudice the legitimate interests of the right holders.</p>	<p>Chapter III of the UK CDPA sets out acts permitted in relation to copyright works.</p> <p>Other than references to “fair dealing”, there is no express proviso that these acts must not conflict with a normal exploitation of the work and not unreasonably prejudice the legitimate interests of the right holders. However, the UK is likely to take the view that Chapter III is consistent with Article IP.15, so no further amendments are anticipated.</p> <p>Article 5 of the EU Copyright Harmonization Directive provides for exceptions and limitations to the reproduction right.</p>	<p>N/A</p>
<p>Article IP.16: Protection of technological measures</p>	<p>1. Each Party shall provide adequate legal protection against the circumvention of any effective technological measures, which the person concerned carries out in the knowledge, or with reasonable grounds to know, that he or she is pursuing that</p>	<p>This is consistent with sections 296 to 296ZF of the UK CDPA.</p> <p>This is identical to the wording of Article 6 of the EU Copyright Harmonization Directive.</p> <p>Therefore, no amendments are required to UK or</p>	<p>N/A</p>

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	<p>objective. Each Party may provide for a specific regime for legal protection of technological measures used to protect computer programs.</p> <p>2. Each Party shall provide adequate legal protection against the manufacture, import, distribution, sale, rental, advertisement for sale or rental, or possession for commercial purposes of devices, products or components or the provision of services which:</p> <p>(a) are promoted, advertised, or marketed for the purpose of circumvention of;</p> <p>(b) have only a limited commercially significant purpose or use other than to circumvent; or</p> <p>(c) are primarily designed, produced, adapted, or performed for the purpose of enabling or facilitating the circumvention of any effective technological measures.</p> <p>3. For the purposes of this Section, the expression "technological measures" means any technology, device, or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works or other subject-matter, which are not authorized by the right holder of any copyright or related right covered by this Section. Technological measures shall be deemed "effective" where the use of a protected work or other subject matter is controlled by the right holders through application of an access control or protection</p>	<p>EU legislation.</p>	

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	<p>process, such as encryption, scrambling or other transformation of the work or other subject-matter or a copy control mechanism, which achieves the protection objective.</p> <p>4. Notwithstanding the legal protection provided for in paragraph 1 of this Article, each Party may take appropriate measures, as necessary, to ensure that the adequate legal protection against the circumvention of effective technological measures provided for in accordance with this Article does not prevent beneficiaries of exceptions or limitations provided for in accordance with Article IP.15 [Exceptions and limitations] from enjoying such exceptions or limitations.</p>		
<p>Article IP.17: Obligations concerning rights management information</p>	<p>1. Each Party shall provide adequate legal protection against any person knowingly performing without authority any of the following acts:</p> <p>(a) the removal or alteration of any electronic rights-management information;</p> <p>(b) the distribution, importation for distribution, broadcasting, communication or making available to the public of works or other subject-matter protected pursuant to this Section from which electronic rights-management information has been removed or altered without authority; if such person knows, or has reasonable grounds to know, that by so doing he or she is inducing, enabling, facilitating or concealing an infringement of any copyright or any related</p>	<p>This is consistent with section 296ZG of the UK CDPA.</p> <p>This is identical to the wording of Article 7 of the EU Copyright Harmonization Directive.</p> <p>Therefore, no amendments are required to UK or EU legislation.</p>	<p>N/A</p>

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	<p>rights as provided by the law of a Party.</p> <p>2. For the purposes of this Article, "rights-management information" means any information provided by right holders which identifies the work or other subject-matter referred to in this Article, the author or any other right holder, or information about the terms and conditions of use of the work or other subject-matter, and any numbers or codes that represent such information.</p> <p>3. Paragraph 2 applies if any of these items of information is associated with a copy of, or appears in connection with the communication to the public of, a work or other subject-matter referred to in this Article.</p>		
<p>Section 2: Trademarks</p>			<p>The INTA Brexit position paper raises concerns relating to the following:</p> <ul style="list-style-type: none"> • Existing registered EU trademarks (“EUTMs”) • EUTM applications • EUTM oppositions/UK trademark oppositions • Trademark cancellation actions/counterclaim • Non-use vulnerabilities • EUTM database <p>None of these concerns are dealt with in the Trade and Cooperation Agreement. However, most (other</p>

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			than oppositions and, to an extent, trademark cancellation actions) are covered by Articles 54 and 59 of the Withdrawal Agreement .
Article IP.18: Trademark classification	Each Party shall maintain a trademark classification system that is consistent with the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as amended and revised.	This is already the case for UK and EU trademarks. Therefore, no amendments are required to UK or EU legislation.	Consistent
Article IP.19: Signs of which a trademark may consist	A trademark may consist of any signs, in particular words, including personal names, or designs, letters, numerals, colors, the shape of goods or of the packaging of goods, or sounds, provided that such signs are capable of: (a) distinguishing the goods or services of one undertaking from those of other undertakings; and (b) being represented on the respective trademark register of each Party, in a manner which enables the competent authorities and the public to determine the clear and precise subject matter of the protection afforded to its proprietor.	This is provided for in: <ul style="list-style-type: none"> Article 4 of the Regulation (EU) 2017/1001 of the European Parliament and of the Council on the European Union trademark (the “EUTMR”) Section 1 of the UK Trademarks Act 1994 (the “UKTMA”) Therefore, no amendments are required to UK or EU legislation.	N/A
Article IP.20: Rights conferred by a trademark	1. Each Party shall provide that the registration of a trademark confers on the proprietor exclusive rights therein. The proprietor shall be entitled to prevent all third	Article IP.20(1) is provided for in Article 9(2)(a) and (b) of the EUTMR and Sections 10(1) and (2) of the UKTMA. Therefore, no amendments are required to UK or EU legislation.	INTA would not support a lesser degree of protection for trademarks enjoying a reputation.

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	<p>parties not having the proprietor's consent from using in the course of trade:</p> <p>(a) any sign which is identical with the registered trademark in relation to goods or services which are identical with those for which the trademark is registered;</p> <p>(b) any sign where, because of its identity with, or similarity to, the registered trademark and the identity or similarity of the goods or services covered by this trademark and the sign, there exists a likelihood of confusion on the part of the public, including the likelihood of association between the sign and the registered trademark.</p> <p>2. The proprietor of a registered trademark shall be entitled to prevent all third parties from bringing goods, in the course of trade, into the Party where the trademark is registered without being released for free circulation there, where such goods, including packaging, come from other countries or the other Party and bear without authorization a trademark which is identical to the trademark registered in respect of such goods, or which cannot be distinguished in its essential aspects from that trademark.</p> <p>3. The entitlement of the proprietor of a trademark pursuant to paragraph 2 shall lapse if during the proceedings to determine whether the registered trademark has been infringed, evidence is provided by the declarant or the holder of the goods that the proprietor of the registered trademark is not</p>	<p>However, infringement as provided in Article 9(2)(c) of the EUTMR and Section 10(3) of the UKTMA where the registered trademark has a reputation and the use of the sign, being without due cause, takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the trademark) is not provided for in Article IP.20(1). This is unlikely to indicate an intention to weaken protection for reputed marks; rather to focus on the essential of infringement.</p> <p>Article IP.20(2) and (3) is provided for in Article 9(4) of the EUTMR and Section 10A of the UKTMA. Therefore, no amendments are required to UK or EU legislation.</p>	

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	entitled to prohibit the placing of the goods on the market in the country of final destination.		
Article IP.21: Registration procedure	<p>1. Each Party shall provide for a system for the registration of trademarks in which each final negative decision taken by the relevant trademark administration, including partial refusals of registration, shall be communicated in writing to the relevant party, duly reasoned and subject to appeal.</p> <p>2. Each Party shall provide for the possibility for third parties to oppose trademark applications or, where appropriate, trademark registrations. Such opposition proceedings shall be adversarial.</p> <p>3. Each Party shall provide a publicly available electronic database of trademark applications and trademark registrations.</p> <p>4. Each Party shall make best efforts to provide a system for the electronic application for and processing, registration, and maintenance of trademarks.</p>	This is consistent with the EUTMR and UKTMA, and the procedures of the EUIPO and UKIPO. Therefore, no amendments are required to UK or EU legislation.	Consistent
Article IP.22: Well-known trademarks	For the purpose of giving effect to protection of well-known trademarks, as referred to in Article 6bis of the Paris Convention and Article 16(2) and (3) of the TRIPS Agreement, each Party shall apply the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks, adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of the WIPO at the Thirty-	<p>This is consistent with Articles 8(1)(a) and (b) and 8(5), read with Article 8(2)(c), of the EUTMR, and section 5(1), (2) and (3), read with section 6 and section 56, of the UKTMA.</p> <p>Therefore, no amendments are required to UK or EU legislation.</p>	Consistent

