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# DSM and Brexit

Brexit means ... possibly not the DSM

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AIIA

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

Dublin, 30 March 2017

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

Theresa May

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

February 2017

# What's being served



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

# Contents

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

# What Brexit might mean for principal IPRs

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

# Trade marks

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

☐ **015585649 - BREXIT** [+ info](#)

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## Trade mark information

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

# Designs

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



# Patents

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





# Copyright

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

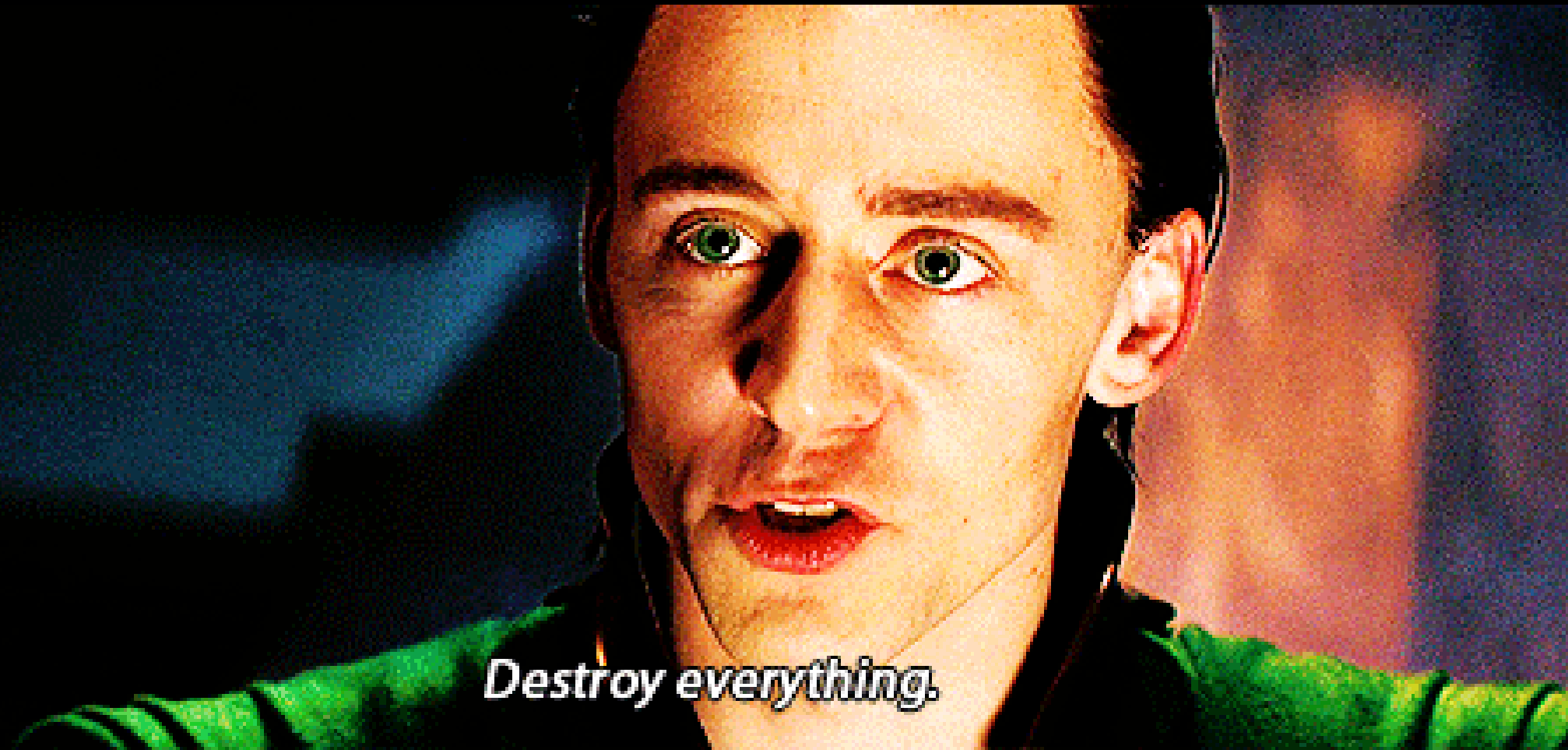
# CJEU copyright case law

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

# UK and the Digital Single Market Strategy

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

What awaits the UK?



*Destroy everything.*

# What will change with Brexit

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

In conclusion

Brexit means ... what?



That's not yogurt, that's mayonnaise.

Likely







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

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Thanks for your  
attention!