

Editorial

Transitional UK copyright provisions

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The legal uncertainty arising from the UK's mid-2016 decision to leave the European Union (EU) continues apace for IP, as much as for any other area of law. At the time of writing, even several months on from the referendum, the future relationship between the UK and the EU remains unclear. This is apparent in the wide range of opinion pieces on the topic, although the wider economic apocalypse and collapse of UK society as predicted by some parts of the British media has thankfully not occurred (yet).

Nonetheless, as we increasingly operate in a digital, knowledge-based, economy and the world gets ever smaller geographically, the importance of a clear, flexible and fit-for-purpose cross-border framework for IP rights to protect creative assets is self-evident. The Digital Single Market Strategy first adopted by the EU Commission in 2015 recognizes the need to continue to support the creative sectors in protecting their rights across borders.

Given the importance of UK-produced IP creative exports, whether music (totalling £2.2 billion in 2015 according to a UK Music survey), film, TV, scientific research or technology to the UK economy, it seems likely that even in a "hard Brexit" scenario, and even if no longer directly applicable, EU law would remain central to many UK content businesses. It is sufficient to consider consumer law or data protection: the scope of the EU General Data Protection Regulation and the recent decision of the Court of Justice of the European Union in *VKI v Amazon* (C-191/15) make it clear that, whilst possibly not directly binding, and depending on the individual circumstances, UK suppliers would likely need to comply with EU data protection rules in order to process and transfer personal data within the EU.

In a similar fashion, the substantive changes to copyright as proposed by the EU Commission under the recently published proposals on the "modernisation of copyright" (Cross-border access (Jan 2016); Marrakesh and Country of Origin (Sept 2016)) will likely continue to have a significant effect, whatever the technical legal relevance on UK law. For instance, if the draft Regulation relating to the online transmissions and retransmissions of

TV and radio programmes is eventually adopted in its current form, notwithstanding that the UK might not be bound by it, it seems unlikely that the UK would take a divergent approach to the principle of "country of origin". This is given not only the longstanding precedent established by the Satellite and Cable Directive, but also the practical difficulties and costs that licensors would arguably face in persuading broadcasters and programme makers in other EU Member States that "top up" licences would be required for UK reception of ancillary digital transmissions.

Accordingly, the unfolding of the EU Digital Single Market programme should continue to be of as much interest to UK-based practitioners, as to the rest of Europe, and it is important that the UK remains active in the relevant EU debates. Whilst much in the recent proposals is to be welcomed from a UK-centric perspective, naturally, different stakeholders would have concerns over some of the provisions. There is likely to be more released in the coming months, including the legislative of the review of the Enforcement Directive. It is to be hoped that, in addition to other measures, the Commission would in particular take the opportunity to provide for the availability of expedited cross-border injunctions for IP infringements and that the UK would ultimately be able to participate in any such solutions, one way or another. The UK has to date often led the way in acting in the area of enforcement, particularly online, through successful initiatives such as "Follow the Money". A more effective expedited pan-European framework for enforcement would benefit and hopefully reduce costs for all concerned.

In light of the substantive reverberations that are to be felt in the UK as a result of the changes made to copyright and the wider IP framework - whether enforcement, a new right in press publications, mandatory exceptions or data protection - it is to be hoped that the UK would continue to embrace the opportunities coming from the EU. Our ongoing participation or "doing our bit" in the EU debate is essential for a smooth transition to whatever formal structural relationship lies ahead for the UK and its friends in the EU and beyond.

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