

## MPA Newsletter – Policy - May 2018

### UK

#### Agent of Change

Following the campaign by UK Music and its members including the MPA to protect live music, the government promised consideration of the agent of change principle as part of the amended National Planning Policy Framework (NPPF) in order to protect existing businesses, such as music venues. This approach has been mirrored in a respective announcement by the Scottish government.

**OFCOM/ BBC consultations** The MPA responded via UK Music to:

- [Consultation](#) on the definition of “new music”. As part of the operating licence (October 2017), Ofcom placed requirements on the BBC to ensure a significant proportion of Radio 1 and Radio 2’s music output was New Music.
- [Consultation](#) on draft Policy for the distribution of its UK Public Services. The draft Policy sets out how the BBC’s services are made available to watch, listen or use and includes a series of proposed conditions for distribution via third parties.

### EU

#### Directive Copyright in the Digital Single Market

The ever changing timeline provides for decisions by the European Council representing member states and the European Parliament respectively before summer so that trilogue discussions can start after the summer break under the Austrian Presidency. The discussions at Council level are progressing steadily (e.g. meeting of permanent representatives on 27<sup>th</sup> April); and the European Parliament Legal Affairs Committee is working on compromise amendments for adoption on 20<sup>th</sup> June paving the way for adoption by the European Parliament Plenary first week of July.

MPA has been working with other European right holder organisation (e.g. ICMP/ IFPI) to improve the wording in particular of Article 13 dealing with the “value gap” both at Council and European Parliament level.

#### Online (re-) transmissions Regulations

Trilogue discussions on the Regulations Online (re-) transmissions involving members of the European Parliament, the Bulgarian Presidency supported by the Commission on behalf of the Council and the Commission have started on 13<sup>th</sup> March and are ongoing.

#### Proposed Regulation on geo-blocking

This [Regulation](#) which will start applying on 3<sup>rd</sup> December 2018 addresses unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market.

## **Regulation on cross-border portability of online content services**

The [Regulation](#) came into force on 1 April 2018. It regulates cross-border portability of online content services based on a legal fiction of licensing "where a service is deemed to have been provided, accessed and used in the subscriber's home Member State". "

## **European Commission [notice](#) on the withdrawal of the United Kingdom and European Union rules in the field of copyright**

Subject to the transitional arrangements and/or any potential trade agreement, the Commission clarified the copyright situation after the withdrawal from the European Union.

International copyright treaties which have been ratified by the United Kingdom itself will remain relevant, Berne Convention, TRIPS agreement 1994, WIPO Internet Treaties 1996.

International copyright standards inter alia on basic rights (reproduction, communication to the public, making available to the public etc), term (minimum of 50 years after the death of the author or after the fixation of a performance/ publication of a sound recording according to international treaties), exceptions (in particular the Berne three-step test), protection of technological protection measures/rights management information and enforcement continue to be binding on the United Kingdom.

It is at the discretion of UK Government whether to apply further European Union standards of high level of protection after withdrawal from the European Union (e.g. term of 70 years). C.f. detailed British Copyright Council [analysis](#) 2017. But there seems little political appetite to change copyright in the short to medium term (nb calls by academics).

However, certain rules are based on the membership to the European Union and will cease to apply unless there is agreement between the United Kingdom and the European Union. Specifically, various EU Directives and Regulations create systems of mutual recognition or reciprocity between European Union member states; they recognise the compliance with, and application of each other's provisions as part of European Union membership (or sometimes the European Economic Area). This might change.

## **US**

### **US Music Modernization Bill**

As reported in earlier newsletters, this Bill has been introduced in the US House of Representatives as well as the Senate; it is endorsed by the NMPA, ASCAP, BMI and the Digital Media Association. As a reminder, its objective is to:

- Streamline the licensing process of mechanical rights in the US primarily by suggesting changes to Section 115 US Copyright Act.
- Introduce blanket licenses in Section 115 to be administered by a new music royalty collective organisation.