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A ‘no-deal’ Brexit: what would it mean for copyright?

The UK’s membership of the European Union ends at 11pm BST on 29 March 2019, unless there is an extension agreed by all EU member states or a unilateral [revocation](#) of the Article 50 by the UK government.

When membership ends, the UK will either be in a transition period (based on the Withdrawal Agreement) or completely out (without a deal).

Here we look at the potential impact for creators and other right holders if the UK leaves the EU without a deal. Please note, this paper does not constitute legal advice; the circumstances remain elastic and elusive.

International treaties (no change)

Whatever happens, the UK remains bound by various international copyright treaties to which it is a signatory in its own right, including the [Berne Convention](#), [TRIPS](#) and the [WIPO Internet Treaties 1996](#). Ongoing membership of these treaties means UK copyright works will continue to enjoy benchmark protections across the world, including in the EU.

It is also expected that the UK will directly ratify the 2013 [Marrakesh Treaty](#), which makes printed works accessible for people with visual impairments. Currently it is bound by the treaty via EU ratification. However, until it becomes a signatory in its own right, the UK may be unable to import and export accessible format works with the EU or other treaty countries.

EU laws (some change)

Beyond the international treaties, there is a body of EU copyright law — deriving from directives and regulations — that has been taken into UK law over the years. This will be preserved in the UK as “retained EU law” under the EU Withdrawal Act 2018.

To do this, the Government — which has said that as far as possible it is seeking to “maintain existing copyright arrangements” — has published two regulations on copyright in the event of a no-deal scenario.

The first is the [Intellectual Property \(Copyright and Related Rights\) \(Amendment\) \(EU Exit\) Regulations 2018](#). This, which has yet to be approved, is designed to ensure retained EU law operates effectively, for example by amending the current references in the UK’s Copyright, Designs and Patents Act to the EU, EEA or member states, which would be inappropriate after Brexit.

This instrument also addresses certain “reciprocal” copyright arrangements within the EU/EEA. If the UK retained these arrangements it would be granting certain privileges to EU/EEA member states that might not be returned. It has therefore provided for these arrangements to operate on a UK-only basis or cease completely.

One example is the mutual recognition throughout the EU of the status of “orphan works” — these are copyright works for which the right holder is unknown or cannot be found. Subject to completing the necessary steps, cultural heritage institutions established in the EEA such as libraries, archives and museums can digitise and make orphan works available online across all EEA member states without permission of the right holder. After a no-deal Brexit, UK-based institutions would be unable to make use of this exception, although they will still be able to use the UK’s own [orphan works licensing scheme](#).

Another example is the Artist’s Resale Right that entitles artists to a royalty payment each time their works are sold on the professional market. The UK implemented the EU Resale Right Directive via the Artist’s Resale Right Regulations 2006. The Government is removing references to the EEA from these regulations but nationals of the UK and countries that recognise the resale rights of UK nationals will continue to receive resale rights in the UK after Brexit.

The second regulation is the <http://www.legislation.gov.uk/ukxi/2019/265/introduction/made>. (“Exhaustion” is the point at which a copyright owner loses the right to control the distribution of their work, that point being when the work is first sold with their consent in a specified territory, which can be national, regional or international.) The regulation states that the UK will continue to recognise the EEA regional exhaustion regime after exit day to provide continuity in the immediate term for businesses and consumers. This means that for a “temporary period” there will be no change to the rules affecting imports of copyright goods into the UK, although there could be restrictions on goods going from the UK to the EEA. We do not know what the practical impact of this regulation will be and, furthermore, while it takes care of the short-term, we do not know what will really happen until the terms under a Future Economic Partnership Agreement with the EU are confirmed.

Conclusion

Leaving the EU with or without a deal does not require the UK to significantly change its copyright regime but — as was noted in the BCC’s 2017 paper “[Impact of Brexit on UK Copyright Law](#)” — it might choose to do so once no longer bound by EU copyright law or the rulings of the Court of Justice of the European Union.

It is nevertheless hoped the Government will be committed to safeguarding the UK’s gold standard copyright regime that is so vital for sustaining our world-class creative sector, now worth around £100bn a year to the UK economy.