Article	Provision	Consistency with UK and EU legislation	Consistency with INTA Brexit position
	Fourth Series of Meetings of the Assemblies of the Member States of WIPO on 20 to 29 September 1999.		
Article IP.23: Exceptions to the rights conferred by a trademark	<p>1. Each Party shall provide for limited exceptions to the rights conferred by a trademark such as the fair use of descriptive terms including geographical indications, and may provide other limited exceptions, provided such exceptions take account of the legitimate interests of the proprietor of the trademark and of third parties.</p> <p>2. The trademark shall not entitle the proprietor to prohibit a third party from using, in the course of trade:</p> <p>(a) the name or address of the third party, where the third party is a natural person;</p> <p>(b) signs or indications concerning the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of the service, or other characteristics of goods or services; or</p> <p>(c) the trademark for the purpose of identifying or referring to goods or services as those of the proprietor of that trademark, in particular where the use of that trademark is necessary to indicate the intended purpose of a product or service, in particular as accessories or spare parts, provided the third party uses them in accordance with honest</p>	<p>This is consistent with Article 14 and Article 138 of the EUTMR and section 11 of the UKTMA.</p> <p>Therefore, no amendments are required to UK or EU legislation.</p>	Consistent

Article	Provision	Consistency with UK and EU legislation	Consistency with INTA Brexit position
	<p>practices in industrial or commercial matters.</p> <p>3. The trademark shall not entitle the proprietor to prohibit a third party from using, in the course of trade, an earlier right which only applies in a particular locality if that right is recognized by the laws of the Party in question and is used within the limits of the territory in which it is recognized.</p>		
<p>Article IP.24: Grounds for revocation</p>	<p>1. Each Party shall provide that a trademark shall be liable to revocation if, within a continuous period of five years it has not been put to genuine use in the relevant territory of a Party by the proprietor or with the proprietor's consent in relation to the goods or services for which it is registered, and there are no proper reasons for non-use.</p> <p>2. Each Party shall also provide that a trademark shall be liable to revocation if within the period of five years following the date of completion of the registration procedure it has not been put to genuine use in the relevant territory by the proprietor or with the proprietor's consent, in relation to the goods or services for which it is registered, and there are no proper reasons for non-use.</p> <p>3. However, no person may claim that the proprietor's rights in a trademark should be revoked where, during the interval between expiry of the five-year period and filing of the application for revocation, genuine use of the trademark has been started or resumed. The commencement or resumption of use within a</p>	<p>This is consistent with Article 58 of the EUTMR and section 46 of the UKTMA.</p> <p>Therefore, no amendments are required to UK or EU legislation.</p>	<p>Consistent</p>

Article	Provision	Consistency with UK and EU legislation	Consistency with INTA Brexit position
	<p>period of three months preceding the filing of the application for revocation which began at the earliest on expiry of the continuous period of five years of non-use, shall, however, be disregarded where preparations for the commencement or resumption occur only after the proprietor becomes aware that the application for revocation may be filed.</p> <p>4. A trademark shall also be liable to revocation if, after the date on which it was registered:</p> <p>(a) as a consequence of acts or inactivity of the proprietor, it has become the common name in the trade for a good or service in respect of which it is registered;</p> <p>(b) as a consequence of the use made of the trademark by the proprietor of the trademark or with the proprietor's consent in respect of the goods or services for which it is registered, it is liable to mislead the public, particularly as to the nature, quality or geographical origin of those goods or services.</p>		
<p>Article IP.25: The right to prohibit preparatory acts in relation to the use of packaging or other means</p>	<p>Where the risk exists that the packaging, labels, tags, security or authenticity features or devices, or any other means to which the trademark is affixed could be used in relation to goods or services and that use would constitute an infringement of the rights of the proprietor of the trademark, the proprietor of that trademark shall have the right to prohibit the following acts if carried out in the course</p>	<p>This is consistent with Article 10 of the EUTMR and section 10(3B) of the UKTMA.</p> <p>Therefore, no amendments are required to UK or EU legislation.</p>	<p>Consistent</p>

Article	Provision	Consistency with UK and EU legislation	Consistency with INTA Brexit position
	<p>of trade:</p> <p>(a) affixing a sign identical with, or similar to, the trademark on packaging, labels, tags, security or authenticity features or devices, or any other means to which the mark may be affixed; or</p> <p>(b) offering or placing on the market, or stocking for those purposes, or importing or exporting, packaging, labels, tags, security or authenticity features or devices, or any other means to which the mark is affixed.</p>		
Article IP.26: Bad faith applications	A trademark shall be liable to be declared invalid where the application for registration of the trademark was made in bad faith by the applicant. Each Party may provide that such a trademark shall not be registered.	<p>This is consistent with Article 59(1)(b) of the EUTMR and section 3(6), read with section 47(1) and (4) of the UKTMA.</p> <p>Therefore, no amendments are required to UK or EU legislation.</p>	Consistent
Section 3: Design			<p>The INTA Brexit position paper raises concerns relating to:</p> <ul style="list-style-type: none"> • registered and unregistered Community designs • invalidity of registered Community designs • the EU registered designs database <p>These concerns are not dealt with in the Trade and Cooperation Agree. However, they are (other than to an extent invalidity) covered by Articles 54 and 59 of the Withdrawal</p>

Article	Provision	Consistency with UK and EU legislation	Consistency with INTA Brexit position
			Agreement
Article IP.27: Protection of registered designs	<p>1. Each Party shall provide for the protection of independently created designs that are new and original. This protection shall be provided by registration and shall confer exclusive rights upon their holders in accordance with this Section.</p> <p>For the purposes of this Article, a Party may consider that a design having individual character is original.</p> <p>2. The holder of a registered design shall have the right to prevent third parties not having the holder's consent at least from making, offering for sale, selling, importing, exporting, stocking the product bearing and embodying the protected design or using articles bearing or embodying the protected design where such acts are undertaken for commercial purposes.</p> <p>3. A design applied to or incorporated in a product which constitutes a component part of a complex product shall only be considered to be new and original:</p> <p>(a) if the component part, once it has been incorporated into the complex product, remains visible during normal use of the latter; and</p> <p>(b) to the extent that those visible features of the component part fulfil in themselves the requirements as to novelty and originality.</p>	<p>Article IP.27(1) is consistent with:</p> <ul style="list-style-type: none"> Articles 4 to 6 of Council Regulation (EC) No 6/2002 on Community designs (the “EU CDR”); and Section 1B of the UK Registered Designs Act 1949 (the “UK RDA”). <p>Article IP.27(2) is consistent with:</p> <ul style="list-style-type: none"> Article 19, read with Article 20, of the EU CDR; and Section 7, read with section 7A, of the UK RDA <p>Article IP.27(3) and (4) is consistent with:</p> <ul style="list-style-type: none"> Article 4(2) and (3) of the CRD; and Section 1B(8) and (9) of the UK RDA. <p>Therefore, no amendments are required to UK or EU legislation.</p>	Consistent

Article	Provision	Consistency with UK and EU legislation	Consistency with INTA Brexit position
	4. For the purposes of point (a) of paragraph 3, "normal use" means use by the end user, excluding maintenance, servicing, or repair work.		
Article IP.28: Duration of protection	The duration of protection available for registered designs, including renewals of registered designs, shall amount to a total term of 25 years from the date on which the application was filed.	This is consistent with Article 12 of the EU CDR and section 8 of the UK RDA. Therefore, no amendments are required to UK or EU legislation.	Consistent
Article IP.29: Protection of unregistered designs	<p>1. Each Party shall confer on holders of an unregistered design the right to prevent the use of the unregistered design by any third party not having the holder's consent only if the contested use results from copying the unregistered design in their respective territory. Such use shall at least cover the offering for sale, putting on the market, importing or exporting the product.</p> <p>2. The duration of protection available for the unregistered design shall amount to at least three years as from the date on which the design was first made available to the public in the territory of the respective Party.</p>	<p>This is consistent with:</p> <ul style="list-style-type: none"> Article 11(1) and Article 19(2) of the EU CDR; and Schedule 1 to The Designs and International Trademarks (Amendment etc.) (EU Exit) Regulations 2019. <p>Therefore, no amendments are required to UK or EU legislation.</p>	<p>Consistent</p> <p>This differs from the EU-Ukraine Association Agreement, which provides for 3 years "as from the date on which the design was made available to the public in the territory of one of the Parties". It is unclear what this means for disclosure, which is not expressly mentioned.</p> <p>It appears that this protection will commence in the UK or the EU only from the date it was first made available to the public in that territory. It would have appeared preferable to provide that protection will commence in both the UK and the EU from the date on which the design was first made available to the public in either the UK or the EU.</p> <p>Also, it is not clear what the effect on the validity of the design will be if it has been previously made available</p>

