

**British Copyright Council (BCC) submission to the Digital, Culture, Media and Sport Committee's inquiry on the impact of COVID-19 on DCMS sectors**

**Introduction**

1. The BCC is a not-for-profit organisation that provides a forum for discussion of copyright law and related issues. We represent those who create, perform, hold interests in or manage rights in literary, dramatic, musical and artistic works, films, sound recordings, broadcasts and other material in which there are rights of copyright or related rights. The purpose of the BCC is to provide a representative voice on copyright across our 29 members, who themselves represent hundreds of thousands of creators.<sup>1</sup>
2. All facets of the creative industry have been impacted by COVID-19. According to the DCMS's own figures, the creative industries contributed £111.7bn to the UK economy in 2018.<sup>2</sup> Based on our members' estimates the creative industries will lose millions of pounds because of the Pandemic. This will have wider economic consequences for the UK, and without action to support the recovery of these industries, there is a risk that the UK's reputation and appeal as a diverse and enriching cultural hub will suffer, reducing its soft power in ongoing trade negotiations. The UK's copyright framework is crucial to the creative industries as it enables creators to derive an income from their works and therefore contribute to the UK's economy. As such is it vital that the UK maintains its copyright framework and its world-leading reputation.
3. Despite the financial impact of COVID-19 across the creative industries, many of our members have either set up or contributed to initiatives that are protecting the livelihoods of creators across the UK, plugging gaps in the Government's provision. Given that many of our members will be submitting their own evidence our response focuses on copyright. However, we would welcome the Government acknowledging the great efforts made by the bodies representing creators and performers, as well as collective management organisations, to provide financial and well-being support during the Pandemic.

**What has been the immediate impact of COVID-19 on the sector?**

4. Many of our members, in particular Collective Management Organisations (CMOs), have moved swiftly to adapt their copyright licensing to support UK businesses, researchers, educators and providers of cultural content during the crisis. Their actions have enabled distributors and creators to facilitate access to copyright content online. In addition the actions of CMOs have allowed businesses and creators to manage their cashflow during the crisis. Examples of these include:
  - i. Education: Educational publishers have provided free and reduced rate access to published and online material for primary and secondary resources for home

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<sup>1</sup> The BCC's membership: Artist's Collecting Society; Association of Authors' Agents; Association of Illustrators; Association of Learned and Professional Society Publishers; Association of Photographers; Authors' Licensing & Collecting Society; BECTU; British Association of Picture Libraries & Agencies; British Equity Collecting Society; BPI; Chartered Institute of Journalists; DACS; Directors UK; ERA; ISM; Ivors Academy; Music Publishers Association; Musicians' Union; National Union of Journalists; PISCEL; Publishers' Association; PPL; Professional Publishers Association; PRS for Music; Publishers' Licensing Services; Royal Photographic Society; Society of Artists' Agents; Society of Authors; Writer's Guild of Great Britain.

<sup>2</sup> DCMS (2020) [DCMS Sectors Economic Estimates 2018 \(provisional\): Gross Value Added](#); Published Feb 2020

schooling, home school planning and exam revision. The ERA has also gone to additional efforts to curate content to make TV and radio broadcasting materials more accessible. The Copyright Licensing Agency (CLA) has relaxed its standard licence terms on educational use copyright materials, allowing an increase in reproduction from 5% up to 30% of original materials until schools are re-opened. In higher education, the limit has been extended from 10% to 30% or three chapters and one chapter for reproduction where the material is not digitally available.

- ii. Research: Free access has been granted to academic research material (particularly evident in the COVID-19 research field) with full text availability online and data mining access for academic research. In addition, research material on COVID-19 has been fast-tracked for publication. Academic libraries have also put key materials online and shared COVID-19 resources globally, as have research / scientific image libraries by discounting and expanding their licensing agreements.
  - iii. Business: PPL and PRS for Music have introduced a number of temporary licensing concessions for affected businesses, including no charge for public performance licence fees whilst businesses are closed; introducing flexibility in licence payments; and no surcharge for late payment.
  - iv. Public: There has been an explosion in online content. We have seen theatre performances, book readings, cultural images and illustrations being made available online. Creators in all sectors have embraced online services and produced more original online content than ever before, including live online events.
5. These examples highlight that the UK's copyright framework is flexible and that licensing systems can adapt in times of challenge to reflect market needs. It has proven that copyright in the UK can ensure access for users, whilst protecting the industry's ability to contribute to the economy and support the livelihoods of creators. However, it is important that Government and all layers of the creative value chain recognise that changes to licensing necessary now will not be applicable on a precedential basis, or for the purposes of future commercial negotiations.
  6. Another immediate impact of COVID-19 is a rise in copyright infringement. A 2019 report by the UK's Intellectual Property Office and Intellectual Property Crime Group identified that "Intellectual Property Crime is a feature of organised crime and highly profitable, accounting for almost 4% of UK imports (£9.3 billion in value) and more importantly accounts for £4 billion in lost tax revenue and 60,000 UK jobs."<sup>3</sup> Our members have seen the level of piracy increase further still across music, publishing and photography sectors since the beginning of April.
  7. This is exacerbated given the timeframe for processing infringement claims via the Intellectual Property Enterprise Court's small claims track (SCT) has been extended as the

