

# The IP Brief

A quarterly update of key IP cases and news, with a primarily UK and EU focus.

## Introduction

Welcome to our latest edition of The IP Brief – a quarterly update of key IP cases and news, with a primarily UK and EU focus.

In this edition, we take a look at:

- the latest policy developments on copyright and AI within the UK and the EU;
- the CJEU's decision in *Pelham II*, clarifying the scope of the pastiche exception for copyright and related rights;
- the UPC Court of Appeal's decision in *Kodak v Fujifilm*, further developing the court's approach to long-arm jurisdiction;
- an apparent trend towards ADR in recent SEP disputes;
- the distinction between "indefinite" and "perpetual" licences and the relevance of such a distinction to termination rights; and
- the UK Court of Appeal's finding in *Lifestyle Equities v Frasers Group* that trade mark licence registration is a pre-condition to recovering licensee losses.

## Copyright

### Reports, responses and resolutions – a busy few months for copyright and AI

Copyright and AI continues to dominate the IP headlines in the UK and the EU. The last few months have been no exception, with a number of material reports, responses and resolutions published.

In the UK, on 6 March, the Communications and Digital Committee of the House of Lords (**CDC**) published its (pro-copyright) report on "[AI, copyright and the creative industries](#)" (see [blog](#)). That was shortly followed by the UK government publishing, on 18 March, its [Report on copyright and AI \(Government Report\)](#) and accompanying economic impact assessment that were due under the Data (Use and Access) Act 2025 (see [blog](#)). Finally, on 15 May, the UK government published its [Response](#) to the CDC report (see [blog](#)).

In the EU, the European Parliament adopted its (equally pro-copyright) [resolution on copyright and generative artificial intelligence](#) on 10 March (**EP Resolution**). This was later followed by the European Commission launching a [Call for Evidence](#) to support its review of the 2019 Directive on Copyright in the Digital Single Market (**DSM Directive**) (which contains, amongst other things, the EU's copyright exceptions for text and data mining (**TDM**)) and to inform potential targeted Commission proposals to change the EU's copyright framework, including in the context of AI.

We summarise some of the key points emerging from these publications below.



## UK

One of the core debates within the UK (and globally) over the last few years has been about how to balance the rights of AI developers and copyright holders when training generative AI. That debate encompasses a number of material topics including the availability of copyright exceptions to AI developers, transparency over data sources, licensing and remuneration, technical tools and standards, and the treatment of models trained abroad.

Given the UK government's current approach (discussed further below) of largely deferring policy decisions until a later date, as well as the limited nature of the issues ultimately argued (and pending before the Court of Appeal) in *Getty Images v Stability AI*, we suspect we might now start to see further litigation to clarify the legal position in the UK from those who had been waiting for the legislature to intervene.

### TDM exception

Of these, the one that has attracted the most attention to date in the UK has been whether a broader copyright exception for TDM should be introduced. After a failed attempt in 2022 to introduce an exception which would have allowed TDM for any purpose with no ability for rights holders to opt out or contract out, the government stated a preference in its December 2024 consultation on AI and copyright (**Consultation**), to introduce a slightly narrower TDM exception that would have permitted TDM for any purpose but only where rightsholders had not reserved their rights and opted their content out (largely mirroring the current position in the EU).

Following significant pushback from those in the creative industries, the government has now confirmed that this is no longer its preferred option. It has not, however, put forward an alternative preference at this stage, opting instead to gather further evidence. For now, therefore, the status quo will continue, with the UK only having a very narrow TDM exception for non-commercial research purposes.

It will be interesting to see whether this retreat has any impact on the developing licensing market. In the meantime, it looks like we're back in a holding pattern, with both rightsholders and AI developers in a position of uncertainty as to what the future direction of travel is likely to be.

### Transparency

As things stand, there is no requirement in the UK for AI developers to publish details of the works used to train their generative AI models or how those works were obtained.