Article	Provision	Consistency with UK and EU legislation	Consistency with INTA Brexit position
			to the public in another territory.
Article IP.30: Exceptions and exclusions	<p>1. Each Party may provide limited exceptions to the protection of designs, including unregistered designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of designs, and do not unreasonably prejudice the legitimate interests of the holder of the design, taking account of the legitimate interests of third parties.</p> <p>2. Protection shall not extend to designs solely dictated by technical or functional considerations. A design shall not subsist in features of appearance of a product which must necessarily be reproduced in their exact form and dimensions in order to permit the product in which the design is incorporated or to which it is applied to be mechanically connected to or placed in, around or against another product so that either product may perform its function.</p> <p>3. By way of derogation from paragraph 2, a design shall, in accordance with the conditions set out in Article IP.27(1) [Protection of registered designs], subsist in a design, which has the purpose of allowing the multiple assembly or connection of mutually interchangeable products within a modular system.</p>	<p>The wording of Article IP.30(1) is not reflected in the EU CDR and the UK RDA but it is likely that Article 20 of the EU CDR and section 7A(2) and (3) of the UK RDA will be considered to be consistent with this Article.</p> <p>Article IP.30(2) and (3) is consistent with Article 8 of the EU CDR and section 1C of the UK RDA.</p> <p>Therefore, no amendments are required to UK or EU legislation.</p>	Consistent
Article IP.31: Relationship to	Each Party shall ensure that designs, including unregistered designs, shall also be	This is consistent with Article 96(2) of the EU CDR.	N/A

Article	Provision	Consistency with UK and EU legislation	Consistency with INTA Brexit position
copyright	eligible for protection under the copyright law of that Party as from the date on which the design was created or fixed in any form. The extent to which, and the conditions under which, such a protection is conferred, including the level of originality required, shall be determined by each Party.	<p>However, section 51(1) of the UK CPDA, provides that it is not an infringement of any copyright in a design document or model recording or embodying a design for anything other than an artistic work or a typeface to make an article to the design or to copy an article made to the design.</p> <p>Section 4 of the UK CDPA which provides that copyright subsists in a work of artistic craftsmanship (as an artistic work). Case law suggests that it is not sufficient that a work is a work of craftsmanship, but that it must also have some aesthetic appeal.</p> <p>As section 51(1) does not provide that designs cannot also be eligible for copyright protection but instead that the making of an article to a design cannot infringe copyright, it might be argued that the CPDA does not require amendment to comply with Article IP.31.</p>	
Section 4: Patents			N/A
Article IP.32: Patents and public health	<p>1. The Parties recognize the importance of the Declaration on the TRIPS Agreement and Public Health, adopted on 14 November 2001 by the Ministerial Conference of the WTO at Doha (the "Doha Declaration"). In interpreting and implementing the rights and obligations under this Section, each Party shall ensure consistency with the Doha Declaration.</p> <p>2. Each Party shall implement Article 31bis of the TRIPS Agreement, as well as the Annex</p>	<p>This relates to the compulsory licenses for export of medicines: more information here.</p> <p>Article 31bis provides that, when the compulsory license concerns a pharmaceutical product, the product can also be exported to an eligible importing country. The UK and EU have opted out as an eligible importing country, and so cannot import pharmaceutical products produced under a compulsory license in another country.</p>	N/A

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	to the TRIPS Agreement and the Appendix to the Annex to the TRIPS Agreement.		
Article IP.33: Extension of the period of protection conferred by a patent on medicinal products and on plant protection products	<p>1. The Parties recognize that medicinal products and plant protection products protected by a patent in their respective territory may be subject to an administrative authorization procedure before being put on their respective markets. The Parties recognize that the period that elapses between the filing of the application for a patent and the first authorization to place the product on the market, as defined for that purpose by the relevant legislation, may shorten the period of effective protection under the patent.</p> <p>2. Each Party shall provide for further protection, in accordance with its laws and regulations, for a product which is protected by a patent and which has been subject to an administrative authorization procedure referred to in paragraph 1 to compensate the holder of a patent for the reduction of effective patent protection. The terms and conditions for the provision of such further protection, including its length, shall be determined in accordance with the laws and regulations of the Parties.</p> <p>3. For the purposes of this Title, "medicinal product" means:</p> <p>(a) any substance or combination of substances presented as having properties for treating or preventing disease in human</p>	<p>This is provided for:</p> <ul style="list-style-type: none"> • In the EU by: <ul style="list-style-type: none"> ○ Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products; and ○ Regulation (EC) No 1610/96 of the European Parliament and of the Council of 23 July 1996 concerning the creation of a supplementary protection certificate for plant protection products • In the UK by: <ul style="list-style-type: none"> ○ The Supplementary Protection Certificates (Amendment) (EU Exit) Regulations 2020; and ○ Schedule 4A of the UK Patents Act 1977 	N/A

Article	Provision	Consistency with UK and EU legislation	Consistency with INTA Brexit position
	<p>beings or animals; or</p> <p>(b) any substance or combination of substances which may be used in or administered to human beings or animals either with a view to restoring, correcting, or modifying physiological functions by exerting a pharmacological, immunological, or metabolic action, or to making a medical diagnosis.</p>		
<p>Section 5: Protection of undisclosed information</p>			<p>INTA has not published a Brexit position on undisclosed information</p>
<p>Article IP.34: Protection of trade secrets</p>	<p>1. Each Party shall provide for appropriate civil judicial procedures and remedies for any trade secret holder to prevent, and obtain redress for, the acquisition, use or disclosure of a trade secret whenever carried out in a manner contrary to honest commercial practices.</p> <p>2. For the purposes of this Section:</p> <p>(a) "trade secret" means information which meets all of the following requirements:</p> <p>(i) it is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;</p> <p>(ii) it has commercial value because it is</p>	<p>This is covered:</p> <ul style="list-style-type: none"> in the EU by Directive (EU) 2016/943 of the European Parliament and of the Council on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (the “Trade Secrets Directive”); and in the UK by The Trade Secrets (Enforcement, etc.) Regulations 2018 (the “Trade Secret Regulations”) and the common law of confidentiality. <p>The Trade Secret Regulations do not contain provisions corresponding to Article IP.34(3), (4) and (5). They provide instead, “<i>The acquisition, use or disclosure of a trade secret is unlawful where the acquisition, use or disclosure constitutes a breach of confidence in confidential</i></p>	<p>N/A</p>

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	<p>secret; and</p> <p>(iii) it has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret;</p> <p>(b) "trade secret holder" means any natural or legal person lawfully controlling a trade secret.</p> <p>3. For the purposes of this Section, at least the following conduct shall be considered contrary to honest commercial practices:</p> <p>(a) the acquisition of a trade secret without the consent of the trade secret holder, whenever obtained by unauthorized access to, or by appropriation or copying of, any documents, objects, materials, substances, or electronic files that are lawfully under the control of the trade secret holder, and that contain the trade secret or from which the trade secret can be deduced;</p> <p>(b) the use or disclosure of a trade secret whenever it is carried out, without the consent of the trade secret holder, by a person who is found to meet any of the following conditions:</p> <p>(i) having acquired the trade secret in a manner referred to in point (a);</p> <p>(ii) being in breach of a confidentiality agreement or any other duty not to disclose the trade secret; or</p> <p>(iii) being in breach of a contractual or any</p>	<p>information".</p> <p>The Explanatory Memorandum to the Trade Secret Regulations stated:</p> <ul style="list-style-type: none"> • The UK has a robust and well-established legal framework that allows for the effective enforcement of trade secrets. As such, implementation of the Trade Secrets Directive does not require substantial changes to be made to UK law. • The Trade Secrets Directive formalized the definition of a trade secret in accordance with existing internationally binding standards and establishes a common definition of a trade secret across the EU. Although UK case law had developed a definition of a trade secret that is consistent with the standards and aligns with that of the Trade Secrets Directive, transposing the definition in the Trade Secret Regulations provided legal certainty and clarity for UK businesses. <p>The Court of Appeal in England and Wales stated in Shenzhen Senior Technology Material Co Ltd v Celgard LLC [2020] EWCA Civ 1293, at paragraph 29 that:</p> <ul style="list-style-type: none"> • if and in so far as English law prior to the implementation of the Trade Secrets Directive was more favorable to the trade secret holder than the minimum level of protection required by the Trade Secrets Directive, then that greater level of protection shall continue to be available, but only in so far as is consistent with the safeguards 	

Article	Provision	Consistency with UK and EU legislation	Consistency with INTA Brexit position
	<p>other duty to limit the use of the trade secret;</p> <p>(c) the acquisition, use or disclosure of a trade secret whenever carried out by a person who, at the time of the acquisition, use or disclosure, knew, or ought to have known, under the circumstances that the trade secret had been obtained directly or indirectly from another person who was using or disclosing the trade secret unlawfully within the meaning of point (b).</p> <p>4. Nothing in this Section shall be understood as requiring either Party to consider any of the following conducts as contrary to honest commercial practices:</p> <p>(a) independent discovery or creation;</p> <p>(b) the reverse engineering of a product that has been made available to the public or that is lawfully in the possession of the acquirer of the information, where the acquirer of the information is free from any legally valid duty to limit the acquisition of the trade secret;</p> <p>(c) the acquisition, use or disclosure of a trade secret required or allowed by the law of each Party;</p> <p>(d) the exercise of the right of workers or workers' representatives to information and consultation in accordance with the laws and regulations of that Party.</p> <p>5. Nothing in this Section shall be understood as affecting the exercise of freedom of expression and information, including the</p>	<p>required by the Trade Secrets Directive; and</p> <ul style="list-style-type: none"> Regulation 3 of the Trade Secret Regulations does not appear to address the position if the Trade Secrets Directive confers greater protection than English law did previously; but presumably English law must, in accordance with well-established principles of EU law, be interpreted and applied, so far as possible, consistently with the Trade Secrets Directive despite the failure of the UK to transpose Articles 3, 4 or 5. 	

