

27th October 2016

Damian Collins, MP
acting Chair,
Culture, Media and Sport Select Committee
House of Commons
London SW1A 0AA

By post and as an attachment via the submission procedure

Dear Damian Collins,

The impact of Brexit on the creative industries, tourism and the Digital Single Market

The BCC represents those who create, hold interests or manage rights in literary, dramatic, musical and artistic works, performances, films, sound recordings, broadcasts and other material in which there are rights of copyright and related rights.

Our members include professional associations, industry bodies and trade unions which together represent hundreds of thousands of authors, creators, performers, publishers and producers. These right holders include many individual freelancers, sole traders and SMEs as well as larger corporations within the creative and cultural industries. While many of these create works and performances professionally and make decisions relating to both commercial and non-commercial use of those works and performances, they also do so privately. Some of our member organisations also represent amateur creators and performers. Our members also include collective rights management organisations which represent right holders and which enable access to works of creativity.

A list of BCC members can be found at <http://www.britishcopyright.org/bcc-members/member-list>.

1. Introduction

The UK's creative industries are essential to our economic success and global reputation. UK creative industries generate £84.1bn a year for the UK economy. These comprise an estimated 2.9m jobs or 1 in 11 of all UK jobs and export £19.8bn of services accounting for 9 per cent of all UK service exports.¹ Recent figures from the music industry indicate total export revenue from the music industry alone of £2.2bn in an industry employing 119,020 people². While the creative industries have consistently grown in recent years, the decision to leave the EU and the ensuing political and market uncertainty is likely to have a significant impact.

While economic uncertainty is damaging to investment in new projects and distribution opportunities for right holders and their businesses, we are positive that British creativity and culture will remain in demand. The BCC encourages 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. The BCC also

¹ All statistic taken from the facts and figures section of the Creative Industries Council website at www.creativeindustries.co.uk and summarised in infographics available at <http://www.thecreativeindustries.co.uk/resources/infographics>

² <http://www.ukmusic.org/assets/general/measuring-music-2016.pdf>

encourages UK Government to support, promote and protect the interests of British publishers and producers and others who invest in creativity and innovation.

The BCC welcomes the Committee's inquiry into the impact of Brexit on the creative industries and the digital single market. The BCC's remit covers matters relating to copyright and related rights so the focus of our response is on "*What should happen in relation to Copyright after the UK leaves the EU?*". On the Digital Single Market we have responded to "*How has UK membership of the EU helped to shape the Digital Single Market to date?*" and "*What are the fears and advantages arising from the UK being outside the developing single market?*".

We have also raised one or two trade related points which are not directly connected to copyright but which, during recent discussions on Brexit, our members identified as being of serious concern to them.

2. Executive Summary

- **As a world leader in creativity, we are keen to ensure that the UK continues to provide an environment in which its creators and performers can continue to flourish, making the UK an attractive place in which right holders will wish to put their rights.**
- **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 trade negotiations ahead.**
- **The world leading example set by the UK in evolving copyright laws to reflect advances in digital technologies (on the back of its own experience of the 2014/2015 review) is used to promote good practice in the Digital Single Market.**
- **Stability for application of existing EU Regulations and transposition of EU Directives which form part of the copyright *acquis* 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.**

3. What should happen in relation to Copyright after the UK leaves the EU?

The UK has strong creative industries which continue to grow in importance within the economy as a whole. Copyright is good for these industries. British right holders wish to maintain strong copyright protection, with a high level of transparency supporting authorised use and to guard against that protection being weakened.

The UK's copyright framework must continue to protect the interests of copyright holders and owners of related rights at UK, European and at international level.

The last few years have seen detailed and rigorous review and debate of copyright legislation both domestically and as part of developing the current European *acquis*. The result for the UK is a legislative framework that is balanced and well able to deal with the complexities of the 21st Century.

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. The BCC is keen to hear how Government will provide for development of UK copyright law derived from the Directives in the context of the Great Repeal Bill and beyond. In this context, provision for future judicial oversight for the law in ways that support effective recognition of international precedents will be important.