The CDC Report called on the government to set best practice for transparency reporting on the use of data in AI training and to place transparency obligations for large AI model providers on a statutory footing.

Responses to the Consultation indicated that there is broad consensus for greater transparency, but, unsurprisingly, there are differing views on approach - particularly on the appropriate level of granularity and how information should be disclosed.

With that in mind, the government has said that it intends to continue monitoring the effect of transparency rules in other jurisdictions, such as the EU and California, and will publish a review of mechanisms available for creators to control the use of their works online, including details of best practice on input transparency, in due course (no timeframe provided).



## Licensing

With respect to licensing, the CDC Report urged the government to set out a clear expectation that commercial AI developers operating in the UK must obtain appropriate licences to use copyright works for training generative AI, and that appropriate mechanisms should be in place to ensure fair remuneration for individual rightsholders.

The government's response did not set out the exact statement requested by the CDC, but did note that "AI developers must seek permission and acquire licences for the use of copyright works, unless they can show an existing copyright exception applies" and that "licensing is important to ensure creators are paid when their work is used". At the same time, it reiterated that the government does not, generally, intend to intervene in the licensing market at this stage, although it acknowledged that more might need to be done to support individual and smaller creative rightsholders. It therefore intends to launch a working group to explore whether there is a role for it to play in providing such support.

## Technical tools / standards

On the topic of technical tools and standards, the CDC Report recommended that the government develop interoperable standards for labelling AI-generated content (as well as technical solutions to reserve rights and show content provenance) and consider enshrining labelling requirements for wholly AI-generated content in legislation.

In response, the government has said that it will: (i) establish a taskforce on best practices for AI-generated content labelling, with an interim report due this autumn; and (ii) take forward work with experts and stakeholders to support best practice and adoption of market-led tools and standards.

## Treatment of models trained abroad

The Government Report considered whether UK copyright law should apply to models that have been trained overseas and then placed on the UK market. A related question was considered last year in the *Getty Images v Stability AI* case, where the English High Court was asked whether importing a trained generative AI model into the UK could amount to secondary infringement of copyright (more on this [here](#) and [here](#)).

The government noted the potential negative effect such extra-territorial reach could have, such as models not being made available in the UK, and the possible negative impacts on downstream developers of AI systems (which are more likely to be UK based than providers of the major generative AI models themselves). It concluded that this is an area of the law that should be considered properly by the English courts, based on the law as it stands. It also acknowledged that developments in other countries (particularly the EU and US) could have a significant impact on outcomes in the UK, with greater clarity expected in those jurisdictions over the coming year or two.

On this basis, the government has proposed not to amend UK copyright law in respect of models trained abroad for now, but will continue to monitor the situation and engage with other countries on the point.



## Computer-generated works (CGWs)

The UK is one of the few countries in the world that provides copyright protection for CGWs, but there are questions around how those rules currently apply in a generative AI context. Acknowledging those issues, the government consulted on a number of potential reforms, with its preference being to remove the CGW provisions unless sufficient evidence emerged on the positive effects of protecting CGWs.

The Government Report noted that most respondents to the Consultation supported the removal of these provisions and the government has so far received limited evidence that the existing protections are being used. Whilst the government didn't take the opportunity to make a final decision on this point, preferring to continue monitoring the use and impact of these provisions, the preference is still very much to remove these provisions unless strong evidence to the contrary arises.

## Digital replicas

Unauthorised digital replicas, including those mimicking a person's image or voice, are an area of growing concern in the UK (as elsewhere). As things stand, however, there are no specific personality or image rights in the UK and, whilst reliance on certain broader protections may be possible, the scope for such reliance is limited.

The Government Report noted that there was clear support from respondents to the Consultation for enhanced protections for image and voice, but no clear view on what form such protections might take or who may benefit from them. The government has therefore proposed to explore potential options to address the risks posed by digital replicas and confirmed that it will launch a new consultation focussing on this, this summer.