Article	Provision	Consistency with UK and EU legislation	Consistency with INTA Brexit position
	<p>freedom and pluralism of the media, as protected in each Party, restricting the mobility of employees, or as affecting the autonomy of social partners and their right to enter into collective agreements, in accordance with the laws and regulations of the Parties.</p>		
<p>Article IP.35: Protection of data submitted to obtain an authorization to put a medicinal product on the market</p>	<p>1. Each Party shall protect commercially confidential information submitted to obtain an authorization to place medicinal products on the market ("marketing authorization") against disclosure to third parties, unless steps are taken to ensure that the data are protected against unfair commercial use or except where the disclosure is necessary for an overriding public interest.</p> <p>2. Each Party shall ensure that for a limited period of time to be determined by its domestic law and in accordance with any conditions set out in its domestic law, the authority responsible for the granting of a marketing authorization does not accept any subsequent application for a marketing authorization that relies on the results of pre-clinical tests or clinical trials submitted in the application to that authority for the first marketing authorization, without the explicit consent of the holder of the first marketing authorization, unless international agreements to which the Parties are both party provide otherwise.</p> <p>3. Each Party shall also ensure that, for a limited period of time to be determined by its</p>	<p>Not analyzed</p>	<p>N/A</p>

Article	Provision	Consistency with UK and EU legislation	Consistency with INTA Brexit position
	<p>domestic law and in accordance with any conditions set out in its domestic law, a medicinal product subsequently authorized by that authority on the basis of the results of the pre-clinical tests and clinical trials referred to in paragraph 2 is not placed on the market without the explicit consent of the holder of the first marketing authorization, unless international agreements to which the Parties are both party provide otherwise.</p> <p>4. This Article is without prejudice to additional periods of protection which each Party may provide in that Party's law.</p>		
<p>Article IP.36: Protection of data submitted to obtain marketing authorization for plant protection products or biocidal products</p>	<p>1. Each Party shall recognize a temporary right of the owner of a test or study report submitted for the first time to obtain a marketing authorization concerning safety and efficacy of an active substance, plant protection product or biocidal product. During such period, the test or study report shall not be used for the benefit of any other person who seeks to obtain a marketing authorization for an active substance, plant protection product or biocidal product, unless the explicit consent of the first owner has been proved. For the purposes of this Article, that right is referred to as data protection.</p> <p>2. The test or study report submitted for marketing authorization of an active substance or plant protection product should fulfil the following conditions:</p> <p>(a) be necessary for the authorization or for</p>	<p>Not analyzed</p>	<p>N/A</p>

Article	Provision	Consistency with UK and EU legislation	Consistency with INTA Brexit position
	<p>an amendment of an authorization in order to allow the use on other crops; and</p> <p>(b) be certified as compliant with the principles of good laboratory practice or of good experimental practice.</p> <p>3. The period of data protection shall be at least 10 years from the grant of the first authorization by a relevant authority in the territory of the Party.</p> <p>4. Each Party shall ensure that the public bodies responsible for the granting of a marketing authorization will not use the information referred to in paragraphs 1 and 2 for the benefit of a subsequent applicant for any successive marketing authorization, regardless of whether or not it has been made available to the public.</p> <p>5. Each Party shall establish rules to avoid duplicative testing on vertebrate animals.</p>		
Section 6: Plant varieties			INTA has not published a Brexit position on plant varieties
Article IP.37: Protection of plant varieties rights	Each Party shall protect plant varieties rights in accordance with the International Convention for the Protection of New Varieties of Plants (UPOV) as lastly revised in Geneva on 19 March 1991. The Parties shall cooperate to promote and enforce these rights.	<p>This is covered:</p> <ul style="list-style-type: none"> • in the EU by Council Regulation (EC) No 2100/94 on Community plant variety rights; and • in the UK by the Plant Varieties Act 1997. 	

Article	Provision	Consistency with UK and EU legislation	Consistency with INTA Brexit position
Chapter 3: Enforcement of intellectual property rights			<p>In the INTA Brexit position paper and the INTA paper on enforcement, INTA's position is as follows</p> <ul style="list-style-type: none"> • In relation to the issue of existing judgments, it is crucial that court judgments with pan-EU reach that are final at the end of the Brexit transition period (31 December 2020) continue to be enforceable in both the UK and the EU27. • The EU27 should pass legislation that will enable direct enforcement of UK judgments in relation to an EUTM in the relevant EU27 courts. • It is crucial that pan-EU proceedings that were commenced either in the UK (but covering at least one EU27 member state) or in the EU27 (and also covering the UK) prior to Brexit Transition End continue to be governed by the jurisdictional rules in effect at the time of bringing the proceedings and that resultant judgments will be enforceable in both the UK and the EU27, regardless of when those decisions become final.

Article	Provision	Consistency with UK and EU legislation	Consistency with INTA Brexit position
			<ul style="list-style-type: none"> The UK government should ensure that, in its domestic legislation, it treats ongoing (at Brexit Transition End) proceedings under the EUTM regulation and the Community designs regulation in a way which will ensure that relief can be granted in the UK that is equivalent to the UK element of the relief that would have been granted under the pan-EU rights, and urges the EU27 to make a similar arrangement in the case of pending cases in their relevant courts, so that the outcome of those cases is as close to what was available under the relevant legislation when the proceedings began. <p>The Trade and Cooperation Agreement deals only with domestic procedure which each of the UK and the EU will need to implement.</p> <p>The Trade and Cooperation Agreement does not deal with the recognition and enforceability, after Brexit Transition End, in both the UK and EU, of decisions of EU trademark and Community design courts (including those sitting in the UK) issued before Brexit Transition End</p>

Article	Provision	Consistency with UK and EU legislation	Consistency with INTA Brexit position
			<p>or, in proceedings ongoing at Brexit Transition End, issued after Brexit Transition End. Those are dealt with in the previous Withdrawal Agreement (which provides, in Article 67, that the rules existing when those proceedings were brought continue to apply to those proceedings). There are discussions ongoing for the UK to accede to the Lugano Convention, which would provide an ongoing basis for jurisdiction in new civil/cross-border proceedings. However, the European Commission has recently recommended that the EU not agree to the accession of the UK to that Convention.</p>
<p>Section 1: General provisions</p>			
<p>Article IP.38: General obligations</p>	<p>1. Each Party shall provide under its respective law for the measures, procedures, and remedies necessary to ensure the enforcement of intellectual property rights.</p> <p>For the purposes of Sections 1, 2 and 4 of this Chapter, the term "intellectual property rights" does not include rights covered by Section 5 of Chapter 2 [Protection of undisclosed information].</p> <p>2. The measures, procedures and remedies referred to in paragraph 1 shall:</p>		<p>N/A</p>

Article	Provision	Consistency with UK and EU legislation	Consistency with INTA Brexit position
	<p>(a) be fair and equitable;</p> <p>(b) not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays;</p> <p>(c) be effective, proportionate, and dissuasive;</p> <p>(d) be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.</p>		
<p>Article IP.39: Persons entitled to apply for the application of the measures, procedures, and remedies</p>	<p>Each Party shall recognize as persons entitled to seek application of the measures, procedures and remedies referred to in Sections 2 and 4 of this Chapter:</p> <p>(a) the holders of intellectual property rights in accordance with the law of a Party;</p> <p>(b) all other persons authorized to use those rights, in particular licensees, in so far as permitted by and in accordance with the law of a Party; and</p> <p>(c) federations and associations, in so far as permitted by and in accordance with the law of a Party.</p>	<p>This is consistent with Article 4 the Directive 2004/48/EC of the European Parliament and of the Council on the enforcement of intellectual property rights (the “EU IP Enforcement Directive”).</p> <p>The EU IP Enforcement Directive was implemented in the UK by The Intellectual Property (Enforcement, etc.) Regulations 2006 (the “UK IP Enforcement Regulations”).</p> <p>In the Explanatory Memorandum to the UK IP Enforcement Regulations it was stated that:</p> <ul style="list-style-type: none"> Article 4 in itself imposed no obligations on member States. Instead, it required member States to ensure that where a person has a direct interest and legal standing under UK law, they should have access to the measures, procedures and remedies provided for in the EU IP Enforcement Directive. 	<p>Consistent</p>

