

SUBMISSION

THE IMPACT OF BREXIT



The Society of Authors' submission to the Culture, Media and Sport Committee's consultation on the impact of Brexit on the creative industries, tourism and the digital single market

28 October 2016

The Society of Authors exists to protect the rights and further the interests of authors. It has more than 9,700 members writing in all areas of the profession.

Key submissions:

- Authors and the UK publishing industry are vitally important to the UK, both in terms of revenues (both internal and export) and cultural significance. That must be considered and maintained.
- We urge that the significance of intellectual property to the UK economy, and the creative industries in particular, continues to be recognised in the context of the future trade negotiations.
- Economic uncertainty tends to make businesses more conservative and less likely to invest in new talent and ideas, leading to a reduction in cultural diversity. This is extremely concerning, particularly if linked to a closing of our borders to vibrant talent from Europe.
- We urge the Government to take measures to maintain free movement for creators and performers and free flow of digital information to protect diversity and our cultural heritage.
- We must invest in funding for translation to maintain diversity and understanding of other cultures.
- The UK has a well-functioning and balanced copyright system. Stability for application of existing EU Regulations and transposition of EU Directives which form part of our copyright law must be maintained as part of the Great Repeal Bill.
- The value of the fair dealing doctrine for application of copyright exceptions and limitations (as opposed to fair use) must be seen as part of creating clarity and transparency for application of copyright rules both during and after BREXIT.
- EU recommendations for provisions protecting creators should be adopted into UK law.
- VAT at zero rate should be extended to ebooks.
- Higher education, arts and translation funding is vital and must be maintained.

The Committee invites written evidence on the following issues:

- **Employment in the creative industries: Will the UK be able to attract and retain talent from across the world in order to maintain its high reputation in these industries?**

The UK publishing industry is in good health. The Publishers Association reported that total sales of book and journal publishing were £4.4bn in 2015 Total export revenues were £1.42 billion with a combination of education, academic and ELT (English Language Training) accounting for two-thirds of this. Over 35% of physical book exports were to Europe.

Ed Vaizey MP, then Minister of State for Culture and the Digital Economy, May 2016 commented: *“The UK’s publishing industry is a huge success story, and I’m delighted the sector is continuing to flourish. The publishing industry contributes £10.2bn a year to the UK economy, and these latest figures are welcome news, particularly in a year when we’re celebrating one of the UK’s most famous literary exports, William Shakespeare.”*

We are positive that British creativity and culture will remain in demand; however economic uncertainty is damaging to investment in new projects and distribution opportunities for rights holders and their businesses. Furthermore, economic uncertainty tends to make businesses more conservative and less likely to invest in new talent and ideas, leading to a reduction in cultural diversity. This is extremely concerning, particularly if linked to a closing of our borders to vibrant talent from Europe.

We encourage the UK Government to promote British creators and performers and to protect their works and performances both in the context of the trade negotiations ahead and in terms of the world leading innovation and investment opportunities which the creative industries provide as a significant part of the overall economy. We also encourage the Government to support, promote and protect the interests of British publishers and producers and others who invest in creativity and innovation.

Live performances are the bread and butter of many of the creative industries. Performers and technical crews from both the UK and mainland Europe are now able to travel freely within the Schengen area, meaning that touring in Europe can be carried out with relative ease. Although this is not as important for authors as in some other industries, many authors also obtain a significant part of their income from performing. The SoA’s membership includes many spoken word artists as well as presenters, teachers and experts.

Changes in immigration law could introduce a visa/work permit system (as, for example, for touring to the USA), for anyone wishing to tour in Europe (and vice versa). This will inevitably increase the time and effort involved in organising a tour and will obviously increase costs. It is not hard to imagine that artistic decisions to employ/engage a person for a particular piece of work being affected by the additional work load involved.

Tax laws could also have an impact on touring (for example if performers have to file tax returns in the countries in which they tour). Authors are not often highly paid for appearances and tax formalities and visa difficulties can simply make such visits not worthwhile. This could have a knock-on negative effect on sales and exports of authors' books.

We are also concerned at the inward effect. Difficulties in obtaining visas or tax and other barriers, combined with the parochial impression of being out of Europe will create may make Britain a less attractive place for writers to visit or settle in. This is bad for diversity and our cultural heritage which has been shaped and enriched by visitors and settlers from many other cultures and lands.

- **While the Intellectual Property Office has stated that the position on trademarks, designs, patents, copyright and enforcement remains the same until exit negotiations are concluded, what should happen in relation to Copyright after the UK leaves the EU?**

The last few years have seen detailed and rigorous review and debate of copyright legislation both domestically and in Europe. The result for the UK is a legislative framework that is balanced in respecting the rights of users and creators and well able to deal with the complexities of the 21st Century. Copyright is good for authors and the publishing industry. Authors wish to maintain strong copyright protection and to guard against that protection being weakened.