## EU

Whilst the EU is notably further advanced than the UK in plotting its way forward on many of these issues (with the AI Act and its broader copyright exceptions for text and data mining already in place), it is clear that there is still plenty of room for debate and that the position in the EU is not settled.

The EP Resolution, for example, calls on the European Commission to reconsider the current approach, ultimately favouring a system based on licensing, remuneration and more granular transparency, over broad exceptions, with a number of recommendations and potential reforms proposed. These include:

- A call for clarification on the application of the DSM Directive in the context of training generative AI models.
- A call for an additional legal framework to clarify licensing rules for generative AI and to address potential infringements of current copyright law.
- A recommendation that the Commission assign responsibility to the EUIPO to support a sector-based, voluntary licensing process.
- A call for rightsholders to receive fair remuneration for the use of their works and consideration to be given to whether, and if so how, rightsholders should be paid for past uses of their works.

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- A requirement for AI developers to disclose itemised lists identifying each item of copyright-protected content used for training (albeit with proposed solutions to protect trade secrets).
  - The creation of a “rebuttable presumption” that copyright-protected content has been used for AI training where EU transparency obligations have not been met.
  - A call for EU copyright law to apply to the use of European content for training any generative AI model or system that is made available on the EU market, regardless of where the model or system was trained, with any model or system that does not comply being barred from the EU market (building on the provisions already contained in Article 53(1)(c) of the EU AI Act, which we discussed in this [briefing](#)).
  - A call for the Commission to investigate measures to protect individuals against the distribution and sharing of deepfakes.

Shortly after the EP Resolution was passed, on 13 May the European Commission launched a combined Call for Evidence. Through this, the Commission is seeking views and evidence on (amongst other things) the impact of the DSM Directive (which, importantly in this context, contains the EU’s existing TDM exceptions) as well as on, more broadly, the challenges relating to the application and enforcement of copyright in an AI context.

The Call for Evidence itself is relatively light on specific proposals. It notes that the Commission “is exploring ways to enhance the licensing and enforcement of copyright and related rights in the AI context, improve the conditions for creators’ remuneration, while making it easier for providers of generative AI to access copyright-protected content” and that “[p]olicy options may include improving rightsholders’ access to information on the use of their content where challenges or gaps are identified, facilitating licensing through mediation or arbitration or potential new measures to enable appropriate remuneration for creators, and strengthening protection of performers against AI-generated impersonifications”. However, at this stage, all options seem to be on the table, with the Commission seeking views to guide it towards a narrower set of proposals that it will then consult on.

This Call for Evidence may therefore provide stakeholders with an opportunity to influence the broader proposals on copyright and generative AI that the Commission will take forward into a stakeholder consultation.

## CJEU settles the score on meaning of pastiche

On 14 April 2026, the CJEU handed down its highly anticipated decision in *Pelham II*, clarifying the scope of the pastiche exception for copyright and related rights.

The decision marks the latest chapter in a 22-year dispute over the use of a two-second sample of a rhythm sequence taken from a phonogram of a song released by Kraftwerk in 1977 that was later used in a continuous loop in the defendants' song "Nur mir", released in 1997.

In this latest instalment, the CJEU was asked, in essence, whether this type of sampling could fall within the scope of the pastiche exception set out in Article 5(3)(k) of the InfoSoc Directive (Directive 2001/29/EC).

More particularly, the CJEU was asked:

- 01 Whether the pastiche exception has a "catch all" nature which covers any artistic engagement with an existing work, including sampling, or whether the concept of pastiche is subject to limiting criteria, such as a requirement of humour, stylistic imitation or tribute?
- 02 In order for use to be "for the purpose of" pastiche, is it necessary to show that the user intended to use the protected work for that purpose (subjective test) or is it sufficient for the pastiche character to be recognisable to a person familiar with that work (objective test)?

### Meaning of pastiche

In answering the first question, the CJEU sought to strike a fair balance between the rights of rights holders on the one hand and freedom of expression and of the arts, as well as the wider public interest, on the other.