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		<ul style="list-style-type: none"> Paragraph 3 of Schedule 1 to the UK IP Enforcement Regulations inserted, amongst other things, section 24F into the Registered Designs Act 1949. This granted an exclusive licensee of a registered design the same rights and remedies as the proprietor, to be consistent with the rights of an exclusive licensee under copyright, performers' property rights, (unregistered) design right, trademarks, and patents. <p>Therefore, no amendments are required to UK or EU legislation.</p>	
Section 2: Civil and administrative enforcement			
Article IP.40: Measures for preserving evidence	<p>1. Each Party shall ensure that, even before the commencement of proceedings on the merits of the case, the competent judicial authorities may, on application by a party who has presented reasonably available evidence to support their claims that their intellectual property right has been infringed or is about to be infringed, order prompt and effective provisional measures to preserve relevant evidence in respect of the alleged infringement, subject to appropriate safeguards and the protection of confidential information.</p> <p>2. Such measures may include the detailed description, with or without the taking of</p>	<p>This is consistent with Article 7 of the EU IP Enforcement Directive.</p> <p>In the Explanatory Memorandum to the UK IP Enforcement Regulations it was stated that no specific implementation of Article 7 was required as courts in each of the UK jurisdictions already have the power to make such orders.</p> <p>In the UK under the Civil Procedure Rules:</p> <ul style="list-style-type: none"> Part 31.16 provides for applications to court for disclosure before proceedings start. As soon as litigation is contemplated, the parties have a duty to preserve disclosable documents. This duty is expressly provided, 	Consistent

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	samples, or the physical seizure of the alleged infringing goods, and, in appropriate cases, the materials and implements used in the production and/or distribution of these goods and the documents relating thereto	<p>in the case of electronic documents, in paragraph 7 of Practice Direction 31B (Disclosure Of Electronic Documents).</p> <p>Therefore, no amendments are required to UK or EU legislation.</p>	
Article IP.41: Evidence	<p>1. Each Party shall take the measures necessary to enable the competent judicial authorities to order on application by a party which has presented reasonably available evidence sufficient to support its claims and has, in substantiating those claims, specified evidence which lies in the control of the opposing party, that this evidence be produced by the opposing party, subject to the protection of confidential information.</p> <p>2. Each Party shall also take the necessary measures to enable the competent judicial authorities to order, where appropriate, in cases of infringement of an intellectual property right committed on a commercial scale, under the same conditions as in paragraph 1, the communication of banking, financial or commercial documents under the control of the opposing party, subject to the protection of confidential information.</p>	<p>This is consistent with Article 6 of the EU IP Enforcement Directive.</p> <p>In the Explanatory Memorandum to the UK IP Enforcement Regulations, it was stated that no specific implementation of Article 6 was required as these measures are already available before the courts in the various UK jurisdictions.</p> <p>In the UK under the Civil Procedure Rules:</p> <ul style="list-style-type: none"> • Part 31.12 provides that the court may make an order for specific disclosure or specific inspection. • Paragraphs 5.1 to 5.5 of Practice Direction 31A (Disclosure and Inspection) provide for an application for an order for specific disclosure • Part 31.17 provides for orders for disclosure against a person not a party <p>Therefore, no amendments are required to UK or EU legislation.</p>	Consistent
Article IP.42: Right of information	1. Each Party shall ensure that, in the context of civil proceedings concerning an infringement of an intellectual property right	<p>This is consistent with Article 8 of the EU IP Enforcement Directive.</p> <p>In the Explanatory Memorandum to the UK IP</p>	Consistent

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	<p>and in response to a justified and proportionate request of the claimant, the competent judicial authorities may order the infringer or any other person to provide information on the origin and distribution networks of the goods or services which infringe an intellectual property right.</p> <p>2. For the purposes of paragraph 1, "any other person" means a person who:</p> <p>(a) was found in possession of the infringing goods on a commercial scale;</p> <p>(b) was found to be using the infringing services on a commercial scale;</p> <p>(c) was found to be providing on a commercial scale services used in infringing activities; or</p> <p>(d) was indicated by the person referred to in points (a), (b) or (c), as being involved in the production, manufacture or distribution of the goods or the provision of the services.</p> <p>3. The information referred to in paragraph 1 shall, as appropriate, comprise:</p> <p>(a) the names and addresses of the producers, manufacturers, distributors, suppliers and other previous holders of the goods or services, as well as the intended wholesalers and retailers;</p> <p>(b) information on the quantities produced, manufactured, delivered, received, or ordered, as well as the price obtained for the</p>	<p>Enforcement Regulations it was stated that:</p> <ul style="list-style-type: none"> • In England and Wales and Northern Ireland no implementation of Article 8 was required as this type of order is already available. (Application can be made for a "Norwich Pharmacal" order to identify the proper defendant to an action or to obtain information to plead a claim). • Regulation 4 of the UK IP Enforcement Regulations implemented this obligation in Scotland by creating a new type of court order, for disclosure of information about infringing goods and services. <p>Therefore, no amendments are required to UK or EU legislation.</p>	

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	<p>goods or services in question.</p> <p>4. Paragraphs 1 and 2 shall apply without prejudice to other laws of a Party which:</p> <p>(a) grant the right holder rights to receive fuller information;</p> <p>(b) govern the use in civil proceedings of the information communicated pursuant to this Article;</p> <p>(c) govern responsibility for misuse of the right of information;</p> <p>(d) afford an opportunity for refusing to provide information which would force the person referred to in paragraph 1 to admit their own participation or that of their close relatives in an infringement of an intellectual property right;</p> <p>(e) govern the protection of confidentiality of information sources or the processing of personal data.</p>		
<p>Article IP.43: Provisional and precautionary measures</p>	<p>1. Each Party shall ensure that its judicial authorities may, at the request of the applicant, issue against the alleged infringer an interlocutory injunction intended to prevent any imminent infringement of an intellectual property right, or to forbid, on a provisional basis and subject, where appropriate, to a recurring penalty payment where provided for by the law of that Party, the continuation of the alleged infringements of that right, or to make such continuation subject to the lodging</p>	<p>This is consistent with Article 9 of the EU IP Enforcement Directive.</p> <p>In the Explanatory Memorandum to the UK IP Enforcement Regulations it was stated that:</p> <ul style="list-style-type: none"> • In England and Wales and Northern Ireland some amendment is necessary to the various rules of court. In England and Wales these changes had been made, but still needed to be made to the Northern Ireland rules of court. 	<p>Consistent</p>

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	<p>of guarantees intended to ensure the compensation of the right holder. An interlocutory injunction may also be issued, under the same conditions, against an intermediary whose services are being used by a third party to infringe an intellectual property right.</p> <p>2. Each Party shall ensure that its judicial authorities may, at the request of the applicant, order the seizure or delivery up of goods suspected of infringing an intellectual property right, so as to prevent their entry into or movement within the channels of commerce.</p> <p>3. In the case of an alleged infringement committed on a commercial scale, each Party shall ensure that, if the applicant demonstrates circumstances likely to endanger the recovery of damages, the judicial authorities may order the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of their bank accounts and other assets. To that end, the competent authorities may order the communication of bank, financial or commercial documents, or appropriate access to the relevant information.</p> <p>4. Each Party shall ensure that its judicial authorities shall, in respect of the measures referred to in paragraphs 1, 2 and 3, have the authority to require the applicant to provide any reasonably available evidence in order to</p>	<ul style="list-style-type: none"> In Scotland, no implementation was required as the necessary measures were already available. <p>In the UK under the Civil Procedure Rules:</p> <ul style="list-style-type: none"> Part 25 provides for interim remedies (including interim injunctions and orders for the detention, custody, or preservation of relevant property) and security for costs Practice Direction 25A provides for interim injunctions. <p>Therefore, no amendments are required to UK or EU legislation.</p>	

