

ALCS written evidence on the impact of Brexit

THE ALCS

- 1 The Authors' Licensing and Collecting Society (ALCS) is a not-for-profit, non-union organization, established in 1977 and wholly owned by the 90,000 authors in our membership. The current membership includes authors working across diverse genres for print, audio, audio-visual and digital publications. We collect money for secondary uses of our members' work, including photocopying, retransmission in the UK and overseas, digital reproduction, educational recording and repeat use via the internet. The ALCS also campaigns on behalf of writers at a national and international level. We aim to ensure that writers receive fair payment for the use of their work, and that writers' rights are recognised and respected. We inform our members of issues that may affect them, such as copyright developments in the EU, national policies affecting Public Lending Right and copyright exceptions, and the growing problem of unfair contracts for writers.

AUTHORS WORKS IN EUROPE

- 2 The works ALCS licenses on behalf of its members – books, journals, films, radio and television works – have continuous sales potential internationally and in European markets and as a result it is important that UK cultural exports have continued access to markets. Significant barriers to distribution across the EU can result from divergence in copyright and licensing models, although solutions to this have been presented in the EU Draft Directive on the Digital Single Market and the wider EU Digital Single Market strategy. Uncertainty regarding our relationship with the EU and the extent to which the UK and the EU would coordinate on efforts towards a digital single market make it unclear how much access the UK will continue to have to these markets.

COPYRIGHT AND THE EU

- 3 The interplay between UK and EU copyright law is an area of uncertainty ahead of Brexit. UK copyright law has been strongly influenced by various EU Directives over the last 25 years; the extent to which this continues to be the case depends on the terms of the exit settlement negotiated by the UK Government. Membership of the EEA would bind us to EU copyright law with only a limited say in its formation, while speculation is unclear as to what 'customised' options the UK could pursue outside of the EEA.
 - 3.1 Following the Hargreaves Review, UK copyright law has already introduced elements that go beyond current harmonised EU provisions, such as the commercial licensing of orphan works, Extended Collective Licensing and an exception for text and data mining. These were developed in response to market demands during a process that was heavily influenced by the demands of the technology sector. Wider EU copyright policy appears to be heading, albeit at a glacial pace, towards a greater recognition of legislative mechanisms designed to ensure fair treatment and remuneration for creators in the digital age.
- 4 In our 2013 studies *What are words worth now?* and *What are words worth now: further findings* we found that typical (median) incomes of professional authors fell by 29% from 2005

to 2013. This was due to a range of factors, including 44% of respondents seeing the value of advances declining and 30% seeing an increase in the use of buy-out contracts that would lead to no further payment of royalties. To reverse this trend it is important that we take measures to secure fair remuneration and contracts for authors; there has been ongoing progress on this in the EU and we must have a clear UK solution to this issue ahead of Brexit.

- 5 It is important that we maintain a good balance of access to work and remuneration to creators. Authors want their work to be available as widely as possible, through provisions in libraries, schools, and universities and so on, and in digital, paper or other formats. The flexibility of a copyright law that accommodates user needs to access authors' work in as many forms and for as many kinds of uses as possible, and which does not unnecessarily limit that access, is vital. However, as reflected in the international copyright framework embodied in the Berne Convention and other copyright treaties administered by the World Intellectual Property Organisation (WIPO) including the TRIPS agreement, the aim of copyright is to do this within a framework which grants rights to authors that give them the opportunity to make a living from those uses, and the necessary protection to choose if and when to make them available for free.

UPCOMING EU MEASURES TO SAFEGUARD AUTHORS

- 6 Any Brexit strategy must develop fair safeguards for authors and performers in the UK in line with those previously developed in the EU and announced in the EU Draft Directive on the Digital Single Market.

- 6.1 The EU Draft Directive on the Digital Single Market proposes two important safeguards for authors:

- 6.1.1 Transparency: a right to regular, timely, adequate and sufficient information on the exploitation of their works and performances from those to whom they have licensed or transferred their rights, including details of modes of exploitation, revenues generated and remuneration due. This right will apply even if copyright has been assigned and will allow authors to assess how their work has been used.

- 6.1.2 The so-called 'bestseller clause': a right to claim additional, appropriate remuneration if the contractual remuneration is disproportionately low compared to the subsequent revenues and benefits derived from the exploitation of the works or performances. One area this could have a substantial impact is in educational publishing, where publishers are increasingly paying authors only a low flat fee. This clause would help avoid current practice where an author typically receives no further payment even if the book later becomes a highly successful curriculum textbook used in every school.

- 6.2 Authors and performers would have a right to detailed and full statements of the uses of and revenues from their work (unless such reporting is disproportionate). That in itself would be an enormous improvement on the present situation where authors often do not know how widely their work is used and have no way of checking whether payments made to them are correct. This problem has become more acute in the digital age where work can be disseminated in many ways and there is no physical stock which can be counted to ensure that accounting is correct.

- 6.3 Once authors and performers have such information they would be able to consider whether the share they have received is disproportionately low in all the circumstances (including taking into account the publisher's investment and risk). If it seems to be disproportionately low they can ask the publisher to renegotiate and if agreement cannot be reached the matter can be referred to an agreed dispute

resolution mechanism (such as the Publishers Association's Informal Disputes Resolution Scheme). The contract adjustment mechanism could remedy those cases in which a lump-sum/buy-out deal turns out to be unfair, and it also addresses outright unbalanced deals as well as changed circumstances.

- 7 The EU Draft Directive on the Digital Single Market is subject to further consideration and review and may take 12–18 months to adopt. It seems to us that the UK has an opportunity to create a fairer playing field for creators with the vast social impact and minimal cost outlined above.

POLICY PRIORITIES

- 8 We believe the policy priorities around Brexit should include:

- 8.1 Addressing the issue of unfair contract clauses which seek to acquire all rights from an author but lack the necessary terms providing for fair and transparent payment for subsequent uses of the work. Few authors will be in a position to reject the terms they are offered. To promote fairness and the equality of bargaining, we believe the Government has a role to play by extending legislation on unfair contract terms to cover IP and establishing a plan for the UK to safeguard authors in contract arrangements.
- 8.2 Establish a clear relationship with the EU regarding the development of the Digital Single Market, to ensure that UK cultural exports can reach as wide an audience as possible.
- 8.3 Secure a framework within Europe that would secure fair remuneration for writers in the digital-use environment. There has been positive debate which the Commission is facilitating through publications such as Digital Single Market strategy and we must ensure that the UK is not disadvantaged in her access to remuneration.
- 8.4 Look towards flexible licensing solutions in addressing the balance between enabling access to creativity while providing reasonable incentives for rights-owners. The UK has led the way in this respect through its educational licensing schemes without requiring the introduction of new copyright exceptions in the past. In consideration of existing and developing EU rules on exceptions, plans should be made to continue the balanced approach the UK has championed.

For further information, please contact:

Barbara Hayes, Deputy Chief Executive,
ALCS

020 7264 5709, Barbara.hayes@alcs.co.uk

ALCS Ltd, Barnard's Inn, 86 Fetter Lane

London EC4A 1EN