Bearing that in mind, the CJEU held that the pastiche exception is not a "catch-all" and doesn't cover every form of creative use of copyright-protected material.

Rather, pastiche covers creations which evoke one or more existing works, while being noticeably different from them, and which use (including through sampling) some of those works' copyright-protected characteristic elements to engage with those works in an artistic or creative dialogue that is recognisable as such.

That artistic or creative dialogue may take different forms, such as overt stylistic imitation of the original work (concealed imitations or plagiarism, by contrast, are not covered), a tribute to the original work, or humorous or critical engagement with it (although humour or mockery is not required for a finding of pastiche).

### Subjective or objective test?

In its answer to the second question, the CJEU held that there is no requirement to show that the user intended to use the existing work for the purposes of pastiche. Rather, whether use is "for the purpose" of pastiche is to be assessed objectively, with the test being met if the pastiche nature is recognisable to a person familiar with the work from which the elements have been taken.



## Comment

It remains to be seen how the EU national courts will interpret and apply this decision in practice, but it nonetheless provides rare and helpful guidance on the scope of the pastiche exception which will be welcomed by rights holders and creatives alike.

For the music sector, the decision confirms that sampling can benefit from the pastiche exception in the right cases, but it does not give carte blanche to sampling so care still needs to be taken. Indeed, it will be interesting to see whether the German courts ultimately find the sample used in *Nur mir* to fall within the scope of the exception.

More broadly, we expect this decision will embolden more parties to raise the pastiche exception in future, not only in the context of music sampling, but also in other areas such as AI. In fact, pastiche has already been raised in an AI context in the UK in the *Getty Images v Stability AI* case, although ultimately the court did not need to rule on its application in that case after Getty dropped its claims for primary copyright infringement.

The *Pelham II* decision isn't binding in the UK, but English courts are likely to have regard to it given (i) the English law version of the exception (which can be found in section 30A of the Copyright, Designs and Patents Act 1988) directly implements Article 5(3)(k) of the InfoSoc Directive, and (ii) the limited English case law on pastiche to date.



## Patents

### UPC Court of Appeal prints next chapter on long-arm jurisdiction

On 2 June 2026, the Court of Appeal of the Unified Patent Court (**UPC**) handed down its latest decision on the scope of the UPC's long-arm jurisdiction.

The judgment in *Kodak v Fujifilm* is interesting for a number of reasons, including the court's construction of certain claimed numerical ranges, but it's fair to say that it's the court's findings on jurisdiction that are making the headlines.

Building on earlier UPC case law, as well as the CJEU's decision in *BSH v Electrolux* (see our summary [here](#)), the judgment clarifies the UPC's approach to accepting jurisdiction over infringement claims concerning European patents designating non-UPC territories, based on the defendant's domicile, and sets out a broader framework for exercising that jurisdiction.

#### Background

As discussed in our [June 2025 edition](#) of The IP Brief, over the last couple of years the CJEU and various divisions of the UPC have been considering the scope of their respective courts' jurisdiction to hear cross-border patent infringement disputes.

Broadly speaking, it has been held that the relevant courts do have jurisdiction to hear cross-border infringement actions where the defendant is domiciled in the place of the court, even if validity of the underlying patent is challenged.

The UPC Court of Appeal's recent decision in *Kodak v Fujifilm* takes this point further, confirming the position at appellate level for the UPC and giving more detailed guidance on how that jurisdiction should be exercised.

#### The underlying dispute

The dispute concerned one of Fujifilm's European patents relating to lithographic printing plate precursors. Fujifilm alleged that Kodak's Sonora Xtra-3 printing plates infringed its patent in both Germany and the UK and brought proceedings before the Mannheim Local Division of the UPC. Kodak denied infringement, counterclaimed for revocation of the patent and challenged the UPC's jurisdiction over the UK designation.