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	satisfy themselves with a sufficient degree of certainty that the applicant is the rightsholder and that the applicant's right is being infringed, or that such infringement is imminent.		
Article IP.44: Corrective measures	<p>1. Each Party shall ensure that its judicial authorities may order, at the request of the applicant, without prejudice to any damages due to the right holder by reason of the infringement, and without compensation of any sort, the destruction of goods that they have found to be infringing an intellectual property right or at least the definitive removal of those goods from the channels of commerce. If appropriate, under the same conditions, the judicial authorities may also order destruction of materials and implements predominantly used in the creation or manufacture of those goods.</p> <p>2. Each Party's judicial authorities shall have the authority to order that those measures shall be carried out at the expense of the infringer unless particular reasons are invoked for not doing so.</p>	<p>This is consistent with Article 10 of the EU IP Enforcement Directive.</p> <p>In the Explanatory Memorandum to the UK IP Enforcement Regulations it was stated that:</p> <ul style="list-style-type: none"> • In relation to Article 10(1): <ul style="list-style-type: none"> ○ In relation to registered designs it is possible to rely on the common law remedies of delivery up and destruction. However, to ensure transparency of implementation paragraph 3 of Schedule 1 to the UK IP Enforcement Regulations inserted sections 24C and 24D into the Registered Designs Act 1949, which provides a statutory scheme for delivery up and disposal of articles which infringe the registered design. ○ In relation to Community designs, Article 89(1) of the Community Design Regulation requires certain remedies to exist. Article 89(1)(d) allows orders imposing other sanctions which are appropriate to the acts of infringement in question. Article 88(2) states that where the matter is not covered by the 	Consistent

Article	Provision	Consistency with UK and EU legislation	Consistency with INTA Brexit position
		<p>Community Design Regulation it shall be governed by national law. Therefore, to ensure transparency and consistency between registered UK designs and registered Community designs the Community Designs Regulations 2005 were amended by paragraph 9 to Schedule 3 of the UK IP Enforcement Regulations. This paragraph inserted provisions to provide for delivery up and destruction in relation to such designs.</p> <ul style="list-style-type: none"> ○ In relation to Community trademarks some similar provisions were included in the Community Trademark Regulations 2006. ○ A small consequential omission (which was a mistake in the original enactment) has been made to section 231 of the Copyright, Designs and Patents Act 1988 by Schedule 4 to the UK IP Enforcement Regulations. ● In relation to Article 10(2), in England and Wales and Northern Ireland some amendments were necessary to the rules of court. These had been made in England and Wales and will be made in Northern Ireland. In Scotland, no action was necessary. <p>Paragraph 26.1 of Practice Direction 63 (Intellectual Property Claims) provides that where</p>	

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		<p>the court makes an order for delivery up or destruction of infringing goods, or articles designed or adapted to make such goods, the person against whom the order is made must pay the costs of complying with that order unless the court orders otherwise.</p> <p>Therefore, no amendments are required to UK or EU legislation.</p>	
Article IP.45: Injunctions	Each Party shall ensure that, where a judicial decision is taken finding an infringement of an intellectual property right, the judicial authorities may issue against the infringer an injunction aimed at prohibiting the continuation of the infringement. Each Party shall also ensure that the judicial authorities may issue an injunction against intermediaries whose services are used by a third party to infringe an intellectual property right.	<p>This is consistent with Article 11 of the EU IP Enforcement Directive.</p> <p>In the Explanatory Memorandum to the UK IP Enforcement Regulations it was stated that no specific implementation of Article 11 was required as injunctions (or in Scotland, interdicts) were already available before the English, Scottish and Northern Irish courts.</p> <p>Therefore, no amendments are required to UK or EU legislation.</p>	Consistent
Article IP.46: Alternative measures	Each Party may provide that the judicial authorities, in appropriate cases and at the request of the person liable to be subject to the measures provided for in Article IP.44 [Corrective measures] or Article IP.45 [Injunctions], may order pecuniary compensation to be paid to the injured party instead of applying the measures provided for in these two Articles if that person acted unintentionally and without negligence, if execution of the measures in question would cause the person disproportionate harm and if pecuniary compensation to the injured party	<p>This is consistent with Article 12 of the EU IP Enforcement Directive.</p> <p>In the Explanatory Memorandum to the UK IP Enforcement Regulations it was stated that no specific implementation of Article 11 was required as injunctions (or in Scotland, interdicts) were already available before the English, Scottish and Northern Irish courts.</p> <p>Therefore, no amendments are required to UK or EU legislation.</p>	Consistent

Article	Provision	Consistency with UK and EU legislation	Consistency with INTA Brexit position
	appears reasonably satisfactory		
Article IP.47: Damages	<p>1. Each Party shall ensure that its judicial authorities, on application of the injured party, order the infringer who knowingly engaged, or had reasonable grounds to know it was engaging, in an infringing activity, to pay to the rightsholder damages appropriate to the actual prejudice suffered by the right holder as a result of the infringement.</p> <p>2. Each Party shall ensure that when its judicial authorities set the damages:</p> <p>(a) they take into account all appropriate aspects, such as the negative economic consequences, including lost profits, which the injured party has suffered, any unfair profits made by the infringer and, in appropriate cases, elements other than economic factors, such as the moral prejudice caused to the right holder by the infringement; or</p> <p>(b) as an alternative to point (a), they may, in appropriate cases, set the damages as a lump sum on the basis of elements such as at least the amount of royalties or fees which would have been due if the infringer had requested authorization to use the intellectual property right in question.</p> <p>3. Where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity, each Party may lay down that the judicial authorities may order the</p>	<p>This is consistent with Article 13 of the EU IP Enforcement Directive.</p> <p>In the Explanatory Memorandum to the UK IP Enforcement Regulations it was stated that:</p> <ul style="list-style-type: none"> • Regulation 3 of the UK IP Enforcement Regulations set out the general approach to the assessment of damages required by Article 13. • Section 62(3) of the Patents Act 1977 was amended by paragraph 2 of Schedule 2 to the UK IP Enforcement Regulations. This removed the absolute bar on the recovery of damages in certain circumstances following the amendment of a patent’s specification. Such a bar was prohibited by Article 13(1). • In future, those circumstances precluding recovery have become factors to be taken into account when assessing damages (along with a new factor of knowledge). Similar amendments are made to section 63(2) of the Patents Act 1977 by paragraph 3 of Schedule 2 to the UK IP Enforcement Regulations, where recovery is barred following a finding of partial invalidity. • Section 68 of the Patents Act 1977 and section 25(4) of the Trademarks Act 1994 both prohibited the recovery of damages prior to the registration of a transaction. This restriction was also incompatible with Article 13(1). Therefore, paragraph 4 and 17 of 	Consistent

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	recovery of profits or the payment of damages which may be pre-established.	<p>Schedule 2 to the UK IP Enforcement Regulations changed the restriction so that damages become recoverable, but costs can no longer be recovered. This was compatible with Article 14 as an exception to the “general rule”.</p> <ul style="list-style-type: none"> Certain amendments were due to be made to sections 62(3) and 63(2) of the Patents Act 1977 by section 2(3) and (4) of the Patents Act 2004. The amendments, in their original form, would not now be commenced, and so are repealed by Schedule 4 to the UK IP Enforcement Regulations. However, a factor was included in sections 62(3) and 63(2) corresponding to that proposed change. <p>Therefore, no amendments are required to UK or EU legislation.</p>	
Article IP.48: Legal costs	Each Party shall ensure that reasonable and proportionate legal costs and other expenses incurred by the successful party shall, as a general rule, be borne by the unsuccessful party, unless equity does not allow this.	<p>This is consistent with Article 14 of the EU IP Enforcement Directive.</p> <p>In the Explanatory Memorandum to the UK IP Enforcement Regulations it was stated that no specific implementation was required as this rule reflected the general practice before the English, Scottish and Northern Irish courts.</p> <p>Therefore, no amendments are required to UK or EU legislation.</p>	Consistent
Article IP.49: Publication of judicial decisions	Each Party shall ensure that, in legal proceedings instituted for infringement of an intellectual property right, the judicial authorities may order, at the request of the	<p>This is consistent with Article 15 of the EU IP Enforcement Directive.</p> <p>In the Explanatory Memorandum to the UK IP</p>	Consistent

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	<p>applicant and at the expense of the infringer, appropriate measures for the dissemination of the information concerning the decision, including displaying the decision and publishing it in full or in part.</p>	<p>Enforcement Regulations it was stated that:</p> <ul style="list-style-type: none"> In England and Wales and Northern Ireland the rules of court required amendment to accommodate this requirement. This change had been made in England and Wales, a change to the Northern Ireland rules was anticipated. Regulation 5 of the UK IP Enforcement Regulations implemented this obligation in Scotland by creating a new type of court order for the dissemination and publication of judgments. <p>Paragraph 26.2 of Practice Direction 63 (Intellectual Property Claims) provides that where the court finds that an intellectual property right has been infringed, the court may, at the request of the applicant, order appropriate measures for the dissemination and publication of the judgment to be taken at the expense of the infringer.</p> <p>Therefore, no amendments are required to UK or EU legislation.</p>	
<p>Article IP.50: Presumption of authorship or ownership</p>	<p>For the purposes of applying the measures, procedures and remedies provided for in Chapter 3 [Enforcement of intellectual property rights]:</p> <p>(a) for the author of a literary or artistic work, in the absence of proof to the contrary, to be regarded as such, and consequently to be entitled to institute infringement proceedings, it shall be sufficient for the author's name to</p>	<p>This is consistent with Article 5 of the EU IP Enforcement Directive.</p> <p>In the Explanatory Memorandum to the UK IP Enforcement Regulations it was stated that:</p> <ul style="list-style-type: none"> No action was required to implement Article 5(1)(a) as a number of presumptions already apply to copyright and database right. However, the presumptions did not apply to other rights related to copyright. 	<p>Consistent</p>