The UK's established copyright framework includes secondary legislation implementing EU Directives which should continue to apply should the European Communities Act 1972 be repealed. We are keen to hear how Government will deal with UK copyright law derived from the Directives in the context of the Great Repeal Bill and beyond.

UK Publishing is a major provider of content to global markets and relies largely on copyright licensing to service those markets. We must stress the importance of stability for the copyright framework during the Brexit process to maintain the UK's world leading position. Authors and publishers need security, clarity and guidance from Government on the measures it will take and the process it will follow.

The UK has established a clear balance between rights and exceptions and, once the UK leaves the EU, that balance must be maintained and not opened to yet further general review. Subsequent change to copyright legislation in the UK must be well considered, well balanced, well informed and evidence-based. The European copyright regime has, overall, been of positive benefit to British right holders. For this reason and because the European Union is an important market for our creative industries, we believe that the UK should follow future EU copyright law. We would particularly be concerned at any attempts to replace the UK's fair dealing with provisions with US style fair use or to weaken creators' moral rights.

The copyright proposals forming part of the European Union's Digital Single Market Strategy are important in establishing free movement of creative content across Europe (and internationally) and, subject to the UK's voice being heard during the consultation process, they should be transposed across into UK legislation.

In particular, the SoA welcomes the provisions to balance the playing field for creators announced in the EU Draft Directive on the Digital Single Market (the so called "transparency triangle") and urges that they be brought in to domestic legislation at the earliest opportunity.

The Directive says: *"authors and performers often have a weak bargaining position in their contractual relationships, when licensing their rights. In addition, transparency on the revenues generated by the use of their works or performances often remains limited. This ultimately affects the remuneration of the authors and performers. This proposal includes measures to improve transparency and better balanced contractual relationships between authors and performers and those to whom they assign their rights."*

Other provisions of the draft Directive which are broadly welcomed by the SoA include exceptions to ensure harmonisation and cross-border uses of copyright including exceptions for text and data mining for scientific research, use of copyright works in the classroom and preservation of documents by cultural heritage institutions.

CREATOR: We urge the UK Government to use this opportunity to legislate for fairer terms for creators. The SoA has been lobbying for these changes for some time as part of its [CREATOR campaign for fair contracts](#).

[A new EC study on authors' remuneration](#) surveyed authors, journalists, translators and illustrators across Europe, and makes important recommendations to improve the contractual position for writers. The study found that:

- Average annual incomes for UK authors, including advance, royalties and ALCS and PLR payments was about £12,500 in May 2015, when the survey was run.
- Average annual incomes for UK journalists were also around £12,500, around half the average levels reported by journalists in Germany and Denmark, where there are far more legal protections for creators.
- Average incomes for UK translators and visual artists were a little higher at around £17,850, still well below the UK average wage.
- The average total income from a UK author's latest book was less than £6,000.
- Only half of book authors view their primary activity as their only or main source of income.
- UK authors do not enjoy the same legal safeguards as their counterparts in other EU countries to ensure that contracts are fair.
- The provision of legal safeguards improves an author's financial position

We welcome the three policy recommendations proposed in the report and would suggest that these also are brought in to UK legislation.

- o A legal requirement for written contracts to specify in detail how a work can be exploited and how its author will be remunerated, and a right for the author to receive accounts.
- o Place limits on transfers of rights to future works and future modes of exploitation.
- o Allowing freelancers who work mainly for one or two employers to claim employee status and rights.

VAT on ebooks: The EU is considering harmonising VAT rates on printed and electronic publications. We have always argued that a tax on books amounts to an inappropriate tax on knowledge. In fact, on first proposing VAT in 1969 Iain Macleod MP said: ‘On the general principle of avoiding a tax on knowledge we intend that books, journals, newspapers and broadcasting shall be at a zero rate. We now have the odd imbalance of the print version of a book being sold with no added VAT (as it is zero rated) while 20% VAT is added to the price tag of the same book sold electronically. Yet the arguments against VAT on ebooks are the same as the general arguments against tax on print books. It’s a barrier to education and research, to adult literacy and to book sales in general. It also complicates pricing when books are bundled together with downloads or you can access newspapers online as part of a print subscription.

The European Commission knows the inconsistency needs to be addressed, which is why their 2016 VAT Actions Plan seeks to tackle it. We would urge that the UK acts as soon as possible to reduce VAT on ebooks to zero in line with printed books.