At first instance, the Mannheim Local Division held the German designation valid and infringed. Three months later it found that it also had jurisdiction over the UK aspects of the infringement claim and, again, found infringement. It did not, however, accept jurisdiction to decide on the validity of the UK designation. Validity was only considered as a defence to the infringement claim, with that defence ultimately dismissed.

Kodak appealed, including on the UPC's jurisdiction to rule on the UK designation.

## Clarification of UPC's long-arm jurisdiction

The UPC Court of Appeal confirmed the Mannheim Local Division's finding that the UPC had jurisdiction to hear the infringement claim concerning the UK designation of the patent as the defendants were all domiciled in Germany.

In reaching that conclusion, the court dismissed Kodak's arguments based on Article 34 of the UPC Agreement. Article 34 provides that UPC decisions concerning a European patent will cover the territory of the UPC contracting member states for which that patent has effect. Kodak argued that this meant that UPC decisions should only cover the UPC territories in which the patent has effect. The Court of Appeal disagreed, finding that Article 34 is not a territorial limit on the UPC's jurisdiction. Rather, Article 34 simply clarifies that, as a rule (unless a more limited scope is requested), UPC decisions will cover all UPC territories where the patent has effect.

The court then went on to draw a distinction between accepting jurisdiction (based on the defendant's domicile) and exercising that jurisdiction, noting that decisions to stay or dismiss a claim can only be made once jurisdiction has been accepted and that, in exercising jurisdiction, the UPC must apply international law principles of comity.

## The framework for exercising jurisdiction

Perhaps most usefully, the judgment considered how jurisdiction over non-UPC designations of European patents should be exercised in three specific scenarios, drawing distinctions (where relevant) between cases where the non-UPC designations relate to (i) EU member states or signatories to the Lugano Convention (**EU/LC EPs**) and (ii) neither EU member states nor signatories to the Lugano Convention (**non-EU/LC EPs**).

### *Scenario 1 - Standalone revocation actions*

For standalone revocation actions, the UPC should declare that it lacks jurisdiction regardless of whether the non-UPC designations in suit are EU/LC EPs or non-EU/LC EPs.

### *Scenario 2 - Infringement actions where the patent is held invalid in the UPC territories but would have been infringed if it were valid*

In these types of infringement scenario, the patentee should be given an opportunity to withdraw the non-UPC infringement claim.

For EU/LC EPs:

- If the patentee does not withdraw the claim and no revocation action is already pending before the competent national court, the defendant should be given the opportunity to file such an action within an appropriate period of time.
- If a revocation action is pending or the defendant has lodged such an action, the UPC infringement proceedings with respect to the relevant designations should generally be stayed pending the national court's final decision.
- If a revocation action is not pending and the defendant does not lodge a national revocation action within the allotted time, the UPC will assume that the patent is valid and will decide the infringement claim on that basis.



For non-EU/LC EPs, if the patentee does not withdraw the claim it will be dismissed, unless there are specific reasons not to do so (e.g. because the relevant claim is different and may be considered valid).

### *Scenario 3 - Infringement actions where the patent is considered valid and infringed in the UPC territory*

In this scenario, the UPC may, where appropriate, issue a decision in respect of the non-UPC designation(s), subject to a condition subsequent that the competent national court does not later hold the relevant patent wholly or partially invalid in a way which would affect that infringement finding.

If a competent national court does later hold the relevant patent wholly or partially invalid in such a way, the patentee will have two months from the date of that decision to request consequential orders from the UPC, including to stay the proceedings until a final decision is given by the national court.

### **Outcome of the case**

Applying this to the facts before it, the UPC Court of Appeal confirmed that the UPC had jurisdiction over the UK aspects of the infringement claim, based on the defendants' domicile (Germany).

It found the German designation of the patent valid and that the Sonora Xtra-3 printing plates fell within the scope of the claims. However, Kodak was ultimately able to rely on a private prior use defence to avoid infringement in Germany.

As for the UK designation, applying English law, the UPC Court of Appeal found no infringement by any of the defendants on the facts.