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	<p>appear on the work in the usual manner; and (b) point (a) applies mutatis mutandis to the holders of rights related to copyright with regard to their protected subject matter</p>	<ul style="list-style-type: none"> Paragraph 10 of Schedule 2 to the UK IP Enforcement Regulations inserted section 197A into the UK CDPA. This created a new presumption, so that where copies of a recording of a performance bear the name of the performer that statement shall be admissible as evidence and shall be presumed to be correct until the contrary is proved. This presumption does not apply in criminal proceedings. Paragraph 5 of Schedule 3 to the UK IP Enforcement Regulations inserted paragraphs 17A and 17B into the Copyright and Related Rights Regulations 1996. The former provision created a similar new presumption in relation to publication right. The latter excludes its application from criminal proceedings. <p>This is consistent with sections 104 and 105 of the UK CDPA.</p> <p>Therefore, no amendments are required to UK or EU legislation.</p>	
<p>Article IP.51: Administrative procedures</p>	<p>To the extent that any civil remedy can be ordered on the merits of a case as a result of administrative procedures, such procedures shall conform to principles equivalent in substance to those set forth in this Section.</p>	<p>This does not appear expressly to be provided in UK or EU legislation but this as this is not inconsistent no amendments appear to be required.</p>	<p>Consistent</p>
<p>Section 3: Civil judicial</p>			<p>INTA has not published a Brexit</p>

Article	Provision	Consistency with UK and EU legislation	Consistency with INTA Brexit position
<p>procedures and remedies of trade secrets</p>			<p>position on trade secrets</p>
<p>Article IP.52: Civil judicial procedures and remedies of trade secrets</p>	<p>1. Each Party shall ensure that any person participating in the civil judicial proceedings referred to in Article IP.34(1) [Scope of protection of trade secrets], or who has access to documents which form part of those proceedings, is not permitted to use or disclose any trade secret or alleged trade secret which the competent judicial authorities have, in response to a duly reasoned application by an interested party, identified as confidential and of which they have become aware as a result of such participation or access.</p> <p>2. Each Party shall ensure that the obligation referred to in paragraph 1 remains in force after the civil judicial proceedings have ended, for as long as appropriate.</p> <p>3. In the civil judicial proceedings referred to Article IP.34(1) [Scope of protection of trade secrets], each Party shall provide that its judicial authorities have the authority at least to:</p> <p>(a) order provisional measures, in accordance with their respective laws and regulations, to cease and prohibit the use or disclosure of the trade secret in a manner contrary to honest commercial practices;</p>	<p>Article IP.52(1) to (4) is consistent, in the EU, with Articles 5, 9, 10 and 16 of the Trade Secrets Directive.</p> <p>Article IP.52(1) to (3) is consistent in the UK, with regulations 10 and 11 of the Trade Secrets Regulations.</p> <p>Article IP.52(4) has no equivalent in the Trade Secrets Regulations but regulation 12(2) provides that in considering whether to make an order under regulation 11(1) and in assessing the proportionality of such an order, a court must take into account the specific circumstances of the case, including where appropriate, amongst others, the legitimate interests of the parties and the impact which the granting or rejection of the measures could have on the parties, the legitimate interests of third parties, the public interest, and the safeguard of fundamental rights.</p>	<p>N/A</p>

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	<p>(b) order measures, in accordance with their respective laws and regulations, ordering the cessation of, or as the case may be, the prohibition of the use or disclosure of the trade secret in a manner contrary to honest commercial practices;</p> <p>(c) order, in accordance with their respective laws and regulations, any person who has acquired, used or disclosed a trade secret in a manner contrary to honest commercial practices and that knew or ought to have known that he or she or it was acquiring, using or disclosing a trade secret in a manner contrary to honest commercial practices to pay the trade secret holder damages appropriate to the actual prejudice suffered as a result of such acquisition, use or disclosure of the trade secret;</p> <p>(d) take specific measures necessary to preserve the confidentiality of any trade secret or alleged trade secret used or referred to in proceedings as referred to in Article IP.34(1) [Scope of protection of trade secrets]. Such specific measures may include, in accordance with each Party's respective laws and regulations, including the rights of defense, the possibility of restricting access to certain documents in whole or in part; of restricting access to hearings and their corresponding records or transcript; and of making available a non-confidential version of judicial decision in which the passages containing trade secrets have been removed</p>		

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	<p>or redacted.</p> <p>(e) impose sanctions on any person participating in the legal proceedings who fail or refuse to comply with the court orders concerning the protection of the trade secret or alleged trade secret.</p> <p>4. Each Party shall ensure that an application for the measure, procedures or remedies provided for in this Article is dismissed where the alleged acquisition, use or disclosure of a trade secret contrary to honest commercial practices was carried out, in accordance with its laws and regulations:</p> <p>(a) to reveal misconduct, wrongdoing, or illegal activity for the purpose of protecting the general public interest;</p> <p>(b) as a disclosure by employees to their representatives as part of, and necessary for, the legitimate exercise by those representatives of their functions;</p> <p>(c) to protect a legitimate interest recognized by the laws and regulations of that Party.</p>		
Section 4: Border enforcement			In the INTA paper on enforcement , INTA's position is that to the extent that a new customs application procedure is adopted for future UK AFAs, INTA advocates that the new UK system should closely follow the EU AFA system, in particular in terms of:
Article IP.53: Border measures	1. With respect to goods under customs control, each Party shall adopt or maintain procedures under which a right holder may submit applications to a competent authority to suspend the release of or detain suspected	Article IP.53(1) to (12) is consistent with Regulation (EU) No 608/2013 of the European Parliament and of the Council concerning customs enforcement of intellectual property	

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	<p>goods. For the purposes of this Section, "suspected goods" means goods suspected of infringing trademarks, copyrights and related rights, geographical indications, patents, utility models, industrial designs, topographies of integrated circuits and plant variety rights.</p> <p>2. Each Party shall have in place electronic systems for the management by customs of the applications granted or recorded.</p> <p>3. Each Party shall ensure that its competent authorities do not charge a fee to cover the administrative costs resulting from the processing of an application or a recordation.</p> <p>4. Each Party shall ensure that its competent authorities decide about granting or recording applications within a reasonable period of time.</p> <p>5. Each Party shall provide for the applications referred to in paragraph 1 to apply to multiple shipments.</p> <p>6. With respect to goods under customs control, each Party shall ensure that its customs authorities may act upon their own initiative to suspend the release of or detain suspected goods.</p> <p>7. Each Party shall ensure that its customs authorities use risk analysis to identify suspected goods.</p> <p>8. Each Party may authorize its customs authority to provide a right holder, upon</p>	<p>rights (the "EU Customs Regulation").</p> <p>The EU Customs Regulation, as amended by The Customs (Enforcement of Intellectual Property Rights) (Amendment) (EU Exit) Regulations 2019, forms part of domestic UK law.</p> <p>Article IP.53(13) to (15) do not require legislative amendment. The Protocol on mutual administrative assistance in customs matters, is a protocol to the Trade and Cooperation Agreement.</p>	<ul style="list-style-type: none"> • the application process; • the definition of counterfeit goods; • the simplified procedure; • the small consignments procedure; and • there being no requirement for a fee/bond. <p>The UK customs regulations appear broadly to replicate the EU Customs Regulation.</p> <p>INTA has also suggested that the UK Border Agency should continue to have access to EU AFAs and the Enforcement Database (EDB) of the European Observatory for Infringements of Intellectual Property Rights (the European Observatory) so it can continue to cooperate with the EU27 authorities in preventing IP infringing goods at the border.</p> <p>There is no provision in the Trade and Cooperation Agreement that the UK Border Agency should continue to have access to EU AFAs and the Enforcement Database (EDB) of the European Observatory for Infringements of Intellectual Property. However, the Trade and Cooperation</p>

