



FUTURE UK-EU RELATIONS: TRADE IN SERVICES
HOUSE OF LORDS EU SERVICES SUB-COMMITTEE
Submission in response to call for evidence – 5 February 2021

About us

This is a joint submission from the [Society of Authors](#) ('SoA') and the [Association of Illustrators](#) ('AOI'). Founded in 1884 and 1973 respectively, the SoA and the AOI represent roughly 15,000 writers, translators and illustrators of all kinds.

The SoA and the AOI are also founding members the [Creators' Rights Alliance](#) ('CRA'), comprising also of the National Union of Journalists, the Incorporated Society of Musicians, the Musicians' Union and the Writers' Guild of Great Britain. We are therefore well placed to discuss the impact of the United Kingdom's departure from the European Union on both the publishing and wider creative industries. The SoA and the AOI are also active members of the [British Copyright Council](#) ('BCC'), whose evidence we have considered and discuss further [below](#) under our 'Licensing, exhaustion and enforcement' section.

Our members

SoA and AOI members provide services globally, including across the EU27. The AOI's artist members provide services in illustration and writing, and its agent members provide services securing work, marketing and managing artists in the UK but many also represent EU based artists. The SoA's membership includes journalists, broadcasters, screenwriters and novelists, as well as translators based in the UK and across the EU27.

Illustration and writing are significant contributors to the UK's creative industries, worth [£111.7 billion in Gross Value Added](#) – more than the automotive, life sciences, aerospace and oil and gas industries combined – and one of the jewels in the crown of the UK economy. Our industries are world-class and it is vital that we retain a genuinely world-leading regulatory system to safeguard UK creators' rights.

Scope of evidence

For brevity and clarity, we have restricted this evidence to the following question set by the committee in its call for evidence:

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

General observations

The [UK-EU Trade and Cooperation Agreement](#) ('TCA') runs to 1,263 pages. It therefore remains to be seen how the agreement will be implemented and, by extension, how it will affect our members. At its most basic, the TCA is better than No Deal and we sincerely hope that it will provide a baseline for future trade and cooperation, rather than a jumping off point for significant divergence in, and diminution, of commercial and regulatory standards.



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Early indications suggest that the TCA will mean new barriers and bureaucracy for many SoA and AOI members and other creative freelancers seeking to work across the EU27 unless the Government acts quickly. Such unwelcome uncertainty comes at a time when so many UK creators are already struggling from the effects of Coronavirus, with [only 28%](#) of writers, illustrators and translators having successfully applied for the first two rounds of the Self-Employment Income Support Scheme and with 96% and 97% of SoA and AOI members ineligible for Job Retention Scheme and Universal Credit payments.

Intellectual Property standards: an overview

Preservation of strong Intellectual Property standards remains a concern for SoA and AOI members. We are cautiously optimistic that the Agreement maintains commitments from both the UK and EU to [World Intellectual Property Organization Treaties](#) and [TRIPS Agreement](#) standards, but we remain extremely concerned about the Government's lack of support for the EU Copyright Directive, having supported and shaped the Directive as an EU member.

To be clear, the Government should aim to meet or beat these standards as part of its domestic Levelling Up agenda in the same way as it has committed to do in animal welfare and certain other standards. It should not be deterred from replicating or seeking to improve upon the [Transparency Triangle](#) rights and obligations provided for in Chapter 3 of the Directive. Progress on enshrining these provisions into domestic legislation ahead of the EU27's transposition deadline on 7 June 2021 has been published by research consortium CREATE [here](#), with the UK now risking being left behind as a global leader in Intellectual Property standards.

Our view is that EU27 and other trading partners are likely to insist on the UK applying law analogous to the Directive in any event to safeguard Intellectual Property standards and maintain a well-functioning global market. If the UK fails to align with the Directive's provisions, particularly those of the Transparency Triangle in Chapter 3, we could risk losing vital trade to the detriment of UK creators as we emerge from the current public health crisis.

Given that the Government supported and shaped the Directive when an EU member, we submit that it would be far less time-consuming and costly to transpose it in full at this stage than to consider Copyright in isolation as the UK seeks to negotiate multiple trade deals with other sovereign nations. Given the long lead times in the publishing and other sectors of creative industries, clarity on this important issue is now a greater concern than ever and we would urge parliamentarians to bring this issue to the Government's attention.

Alignment with the Directive should be relatively straightforward in policy terms, given that there are no meaningful calls across the creative industries for there to be a wholesale review of Copyright law. Whilst we recognise that any legislative changes invariably carry with them risks and rewards for the various links in the creative value chain, we believe that meaningful and sustained dialogue with our organisations and others can ensure a positive public policy

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outcome in this vital area so that the UK's copyright regime remains genuinely world-leading. To this end, we are renewing our call for the creation of a UK Creators Council to improve UK policymaking, having proposed this to the Department for Digital, Culture, Media and Sport ('DCMS') on several occasions last year with DCMS yet to substantively address the merits of the proposal. For more on this, see our 'Improvements to UK policymaking' section [below](#).