### **Comment**

This is another important jurisdictional decision that helpfully builds on earlier UPC case law, and the CJEU's decision in *BSH v Electrolux*, where jurisdiction is established based on the defendant's domicile. In providing a structured framework for the exercise of the UPC's long-arm jurisdiction in those types of cases, it should make the UPC's role in cross-border patent enforcement more predictable for patentees and defendants alike.

That said, this decision should be seen as one piece of a rapidly-developing jurisdictional landscape, in which the precise limits of the UPC's jurisdiction are still being determined. The UPC Court of Appeal has taken a narrower view on its jurisdictional reach where jurisdiction is founded on the place where the harmful event occurred (see *Keeex v Adobe*) and a number of questions remain pending before the CJEU in relation to claims pursued against non-EU defendants for acts committed in non-UPC EU territories (e.g. Spain) based on the presence of an anchor defendant or intermediary that is domiciled in a UPC contracting member state (*Dyson v Dreame*).

## SEPs and FRAND licensing – a push towards ADR?

It has been another busy period for courts dealing with disputes relating to Standard Essential Patents (**SEPs**) and FRAND (Fair, Reasonable And Non-Discriminatory) licensing.

In May, the English Patents Court [determined](#) the terms of a global FRAND cross-licence between Samsung and ZTE. Whilst the English courts have determined the terms of global FRAND licences three times previously (see our earlier commentary [here](#), [here](#) and [here](#)), this is the first time that they have determined the terms of a FRAND cross-licence.

Perhaps unsurprisingly, the key area of disagreement between the parties related to price. Both parties agreed that Samsung would be the net payer under any new cross-licence, but they disagreed about the amount of that net payment. Samsung's position was that it should not have to pay more than \$200m, whereas ZTE was seeking \$731m.

In order to reach a conclusion on what was FRAND, the court had to determine a number of important factors, including which comparable licence to use in the valuation process, the mechanics of unpacking that licence and repacking it into the court-determined licence, and any adjustments needed to account for non-FRAND factors (see our [blog](#) for more details).

Applying its findings to the facts before it, the court ultimately concluded that the FRAND lump sum balancing payment due from Samsung to ZTE under a court-determined licence should be \$392m.

The judgment did not, however, require ZTE to enter into that licence. ZTE did not give an undertaking to the English court to take a licence on these terms and had brought its own claim in China for a determination of global FRAND terms.

The Chinese court handed down its FRAND determination at a similar time, finding, in contrast to the English court, that ZTE's offer of \$731m for a six year licence was FRAND.

A third decision on FRAND terms between Samsung and ZTE was handed down by the Munich I Regional Court in Germany, which suggested a FRAND lump sum payment of \$640m.

And, finally(!), the UPC proposed somewhat of a halfway house, suggesting that the parties enter into a global settlement on the basis of either:

- Payment of a lump sum from Samsung to ZTE of \$640m for a cross licence lasting until 31 December 2028; or
- Payment of a lump sum from Samsung to ZTE of \$731m for a cross licence lasting until 31 December 2029,

with a suggestion that the parties submit to mediation before the UPC's new Patent Mediation and Arbitration Centre if they are unable to agree.

That apparent push to alternative dispute resolution (**ADR**) seems to be a recurring theme at the moment, with the English Court of Appeal having recently held, in [Acer v Nokia](#), that an offer of an interim licence whose terms were subject to adjustment by the decision of an arbitral tribunal was RAND. That led the Court of Appeal to permanently stay the English proceedings and left Acer and Asus with a choice – to accept the adjustable licence offer and thereby consent to arbitration; or refuse the licence offer and take the consequences (they would be seen by the



English court as an unwilling licensee and therefore unable to invoke the court's jurisdiction to determine (F)RAND terms).

Shortly afterwards (albeit following a subsequent English court decision finding one proposed term of the adjustable licence offer non-RAND), Nokia signed separate patent licence agreements with both Acer and Asus, agreeing in the process to pause or withdraw all related patent litigation and enter into binding arbitration to determine certain terms of the respective agreements.

