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IP & Data

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No Deal Brexit IP & Data Protection



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B

Intellectual Property (IP) Copyright & Trade Marks

Colin Bell

“Most stakeholders responding to the survey have a negative perception of Brexit, with many expressing the view that it would have adverse effects on the arts and culture sector. When asked about potential advantages, a majority stated that they were not able to give any arising for their organisation as a result of Brexit”

Arts Council England, 2017 Research

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Key Priorities

Arts & Culture sector



- ↑ Prevent Barriers to Trade
- ↑ Funding
- ↑ Freedom of Movement
- ↓ Regulation including IP

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Get *ready* for Brexit

DEAL OR

?

NO DEAL

REMA ||| **N**

Copyright

International Legislation

- Berne Convention for the Protection of Literary and Artistic Works
- Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations
- World Intellectual Property Organisation (WIPO) Performances and Phonograms Treaty (WPPT)
- WIPO Copyright Treaty (WCT)
- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)
- **EU Copyright Directive - European Commission's Digital Single Market**

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Copyright

- Collective Management
- Sui Generis Rights
- Portability of Online Services
- Country of Origin Principle for Copyright Clearance in Satellite Broadcasting
- Orphan Works
- Cross-border transfer of accessible format copies of copyright works. The Marrakesh Directive
- Enforcement

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Trade Marks

- New UK Right - For existing EUTMs
 - Comparable Trade Marks (EU)
 - Free / Automatic / Opt Out
 - Renewal – six months (“late” renewals)
 - Applications – standard fees – 9 months
- Clearance
- Licences
- Representation
- .eu domain names

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Exhaustion of Rights

Temporary Period

- Intellectual property-protected goods placed on the EEA market by, or with the consent of, the right holder after the UK has exited the EU will continue to be considered exhausted in the UK. This means that parallel imports of these goods from the EEA to the UK will be able to continue unaffected.
- Goods placed on the UK market by or with the consent of the right holder after the UK has exited the EU will not however be considered exhausted in the EEA. This means that businesses exporting these goods from the UK to the EEA might need the right holder's consent.

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Privacy & Data Protection

Will Eggleston

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What's not changing?

- Data Protection Act 2018 – GDPR is part of UK national law
- E-privacy regulations (email marketing)
- No change to use and transfer within the UK of data about UK individuals
- No change to transfers of data **from the UK**

What IS changing?

UK becomes a **third country**

- May need to appoint an **EU Representative**
- May need to deal with **EU supervisory authorities**
- Restricted transfers of data **into the UK**

EU Representatives

- If you are:
 - a UK organisation
 - with no establishment in the EEA
 - offering goods/services to EEA individuals
- You may need to appoint an EU Representative
- ***Unless*** the use of personal data is occasional, low risk and doesn't involve sensitive data

EU Supervisory Authorities

- GDPR introduced one-stop-shop to simplify compliance and enforcement across EU
- UK ICO will no longer be a competent authority under the EU GDPR
- ICO will continue to supervise use of personal data in UK
- You may have to deal with the ICO and authorities in other EU countries – *you could be fined by both*
- One-stop-shop still applies to EU establishments

Restricted data transfers

- Any transfer of personal data into a third country is a **restricted transfer**
- Additional safeguards needed when receiving or collecting personal data from the EEA:
 - Adequacy decision?
 - Standard Contractual Clauses
 - Binding Corporate Rules
 - Exceptions
 - Consent, performance of contract

Restricted data transfers

- **Non-restricted transfers:**

- UK → EEA
- UK → Third countries with adequacy decisions
- UK → USA (update Privacy Shield policy)

- **Restricted transfers:**

- Anywhere → UK
- UK → Other third countries

Contact

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