Article	Provision	Consistency with UK and EU legislation	Consistency with INTA Brexit position
	<p>request, with information about goods, including a description and the actual or estimated quantities thereof, and if known, the name and address of the consignor, importer, exporter or consignee, and the country of origin or provenance of the goods, whose release has been suspended, or which have been detained.</p> <p>9. Each Party shall have in place procedures allowing for the destruction of suspected goods, without there being any need for prior administrative or judicial proceedings for the formal determination of the infringements, where the persons concerned agree or do not oppose the destruction. In case suspected goods are not destroyed, each Party shall ensure that, except in exceptional circumstances, such goods are disposed of outside the commercial channel in a manner which avoids any harm to the right holder.</p> <p>10. Each Party shall have in place procedures allowing for the swift destruction of counterfeit trademark and pirated goods sent in postal or express couriers' consignments.</p> <p>11. Each Party shall provide that, where requested by the customs authorities, the holder of the granted or recorded application shall be obliged to reimburse the costs incurred by the customs authorities, or other parties acting on behalf of customs authorities, from the moment of detention or suspension of the release of the goods, including storage, handling, and any costs</p>		<p>Agreement does provide for the respective customs authorities to share operational information for the purposes of the prevention, investigation, detection, or prosecution of criminal offences (Article LAW.OPCO.1: Cooperation on Operational Information). A Trade Specialized Committee on Customs Cooperation and Rules of Origin has also been established, which will deal, inter alia, with issues relating to customs enforcement of intellectual property rights and which may supplement or make further recommendations over and above the provisions of the Trade and Cooperation Agreement.</p>

Article	Provision	Consistency with UK and EU legislation	Consistency with INTA Brexit position
	<p>relating to the destruction or disposal of the goods.</p> <p>12. Each Party may decide not to apply this Article to the import of goods put on the market in another country by or with the consent of the right holders. A Party may exclude from the application of this Article goods of a non-commercial nature contained in travelers' personal luggage.</p> <p>13. Each Party shall allow its customs authorities to maintain a regular dialogue and promote cooperation with the relevant stakeholders and with other authorities involved in the enforcement of intellectual property rights.</p> <p>14. The Parties shall cooperate in respect of international trade in suspected goods. In particular, the Parties shall, as far as possible, share relevant information on trade in suspected goods affecting the other Party.</p> <p>15. Without prejudice to other forms of cooperation, the Protocol on mutual administrative assistance in customs matters applies with regard to breaches of legislation on intellectual property rights for the enforcement of which the customs authorities of a Party are competent in accordance with this Article.</p>		
Article IP.54: Consistency with GATT	In implementing border measures for the enforcement of intellectual property rights by customs, whether or not covered by this	N/A	

Article	Provision	Consistency with UK and EU legislation	Consistency with INTA Brexit position
1994 and the TRIPS Agreement	Section, the Parties shall ensure consistency with their obligations under GATT 1994 and the TRIPS Agreement and, in particular, with Article V of GATT 1994 and Article 41 and Section 4 of Part III of the TRIPS Agreement.		
Chapter 4: Other provisions			
Article IP.55: Cooperation	<p>1. The Parties shall cooperate with a view to supporting the implementation of the commitments and obligations undertaken under this Title.</p> <p>2. The areas of cooperation include, but are not limited to, the following activities:</p> <p>(a) exchange of information on the legal framework concerning intellectual property rights and relevant rules of protection and enforcement;</p> <p>(b) exchange of experience on legislative progress, on the enforcement of intellectual property rights and on enforcement at central and sub-central level by customs, police, administrative and judiciary bodies;</p> <p>(c) coordination to prevent exports of counterfeit goods, including coordination with other countries;</p> <p>(d) technical assistance, capacity building, exchange, and training of personnel;</p> <p>(e) protection and defense of intellectual</p>	N/A	<p>INTA advocates that UK and EU27 law enforcement authorities continue to collaborate, share intelligence, and continue to participate in the European Arrest Warrant (EAW) and Joint Investigation Teams (JIT) in the fight against IP Crime and that, to the extent possible, UK law enforcement authorities continue to collaborate on IPC3 initiatives.</p> <p>INTA considers that it would be beneficial to continue to publish macro/trend data in the post-Brexit UK, along the lines of the annual report on EU Customs' enforcement of IPR. This data sharing has a real value to a wide stakeholder group: by identifying the scope of the issue, it not only highlights the importance of customs' work on counterfeiting and the challenges they are facing, but it also supports raising awareness of consumers, governments, and</p>

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	<p>property rights and the dissemination of information in this regard in, among others, to business circles and civil society;</p> <p>(f) public awareness of consumers and right holders;</p> <p>(g) the enhancement of institutional cooperation, particularly between the intellectual property offices of the Parties;</p> <p>(h) educating and promoting awareness among the general public regarding policies concerning the protection and enforcement of intellectual property rights;</p> <p>(i) the promotion of protection and enforcement of intellectual property rights with public private collaboration involving small and medium-size enterprises;</p> <p>(j) the formulation of effective strategies to identify audiences and communication programs to increase consumer and media awareness of the impact of intellectual property rights' violations, including the risk to health and safety and the connection to organized crime.</p> <p>3. The Parties shall, either directly or through the Trade Specialized Committee on Intellectual Property, maintain contact on all matters related to the implementation and functioning of this Title</p>		<p>businesses of all sizes.</p> <p>The provisions of the Trade and Cooperation Agreement appear to allow continued institutional cooperation in these areas, which is to be welcomed.</p>
Article IP.56: Voluntary	Each Party shall endeavor to facilitate voluntary stakeholder initiatives to reduce	N/A	INTA supports stakeholder engagement in the enforcement of

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stakeholder initiatives	<p>intellectual property rights infringement, including online and in other marketplaces focusing on concrete problems and seeking practical solutions that are realistic, balanced proportionate and fair for all concerned including in the following ways:</p> <p>(a) each Party shall endeavor to convene stakeholders consensually in its territory to facilitate voluntary initiatives to find solutions and resolve differences regarding the protection and enforcement of intellectual property rights and reducing infringement;</p> <p>(b) the Parties shall endeavor to exchange information with each other regarding efforts to facilitate voluntary stakeholder initiatives in their respective territories; and</p> <p>(c) the Parties shall endeavor to promote open dialogue and cooperation among the Parties' stakeholders, and to encourage the Parties' stakeholders to jointly find solutions and resolve differences regarding the protection and enforcement of intellectual property rights and reducing infringement.</p>		intellectual property rights.
Article IP.57: Review in relation to geographical indications	Noting the relevant provisions of any earlier bilateral agreement between the United Kingdom of the one part and the European Union and European Atomic Energy Community of the other part, the Parties may jointly use reasonable endeavors to agree rules for the protection and effective domestic enforcement of their geographical indications.	<p>The UK has incorporated into domestic law EU food and drink regulations concerning geographical indication (“GI”) schemes, amended pursuant to The Agricultural Products, Food and Drink (Amendment) (EU Exit) Regulations 2019 (the “UK GI Regulations”).</p> <p>The Explanatory Memorandum to the UK GI Regulations states as follows:</p>	The INTA Brexit position paper states that the short-term focus should be on preserving Protected Geographical Indications (PGIs), Protected Designations of Origin (PDO) and Traditional Specialty Guaranteed (TSG) and putting in place transitional provisions to recognize existing GIs in the UK or to allow their conversion

Article	Provision	Consistency with UK and EU legislation	Consistency with INTA Brexit position
		<ul style="list-style-type: none"> • The UK will recognize the application date to the EU of all pending and existing GIs and traditional wine terms. • For a period of nine months following Brexit Transition End, all GI and traditional wine term applications submitted to the UK will be able to refer to their corresponding date of application to the EU, should one exist. This will apply to all GIs already protected in the EU, and those where the application to the EU is pending a decision as at Brexit Transition End. • When examining a trademark application, or in the case of a registered mark, an application for declaration of invalidity is made in the UK, the IPO will use the effective date to determine precedence between conflicting GI and trademark applications. • Should the effective submission date of a successful GI application precede a conflicting trademark application, it will be entitled to exclusive use of that name in the UK. Should the trademark application date precede the GI application, the names will normally co-exist in the UK. <p>The UK Government has published this guidance regarding the UK GI schemes: Protected geographical food and drink names: UK GI schemes</p>	<p>into national rights. Going forward, there should be mutual recognition of EU and (future) UK rights. The EU should preserve all GIs currently applicable to the UK as third country GIs. Applications pending at the time of the UK's exit should be recognized in the UK.</p> <p>The protection in the UK of PGIs, PDOs and TSGs registered at Brexit Transition End are dealt with by Article 54 of the Withdrawal Agreement.</p> <p>However, none of the Trade and Cooperation Agreement, the Withdrawal Agreement or the UK GI Regulations provide for the continued protection in the EU of PGIs, etc., for UK product names, nor for the recognition in the UK of applications pending at Brexit Transition End.</p>