Whilst this type of support for arbitration isn't new, particularly in the English courts (with Lord Justice Arnold, for instance, long having been in favour of it for these types of case), these recent developments suggest we might start to see more parties taking the ADR route in future.

## IP Licensing

### Terminating “indefinite” licence agreements

The UK Court of Appeal has recently ruled on whether a licensee could terminate a trade mark licence agreement that was stated to be of “indefinite” duration, in circumstances where that licence granted no express termination rights to the licensee. The Court of Appeal [held](#) that the agreement could be terminated by either party on reasonable notice, even though the contract gave only the licensor express rights to terminate.

The decision illustrates an important distinction between perpetual licences (that bind parties forever) and indefinite licences (that may be brought to an end).

#### Background

In 2014, the company that operates Zaha Hadid Architects (**company**) entered into a trade mark licence agreement with the Zaha Hadid Foundation, which allowed the company to use the name ZAHA HADID. The company intended to continue using the name, but wanted to renegotiate the terms of the agreement, including, in particular, the royalty rate which it felt was too high. In that context, the company contended that it had the right to terminate the licence on reasonable notice.

The agreement was expressed to continue “indefinitely” unless terminated earlier in accordance with the duration and termination clause. That clause provided that the foundation could terminate the licence on three months’ notice or with immediate effect in the event of non-payment, material or repeated breach or insolvency. It provided no reference to termination by the company.

The core question before the Court of Appeal was whether the company was entitled to terminate the licence.

At first instance, the High Court held that the company was not entitled to terminate because the licence contained no express right for it to do so. The result was that the company would be locked into the contract forever. The Court of Appeal disagreed.

#### Perpetual and indefinite agreements

The Court of Appeal adopted the two-stage reasoning from the House of Lords’ decision in *Winter Garden Theatre*, which draws a distinction between perpetual and indefinite agreements.

The first stage is to determine whether, as a matter of construction, the agreement was intended to run in perpetuity (whether in all circumstances or in some defined circumstances) or for an indefinite period. If the contract is intended to run in perpetuity, absent express terms, there is no room for an inference that a party could terminate on reasonable notice. Conversely, an agreement intended to run for an indefinite period necessarily and within its own terms contemplates that it can be brought to an end at some unspecified time.

The second stage is that, if an agreement was intended to run for an indefinite period, it necessarily follows (as a matter of construction or implication) that a power to terminate on reasonable notice forms part of the parties’ intentions.



The Court of Appeal in this case found that, as a matter of construction, the agreement was indefinite. It was expressed to continue “indefinitely” and interpreting the agreement as continuing forever unless terminated by the foundation was contrary to business sense. The company could therefore terminate it on reasonable notice.

Where a contract expressly mentions some things, it is often inferred that other things of the same general category not expressly mentioned were deliberately omitted; however, the Court of Appeal did not consider that maxim of interpretation determinative.

### Reflections

This case highlights a crucial distinction between “perpetual” and “indefinite” contracts. Absent express terms, there is no room for an inference that a perpetual contract could be terminated on reasonable notice. By contrast, an indefinite contract necessarily empowers parties to terminate on reasonable notice.

Whether a contract is perpetual or indefinite is a matter of construction. When drafting or interpreting licences (or other contracts) of unspecified duration, close attention should be paid to that distinction to clarify or determine the parties’ intention.

## Trade mark licence registration a pre-condition to recovering licensee losses

In our [November 2025 edition](#) of The IP Brief, we reported on the High Court's decision in *Lifestyle Equities v Sportsdirect.com*, which considered the impact of failing to register a trade mark sub-licence on the ability of a trade mark owner to recover damages for losses suffered by its sub-licensees under section 30(6) of the Trade Marks Act 1994 (**TMA**). The High Court concluded that failure to register had no effect on the trade mark owner's right to claim for such losses. The Court of Appeal has now overturned that decision in *Lifestyle Equities v Frasers Group*, in a judgment that significantly shifts the landscape for trade mark owners relying on section 30(6) TMA.

