



BCC response to the call for written evidence: Retained EU Law (Revocation and Reform) Bill

Introduction.

The British Copyright Council (BCC) represents those who create, hold interests, or manage rights in literary, dramatic, musical and artistic works, performances, films, sound recordings, broadcasts and other material in which there are rights of copyright and related rights.

Our members include professional associations, industry bodies and trade unions which together represent hundreds of thousands of authors, creators, performers, publishers, and producers. These right holders include many individual freelancers, sole traders, and SMEs, as well as larger corporations within the creative and cultural industries. Our members also include collecting societies which represent right holders and which provide licensed access to works of creativity. A list of our members can be found [here](#).

We write with particular reference to the way in which our primary copyright legislation has evolved since the enactment of the Copyright, Designs and Patents Act in 1988. Over some 30 years, the Act has been amended on multiple occasions to reflect maintaining the UK's IP framework as a gold standard within the member states of the World Intellectual Property Organisation.

For copyright law provisions, the changes now included in our primary legislation have been driven through the transposition of Directives within the EU Copyright acquis¹ which the UK transposed into UK law before 31 December 2020. Although many changes were included and applied under Statutory Instruments prepared with reference to s 2 European Communities Act 1972, in practice, these have resulted in changes being adopted within the text of the Copyright Designs and Patents Act 1988 (as amended).

The IPO are considering around 45 statutory instruments which delivered these changes to our copyright primary legislation. Most provisions are already enshrined in primary

1 <https://digital-strategy.ec.europa.eu/en/policies/copyright-legislation>

legislation. At present, the published text of the CDPA 1988 includes notes to show where text is currently noted as having been amended by EU-derived Statutory Instruments relevant to the Bill. For clarity, might these notes be changed by a clear direction that the notes, but not the changes to the CDPA, are overridden by the application of the REUL Bill provisions?

For our members, the importance of certainty and stability as they relate to the ability of creators and rightsholders to innovate and derive economic value from their work cannot be understated.

We welcome the opportunity to provide written evidence on the Retained EU Law Bill. However, we do stress that this is a new and ongoing stream of our work for us and for our members. As a result, new insights may emerge over the coming months, and we would welcome the opportunity to share new evidence at a later stage. To that end, we would be remiss not to note that the current December 2023 sunset deadline carries significant risk if not enough time is given to ensure that the full impact and secondary effects of current legislation are mapped and evaluated– which could lead to an inadvertent and undesirable undermining of the UK’s IP system.

In addition, the UK’s copyright landscape has been heavily shaped by significant EU legal cases, which have significantly expanded the scope and availability of copyright protection. For example, this has been true for the doctrine of exhaustion as developed and applied within the UK both prior to and since Brexit.

On a related note, the complete removal of reference points supporting certainty offered by CJEU decisions may risk creating a more complex and opaque environment leaving creators and rights holders uncertain of ways in which rights may be relied on. Rather than providing a Brexit opportunity, such a blanket approach may actually set back the application of UK primary legislation in ways that create unintended judicial burdens for the future.

We stand ready to facilitate further engagement for the Public Bill Committee with our members should the opportunity arise. However, given the time constraints of the call for evidence, we hope that the Committee will advocate:

1. Clarity over the status of primary law as indicated above.
2. Clarity that the sunset provisions will not be applied to conflict with UK International obligations deriving not only from WIPO and WTO Treaty provisions but also those which have been advocated by the UK and adopted in the IP Chapters of recent Free Trade Agreements with countries around the world.

Important examples relevant to such international obligations include:

- The Artist's Resale Right Regulations 2006
- The Copyright and Rights in Databases Regulations 1997
- The Collective Management of Copyright (EU Directive) Regulations 2016

Given that the value of the pieces of legislation listed above has been embedded in the UK's copyright sector, their expiration would likely have a significant impact on current working practices. In addition, they have been included in specific trade agreement provisions and in current IP Trade Chapters which aim to ensure that our international trade partners work in a manner consistent to the UK in promoting appropriate standard levels of protection and equitable remuneration. This is of paramount importance since these often exceed the minimum levels established under WIPO led international treaty provisions on copyright and related rights.

Advocating for the artist resale right (ARR) | The Artist's Resale Right Regulations 2006

Traditionally artists have earned money only from the initial sale of their works – unlike other creators, such as musicians, screenwriters, and authors. However, art is often actively traded on the secondary market and can substantially increase in value over time – which risks creating a situation in which the originator of a creative work is left unfairly compensated. The ARR was developed to address this gap and ensures that artists benefit from the subsequent economic value creation of their work.

In the UK, ARR is codified in law via two SIs, the 2006 regulations and the 2011 regulations which extended ARR to artist's heirs and estates after the artist's death. This legislation and guidance have been implemented to provide artists with a royalty when their copyright-protected works are resold through art market professionals such as galleries, auction houses and art dealers. It is worth emphasising that the ARR exists in 80 countries worldwide, and the UK's usage of it is by no means an exception on the global market. However, it is an important way through which artists and their estates can have a share in the increasing value of their work.

The Copyright and Rights in Databases Regulations 1997

There is currently some uncertainty around the status of the Copyright and Rights in Databases Regulations 1997. A database is currently defined in the legislation as "a collection of independent works, data or other materials which are arranged in a systematic or methodical way and are individually accessible by electronic or other means." It is worth noting that database rights protect the collection of data, not its constituent elements – which where these are creative works would be covered by copyright. However, a person infringes a database right when they extract or re-utilise all or a substantial part of the contents of a protected database without consent. This

would subsequently have wider ramifications on rightsholder who have their work stored in databases.

The Collective Management of Copyright (EU Directive) Regulations 2016

The Collective Management of Copyright (EU Directive) Regulations 2016 (“CRM Regulations”) placed obligations on collective management organisations (“CMOs”) established in the UK, as well as independent management entities, users, right holders and members of CMOs to the benefit of the ecosystem as a whole.

The CRM Regulations created a stable regulatory framework for CMOs. In a market of increased competition, a common set of rules is essential. Any significant change in regulation would not only create uncertainty but also have result in unnecessary costs for members, disrupt current business practices and diminish the UK’s reputation as world leaders in collective management.

Conclusion

In summary, the UK copyright regime provides a world-leading system which recognises and rewards creative work, ensuring equitable remuneration for the work of creators, performers, and other rights holders.

It is important that the Bill avoids delivering a reduction in the quality and quantity of creative innovation, which over time, will diminish the value of creative work. For the UK to incentivise, protect and remain attractive to foreign investment, it must retain its current, effective, and strong protection of copyright.