The UK's creative industries are major providers of content to global markets and rely largely on copyright licensing to service those markets. British right holders stress the importance of stability for the copyright framework during the Brexit process to maintain the UK's world leading position. Right holders need security, clarity and guidance from Government on the measures it will take and the process it will follow.

The UK has developed 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.

Subject to our comments above, British right holders recognise there is an opportunity for the UK to set its own future agenda for copyright, for example, on the enforcement of rights, where the UK Government is already setting the agenda at European level.

Specifically on enforcement, the BCC hopes that UK Government will give careful consideration to the DSM enforcement package expected in the first part of 2017. Having put so much effort into policy development in this area and, given the importance of global protection for UK content, the UK should participate fully in policy development and European initiatives on enforcement in the coming months.

The copyright proposals forming part of the European Union's Digital Single Market Strategy are important in supporting 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 reflected within UK legislation.

4. How has UK membership of the EU helped to shape the Digital Single Market to date?

The BCC believes that the European copyright *acquis* 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, British right holders are inclined to follow future EU copyright law. As yet the BCC has no strong clear view on how that can or should be achieved.

As stated above, the EU's Digital Single Market Strategy remains a significant initiative for UK right holders and we repeat again, that it is one which we would wish to see reflected within UK legislation.

The UK has played a major role in setting out the economic harm being caused by the legal ambiguity in the current law covering the liability of platforms, the so called "value gap" issue. As a net exporter of music, and Europe being our largest single market, the influence of the UK in this essential debate about the balance between rights and exploitation has been essential in the Digital Single Market policies under consideration. It is imperative this influence continues in the future. Indeed the UK has the opportunity to take a leading role in this area, through the current Digital Economy Bill, specifically by clarifying 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, enshrined in published codes of conducts, in de-listing search results leading to illegal content, or in removing illegal content.

5. What are the fears and advantages arising from the UK being outside the developing single market?

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.

Guidance and clarity from the Government on the best means of inputting into the process would be welcomed. We are working on the proposals on the Digital Single Market Strategy and have already identified the following high-level areas where the UK must input into the consultative process. They are: definitions, exhaustion of rights, mandatory and optional proposals. Individual sectors within the UK creative industries will, no doubt, identify others.

There is also a concern that the UK's balancing influence on the EU should not 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 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. The BCC encourages 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.

6. Trade Priorities

Trade priorities for British right holders are, on the whole, sector specific but our members are keen to see the creative industries as a whole forming part of the Government's industrial strategy for Brexit from the outset.

In particular, our members are concerned with the protection of established trade agreements and finance with European businesses, including the movement of capital, licensing agreements, tax arrangements and project funding.

While understanding that the much wider political issues involved in the debate on this particular issue, we are concerned about the creative and economic impact of possible future restrictions on freedom of movement around Europe and around access to European grants, prizes and universities, for our creators and performers, something which our members feel will also impact on our cultural enrichment as a nation.

Not directly a copyright issue, but one of concern to the creative industries, is that there is a risk that the UK will become a less favourable hub for our industries. For example, in the case of media services, an omnibus General Repeal Bill may create a reciprocity deficit under the AudioVisual Media Services Directive and the Satellite and Cable Directive, so a non-UK broadcaster would be cleared for the UK, but not *vice versa*. That can only have a negative impact on the attractiveness of the UK to international broadcasters/OTT services, and hence, downstream, less investment in UK content and therefore, it will have a detrimental impact on our creative industries.

Beyond the umbrella of the European Union, the BCC and its members will continue to work with UK Government to encourage international recognition of the UK regime and its effectiveness in supporting creativity and innovation.

Should you require any further information or assistance from the British Copyright Council please feel free to contact me.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Janet Ibbotson', with a stylized flourish at the end.

Janet Ibbotson
Chief Executive Officer

c.c. Dr. Ros Lynch, Director of Copyright and IP Enforcement Directorate, IPO