By way of brief recap, Lifestyle Equities CV is the registered proprietor of trade marks for BEVERLY HILLS POLO CLUB, which it exclusively licensed (and registered) to its wholly-owned subsidiary, Lifestyle Licensing BV. The subsidiary in turn granted a number of unregistered sub-licences. Following a finding of trade mark infringement against Frasers Group (formerly SportsDirect), the claimants sought to recover damages for losses suffered not only by themselves but also by their sub-licensees, relying on section 30(6) TMA.

At first instance, the High Court held that section 30(6) permitted such recovery notwithstanding the lack of registration of the sub-licences. The Court also held that there was no time limit for registration.

Two key questions arose on appeal:

- 01 Are the rights conferred by section 30(6) TMA dependent on registration of the licence?
- 02 Is there a time limit within which an application for registration of a licence must be made in order to obtain the protection of section 30(6)?

The Court of Appeal answered 'yes' to both questions, allowing the appeal on both grounds.

On the first question, the Court held that section 30(6), in its entirety, is a protection for licensees not proprietors. Where an infringement claim is brought by the proprietor, section 30(6) ensures that the loss suffered by the licensee is taken into account, and may be held by the proprietor on behalf of the licensee. Since section 30(6) was recognised as a protection for licensees, it followed that, pursuant to section 25(3)(b), a licensee will not have the protection of section 30(6) until an application has been made to register the licence.

On the second question, it was not disputed between the parties that there is no time limit, as such, for registering a licence. Nor was it disputed that registration of a licence may have retrospective effect, such that, once registered, damages can be recovered in respect of infringement that took place before the licence was registered. The core question was whether ordinary statutory limitation periods still apply. The Court concluded that they do. Accordingly, since the Court had found that an application to register the licence is a pre-condition to the section 30(6) protections being available, it went on to conclude that a claim for licensee losses can only be brought if that application is made before the relevant limitation period has expired.

On the facts, the last pleaded act of infringement was on 30 June 2016, the only application to register a sub-licence was made in April 2025, and no application to register the other sub-licences had been made even by the time of the appeal. In those circumstances, the Court held



that the claims for the sub-licensees' losses were statute-barred, and granted Frasers Group summary judgment dismissing those claims.

In practice, whilst there is no requirement to do so, this decision reinforces the importance of prompt licence registration. Failure to do so could prevent recovery of licensee losses and may lead to claims becoming statute-barred. Trade mark owners and licensees should review their licensing arrangements and ensure that all relevant licences are registered without delay.

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# Contact

If you would like to discuss any of the above in more detail, please contact your relationship partner or email one of our IP team.

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**David Ives**  
Partner

+44 (0)20 7090 4266  
[david.ives@slaughterandmay.com](mailto:david.ives@slaughterandmay.com)



**Duncan Blaikie**  
Partner

+44 (0)20 7090 4275  
[duncan.blaikie@slaughterandmay.com](mailto:duncan.blaikie@slaughterandmay.com)



**Laura Houston**  
Partner

+44 (0)20 7090 4230  
[laura.houston@slaughterandmay.com](mailto:laura.houston@slaughterandmay.com)



**Richard McDonnell**  
Senior Counsel

+44 (0)20 7090 4240  
[richard.mcdonnell@slaughterandmay.com](mailto:richard.mcdonnell@slaughterandmay.com)



**Richard Barker**  
Senior Knowledge Lawyer, IP

+44 (0)20 7090 4522  
[richard.barker@slaughterandmay.com](mailto:richard.barker@slaughterandmay.com)

## London

T +44 (0)20 7600 1200  
F +44 (0)20 7090 5000

## Brussels

T +32 (0)2 737 94 00  
F +32 (0)2 737 94 01

## Hong Kong

T +852 2521 0551  
F +852 2845 2125

## Beijing

T +86 10 5965 0600  
F +86 10 5965 0650

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