- **The Digital Single Market: The UK digital sector currently is worth £118 billion a year; 43% of UK digital exports go to the EU. How has UK membership of the EU helped to shape the Digital Single Market to date? What are the fears and advantages arising from the UK being outside the developing Single Market? What will happen to companies that have used the UK as a base for sales within the Single Market?**

The EU’s Digital Single Market Strategy remains a significant initiative for UK right holders and we repeat, that it is one which we would wish to see transposed across into UK legislation. The EU has been working towards harmonising copyright laws throughout the EU and member states have been discussing how copyright legislation may be amended to adapt to digital technologies and to facilitate the Digital Single Market. Proposed amendments to EU copyright laws include enabling access to online content (for example, e-books, music, films) in all member states, regardless of where that content was obtained. The UK may now find itself excluded from discussions which would determine the rules setting out distribution of royalties for rights holders and the harmonisation of “moral rights” (including the rights to be identified as author or to object to derogatory

treatment of a work) at EU level.

The UK has played a major role in influencing the debates and there is a risk that this influence will be lost from Digital Single Market policy going forward. At UK level, further to the areas already addressed in the Digital Economy Bill, there is an opportunity to address and clarify the responsibilities of internet search engines and internet service providers respectively. This could be done, within the Bill, by encouraging search engines and ISPs to take a more pro-active role in de-listing search results leading to illegal content, or in removing illegal content.

Our fears are not so much with the future development of the UK's copyright framework. As we have already said, our legislation has, over the past few years, undergone thorough and rigorous review. Our fears are more to do with the extent to which British right holders and UK Government will now be in a position to influence the European consultative process and legislative outcomes, particularly in relation to the Digital Single Market Strategy which will put in place a regime that works across borders, for content that cannot be prevented from crossing national or regional borders.

There is also a concern that the UK's balancing influence on the EU may be lost. For example without the UK, future EU law may see a move from a "fair dealing" approach applied to specific exceptions to copyright, to a more general "fair use" approach. In relation to copyright proposals under the Digital Single Market, there has been recognition of licensing arrangements at national level for certain types of use. This is a system that has worked well and been successfully promoted by the UK at EU level.

The UK's collective management organisations such as ALCS have been at the forefront of establishing high standards of transparency and good governance across Europe. Through CMOs based within the UK, right holders benefit from revenues collected elsewhere in Europe. These revenues are, in the main, collected under agreements and contracts that do not depend on EU membership. However, it is possible that some provisions which provide benefits under some of those agreements will now be at risk. Application of local distribution policies based upon reciprocal recognition of rights may fall for review. We encourage UK Government to support the work of its CMO's and the maintenance of representation agreements already in place between CMOs within the current EU Member States.

- **What will be the impact of the loss of European Union funding, both specialised (such as the Creative Europe fund) and more general (such as the Regional Development Fund). Will the UK Government replace these? Can tax exemptions or private sponsorship fill the gap?**

Organisations benefiting from ACE grants (ACE being funded by the DCMS) have guaranteed funding only up to 2018. In addition, the film industry (supported by UK screenwriters) has benefitted from EU funding for many years. With the prospect of losing access to funding such as Creative Europe (the EC's framework

for supporting the culture and audiovisual sectors – to a tune of EUR 1.46 billion), there is considerable financial uncertainty about the future, particularly if the loss of funding is coupled with the loss of other income streams, for example, through box office receipts.

Leaving the EU will also have a major impact on higher education with lost income from an anticipated fall in the numbers of EU nationals. Losing access to EU funding, such as Horizon 2020 grants (which account for a quarter of all public investment in UK research), could further tarnish the attractiveness of the UK as a place to study for other international students. Over half (53%) of academic publishers surveyed said that reduced funding for academic research and Higher Education Institutes, was the main challenge they faced.

Finally, much UK translation is supported by EU grants and prizes. Translation is essential for understanding of other cultures and the range and diversity of our reading. Translated fiction is receiving increased interest. Research by Nielsen Book commissioned by Man Booker showed that sales of translated fiction have risen in the UK to £18.6m in 2015 from £8.9m in 2001. It would be a huge shame if that were reversed due to lack of funding.

We do not know how these funds will be replaced. It is likely that the gap cannot be filled by tax exemptions or private sponsorship- particularly as sponsors are likely to have less funds due to economic slowdown caused by Brexit. Creators will have to look to Government for additional funds and these will need to be forthcoming if we are to support the success of our publishing and allied industries and if authors are to be able to afford to remain working creatively.

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The Society of Authors is a company registered in England No. 19993 and an independent trade union