Licensing, exhaustion and enforcement

We agree with the BCC's submission that digital services should obtain licences from rightsholders for the creative content that they use, irrespective of whether the content is uploaded or shared directly by the platform or indirectly by users of digital platforms. Despite such licences being available, some digital service providers have sought to avoid doing so. This practice is detrimental for UK creators and to those digital service providers that do the right thing by creators in obtaining licences from rightsholders. We also agree with the BCC that digital service providers are best placed to deal with the prevention of illegal material by removing unlawful content from their platforms and subsequently ensuring that it stays down.

We further support the BCC's view that ongoing copyright concerns should be addressed by returning to the exclusion of international copyright exhaustion in domestic law. Moves towards an international exhaustion regime would significantly weaken copyright protections at a time when the UK should be aspiring to Level Up its Intellectual Property standards and be a genuine world leader in the field. As part of this approach, it is vital that the UK enjoys a robust relationship with the EU Intellectual Property Office to ensure that creators' rights are properly protected.

Tax and payments

There is already an increase in VAT-related red tape following conclusion of the TCA negotiations. Artists who are not registered for VAT in EU27 member states are now being charged VAT by their UK-based agent for marketing and other services where they were not charged before. This practice represents a significant additional cost for artists, making the services provided by UK agents less attractive, with consequences for the industry such that there is likely to be a reduction in the ability for UK to import creative work.

There are also ongoing challenges around how onerous certain tax paperwork is, for example, declarations to avoid EU companies withholding tax to UK illustrators. This has created huge administrative barriers to UK creators, which will need to be addressed by ministers and parliamentarians to avoid a significant economic hit to the sector.

There is also a distinct lack of clarity on how artists can claim royalties from Collective Management Organisations across the EU27. This vital benefit is now in question and must be addressed by ministers and parliamentarians without delay to provide clarity to UK creators.



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Trade and travel

The end to freedom of movement as a pillar of EU law for the majority of UK citizens will mean that many of our members will have to negotiate complicated visa and work permit regimes before travelling to EU27 countries. For example, a journalist or photographer travelling to the EU27 for research purposes will first need to check requirements with the UK consular office or embassy for that state before travelling:

To work in France for up to 90 days, s/he will not require a visa but will require a work permit;

Meanwhile, in Italy, any exemptions for UK citizens are dependent on reciprocal exemptions for Italian citizens working in the UK; and

In Germany, they will be subject all German immigration rules for third-country nationals.

However, if an author or illustrator were travelling to an event meeting *about* the book trade or the illustrating profession, current exemptions are likely to mean that they will *not* require work permits and, in many cases, will not require a separate visa.

Regrettably, it is becoming all too clear that UK and EU27 immigration rules are likely to present labyrinthine and costly to thousands of UK creators – 47% of whom are freelance – and with 95% of creative businesses employing fewer than 10 people, according to the [Creative Industries Federation](#).

Improvements to UK policymaking

With a document of the length and complexity of the TCA, we would expect there to be a sustained period of reflection by the Government to work out how each of its composite parts will work in practice. However, we would urge the parliamentarians and ministers to take on board the concerns set out in this submission and to act positively to ensure that UK creators' rights are improved and safeguarded moving forward.

We want to have confidence in the Government's ongoing policymaking processes and, to this end, we are renewing our call – widely supported across the creative industries – for the [creation of a UK Creators Council](#) to ensure that collecting societies, trade unions and other organisations can directly inform policymaking affecting the creative industries.

Given that certain sections in the TCA refer to outmoded software and encryption applications and there remains no formal consultation mechanism in policymaking terms with member organisations, the establishment of a UK Creators Council is surely necessary to ensure that better public policymaking in future.



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Further evidence

The SoA and the AOI stand ready to help the committee in offering further evidence to assist it in its deliberations. For further information about this submission or to arrange for oral evidence to be taken, please contact Chief Executives [Nicola Solomon](#) (SoA) and [Ren Renwick](#) (AOI), copying in Public Policy Advisor [Eddie Reeves](#) (SoA).

Embedded links

Links to external research and reports have been embedded and will take the reader through to external websites. Names highlighted in this report contain embedded 'mailto:' links.

Submitted via the House of Lords portal [here](#).

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The Society of Authors is a company registered in England No. 00019993 and is an independent trade union.

The Association of Illustrators is a company registered in England No. 01237440 and the professional body for illustration in the UK.