**British Copyright Council response to EU Services Sub-Committee Call for Evidence: Future UK-EU relations: Trade in services**

1. The British Copyright Council (BCC) is a not-for-profit organisation that provides a forum for discussion on copyright law and related issues within the creative industries. We have 30 member organisations that span the creative industries from creators of literature, music, tv and film, photography, illustrations and other visual art - to publishers and producers. Our members represent over 500,000 individual creators and those who manage their rights.
2. We have limited our response to the question on the creative industries sector.

**Q13. How will the provisions in the UK-EU Trade and Cooperation Agreement affect the creative industries sector?**

1. **EU Directives:** As the UK will not adopt the EU Directive on Copyright in the Digital Single Market, Digital Services Act or the Digital Markets Act regulatory divergence between the UK and EU will emerge without updates to the UK’s regulatory regime. Some of the provisions in these EU initiatives are already contained within UK legislation. Wholesale review of copyright law is not required. There is a range of approaches the government could take for those provisions that are not already enshrined in UK legislation - each with upsides and downsides for different links in the creative value chain. Therefore, at this stage dialogue is needed across the creative value chain to make sure that the UK’s copyright regime remains world-leading and to find a workable way forward.
2. This is pertinent because digital services increasingly facilitate cross-border trading across the EU and the rest of the world, opening entirely new business opportunities to the creative industries by facilitating their expansion and access to new markets.[[1]](#footnote-1) However, under the current liability regime, certain types of digital services have enjoyed a significant increase in revenue and a dominance of advertising revenues from new markets for creative works, whilst artists’ and performers’ income has not kept pace.
3. Whilst this phenomenon is not limited to musicians, one useful is example is a member survey carried out by The Ivors Academy and the Musicians’ Union. 82% of respondents earned less than £200 from streaming, from all of their music across all platforms in 2019. This included members with thousands, hundreds of thousands, and millions of streams. 7% earned more than £200 but less than £500, and 4% earned more than £500 but less than £1,000. The remaining 7% of respondents earned more than £1,000 from streaming in 2019.[[2]](#footnote-2)
4. Getting digital services to “pay fair” for the content that enables them to generate large profits, remains at the core of what publishers and creators deserve. As the scale and nature of disruption caused by the pandemic continues to evolve, the creative industries are facing significant challenges meaning that they are more dependent on streaming royalties. Therefore, much more needs to be done to get creators, publishers and producers a better and fairer deal in the digital market.
5. This imbalance is caused by:

* certain digital service providers’ relative power in the digital value chain, which means the income generated by digital services is often much greater than the income derived for the original creator; and
* responsibility for the prevention of piracy and unlicensed use of intellectual property on digital services’ platforms falls to individual rightsholders, rather than the platforms having responsibility for preventing illegal content on their platforms.

1. Digital services should obtain licences from rightsholders for the creative content they use, regardless of whether the content is uploaded and / or shared directly by the platform or indirectly by users of digital platforms. Such licences are already available. Yet some digital services have avoided obtaining these licences, instead relying on their interpretation of the limitations of their responsibilities and European legislation. This is detrimental to creators and artists, and to those digital services that do the right thing and obtain a licence from rightsholders. The Digital Services Act includes provisions which provide an opportunity to create a level playing field by ensuring that any digital services which do not obtain licences face effective and persuasive sanctions.
2. In addition, digital services that provide a platform for exchanging content and services play a pivotal role in preventing the availability of, and dealing with, illegal works. Our view is that within the digital ecology these digital services are best placed to deal with illegal material efficiently by removing illegal content from their platforms and ensuring that it stays down. For example, BAPLA, a member of the BCC which represents 120,000 professional photographers, videographers and illustrators, found that 93% of its members experience copyright infringement online resulting in 25% of licensing revenue each year (on average) being lost to online infringements of images.[[3]](#footnote-3) Digital services that do not play their part in preventing piracy need to face effective and persuasive sanctions to ensure that there is a legitimate marketplace for rightsholders.
3. Ultimately, consumers are driven online because they want access to music, films, TV, images and books - so if the UK wants to drive digital innovation globally then the creators and contributors of these creative assets must be rewarded.
4. **Exhaustion:** The UK’s treatment of imports from the EU27 remains different than from the rest of the world and now that we are no longer part of the EU this has resulted in an asymmetric exhaustion regime. This must not become a permanent solution. Our view is that copyright concerns would be best addressed by returning to the long-standing exclusion of international copyright exhaustion in UK legislation. Any radical move towards an “international exhaustion regime” would significantly weaken copyright protection for the distribution of goods globally. This is a significant concern to all sectors who export physical IP products around the world, for example in book publishing where authors and publishers rely heavily on global exports under a territorial rights system. Export sales total 60% of the market in publishing, worth £3.5bn per annum. A functioning exhaustion regime underpins the viability of the publishing industry and supports the thousands of UK authors who rely on global sales.
5. **Touring artists:** This has, rightly so, been in the headlines this month and discussed in both Houses as the failure for the UK and EU to reach an agreement on the movement of people will be a major disrupter for the music industry, but also for many other sectors within the creative industries that require the contractor to be on site such as journalists, performers, authors, and photographers. We urge the Government to work with their European counterparts to find a solution for touring performers and artists without costs or bureaucracy, de facto barriers to the trade of our creative industry.
6. **Data protection:** The exchange of data is key both to permit copyright uses and to ensure accurate payment to the right artist or creator for the use of their works or performances. As long as the European Union considers the United Kingdom does not provide adequate protection for data, the exchange of data between territories will need specific consideration. For example, through standard contractual clauses. We urge the Government to confirm a data protection framework that complies with the GDPR and press the Commission for conclusion of an adequacy decision before 30 June 2021.
7. **Copyright Enforcement:** As a third country outside of the EU, it remains important to establish a collaborative future relationship with various European institutions to ensure a useful exchange of news and information. This includes institutions such as the EUIPO that heads the EU IP Enforcement Portal, agorateka (the European online content portal) and Orphan Works Database (which will likely become a repository for Out of Commerce Works) through the Observatory, to enable creative industry rightsholders to maintain connections in order to communicate with these institutions over the use of copyright protected works.

1. In this context, we are referring to digital services as services provided by certain types of platforms that generate advertising revenue indirectly from content shared or streamed on their websites, such as online content sharing service providers [↑](#footnote-ref-1)
2. https://committees.parliament.uk/writtenevidence/15416/pdf/ [↑](#footnote-ref-2)
3. BAPLA Research Into Online Copyright Infringement – Assessing the Value Gap <https://bapla.org.uk/bapla-releases-its-first-online-copyright-infringement-report/> [↑](#footnote-ref-3)