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<sup>3</sup> IPO & IP Crime Group (2019) *IP Crime and Enforcement* Available online: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/842351/IP-Crime-Report-2019.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/842351/IP-Crime-Report-2019.pdf)[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/842351/IP-Crime-Report-2019.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/842351/IP-Crime-Report-2019.pdf)

STC is currently closed until further notice, owing to the Pandemic. Given the Pandemic is jeopardising right holders' financial security, it is more important than ever that they can recoup fair payment in a timely manner. Our members have informed us that many right holders that use the STC are seeing an even greater increase the proportion of infringements, in particular by serial offenders, suggesting they are capitalising on the lack of an active deterrent and knowingly committing copyright infringement.

**How effectively has the support provided by DCMS, other Government departments and arms-length bodies addressed the sector's needs?**

8. As highlighted in our introductory remarks our members have more direct evidence on the effectiveness and gaps in the Government's provision for the creative industries and those who work in these industries. However, we are aware of and in support of the extraordinary efforts our members have made to protect the livelihoods of their members. We encourage the Government to consider the gaps in provision identified by our members.

**What will the likely long-term impacts of COVID-19 be on the sector, and what support is needed to deal with those?**

9. Copyright and related rights provide creators and performers with a means of earning a living, as well as being an important tool for those at the business end of the creative and cultural industries. Therefore, maintaining the UK's copyright framework will be an important component of the creative and cultural sectors' recovery from the Pandemic and any weakening of our copyright regime could slow down the recovery. For example, changes to substantive rights protection, overbroad exceptions and lack of enforcement, could all result in significant missed revenue (including tax revenue) and investment opportunities.

10. The BCC has three interlinked concerns relevant in the context of Coronavirus:

- i. Precedent

The UK's copyright framework has demonstrated that it is well-balanced in its application of licensing. We understand from our members that the application of licensing will continue to adapt as the environment evolves and we come out of the other side of the Pandemic. It is important to acknowledge that provisions made by our members have been in response to a crisis. Reactions to the Pandemic must not be equated to acceptance of the removal or reduction of rights in future licensing negotiations.

- ii. Platforms

The increased emphasis on online engagement between people during the lockdown further reinforces the need for the Government to ensure a high level of protection for copyright and rights owners online, so that content creators are fairly rewarded for the online use of their work. However, the expansion of digital platforms has made it harder for the creative industries to control how their content is distributed online and to maintain their associated revenue streams. Through collaboration, the Government and businesses have an opportunity to lead the world in shaping regulation of the digital economy:

- Economic harm and copyright infringements - the Government's upcoming Online Harms Bill provides a legislative framework to capture these economic

harms. The passing of this Bill should not be delayed, however additional legislation should be drafted that covers economic harms.

- The roundtable process in the Creative Industries Sector Deal – the progress that was being made by these roundtables has stalled. It would be helpful for the DCMS Committee to ask the Government whether it will give greater priority to reviving this initiative, or other means of addressing the role of online intermediaries in reducing piracy, and look at reconciling the issue of platform liability, as stated in the DCMS' overview on the Industrial Strategy and IP.

iii. Free Trade Agreements (FTAs)

The UK is continuing with several FTAs during the Pandemic. Given the importance of copyright for the financial recovery of the creative sector, it is crucial that the Government preserves and supports the UK's copyright regime in FTA Intellectual Property Chapters.

The BCC urges the Government to consider all new rights in the European Directive on Copyright in the Digital Single Market during the FTA negotiations with the EU. Reflecting these much-debated provisions in UK legislation would be both a practical policy response and welcomed by the creative industries, including CMOs. If the Government does not address these new rights during the transition period, there is a risk that heightened time pressures on Parliament in the wake of the Pandemic will mean that updates to UK legislation could be delayed. Any delays between implementation of this Directive in the EU and UK could result in lost revenue for the UK.

In respect of the UK-US trade talks, the BCC is concerned that any requirement to adopt the fair use doctrine, instead of maintaining the UK's principle of fair dealing, would not be in the public interest and would ultimately have a negative economic impact. As with the EU, maintaining the UK's gold standard copyright regime in the FTA will support the creative industry's recovery from the Pandemic, and better able it to contribute to the wider economic recovery.

11. If the Committee would like to discuss any of these points in further details please contact Rebecca Deegan, Director Policy and Public Affairs ([rebeccadeegan@britishcopyright.org](mailto:rebeccadeegan@britishcopyright.org)).