**MPA policy briefing Update April 2019**

**European Union**

**Directive Copyright in the Digital Single Market**

Following its adoption in the Plenary on 26 March 2019, the European Council too adopted the Copyright Directive at its meeting on 15 April 2019. The final text will now be redacted and translated before publication in the Official Journal, presumably in May or June, triggering a 24 month implementation period. We will publish the final version as soon as available, and continue working on its implementation in the UK.

### Online (re-) transmissions Directive

The Directive to simplify cross-border distribution and retransmission of television and radio programmes was adopted by the European [Plenary](http://europa.eu/rapid/press-release_STATEMENT-19-1888_en.htm) on 27 March 2019 and now awaits adoption by the European Council.  As is the case, with the Copyright Directive, referenced above, the final text will be redacted and translated before publication in the Official Journal, triggering a 24 month implementation period. For publishers, it is relevant that the country of origin principle will only apply to broadcasters’ own and fully solely financed radio, TV news and current affairs programmes. This means that broadcasters could make their content available online in other countries simultaneous to their broadcast, or as catch-up services. Sports events are excluded. The provision on direct injection is included within the Directive leaving a lot of flexibility to member states on how to implement at a national level. We will publish the final version once available, and continue working on its implementation in the UK.

**Court of Justice of the European Union - cases**

And as a special treat for the real legal aficionados in our membership, there are a couple of cases which are of interest to the publishing community:

1. Case C 572 /17 CJEU [decision](https://ipcuria.eu/case?reference=C-572/17) (“Syed”) - scope of distribution right includes storage facilities
2. Case C 476/ 17 Advocate General opinion (“Kraftwerk”) - relation of sampling to reproduction right and freedom of arts Charter of Fundamental Rights of the European Union. Decision of the court expected before summer
3. Case C 263/18 (“Tom Kabinet “) concerning a second hand market place for e-books (“Reading Club”); and whether there is digital exhaustion
4. Case C 682/18 (“YouTube”) - Reference on liability of digital platforms

**United Kingdom**

**Call for evidence to review the 2014 changes to Copyright**

Government has asked for evidence regarding the impact of the 2014 changes to copyright, i.e. the exceptions resulting from the Hargreaves Review of Intellectual Property, “Digital Opportunity”. For publishers, the main new exceptions relate to education, quotation, and parody, caricature and pastiche. This evidence has been sought to enable Government to prepare a post-implementation review. The MPA responded to this request by challenging the economic evidence presented at the time and asked for a comprehensive assessment during the post-implementation review.

**Online Harms White Paper**

The UK Government published the White Paper on online harms on 8 April 2019, a package of online safety measures that also supports innovation and a thriving digital economy. This is part of the wider Digital Charter programme. The White [Paper](https://www.gov.uk/government/consultations/online-harms-white-paper) proposes “establishing in law a new duty of care towards users, which will be overseen by an independent regulator. Companies will be held to account for tackling a comprehensive set of online harms, ranging from illegal activity and content to behaviours which are harmful but not necessarily illegal.” The MPA will be discussing its response with UK Music (deadline 1 July 2019).

**UK withdrawal from the European Union**

We have been updating MPA members throughout the months since the referendum on 23 June 2016 in our policy picnics and newsletters. Following the European Council [decision](https://www.consilium.europa.eu/media/39042/10-euco-art50-conclusions-en.pdf) on 10 April 2019 to extend the Art 50 deadline until 31 October 2019, discussions will continue at UK level. This extension is coupled with a variety of conditions, mainly:

* The UK has to take part in the European Parliament elections if still a Member of the European Union on 23-26 May 2019 and if the Withdrawal Agreement has not been ratified by 22 May 2019. If not, the withdrawal will take place on 1st June 2019
* The UK committed to act in a constructive and responsible manner and fulfil its commitments and Treaty obligations
* The European Council restated that the Withdrawal Agreement will not be re-opened (but the political declaration might)
* There will be a review of the progress at the June Council meeting

There are various possible scenarios on the withdrawal at this stage:

* Adoption of the Withdrawal [Agreement](https://ec.europa.eu/commission/publications/draft-agreement-withdrawal-united-kingdom-great-britain-and-northern-ireland-european-union-and-european-atomic-energy-community-agreed-negotiators-level-14-november-2018_en) on the Withdrawal of the United Kingdom from the European Union (with or without Political Declaration on the future relationship). It is worth noting that the European Council will not change the Withdrawal Agreement and will not engage in discussions on the future trade relation before the withdrawal is concluded. If the Withdrawal Agreement is ratified by both parties before 31 October 2019, the withdrawal will take place on the first day of the following month. After this, negotiations on future trade relations will commence.
* No-deal (“[WTO](https://www.wto.org/english/thewto_e/whatis_e/TIF_e/fact2_e.htm) rules”) Brexit
* [Revocation](https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-12/cp180191en.pdf) of Article 50 (i.e. continued European Union membership).

The most likely options for the future relationship range from staying in the European Union (“revocation”) to trading under WTO rules (“no-deal”), including membership to the European Economic [Area](https://www.efta.int/eea) (“Norway”), the European Free Trade [Association](https://www.efta.int/) (“Switzerland”), a Customs [Union](https://ec.europa.eu/taxation_customs/business/calculation-customs-duties/rules-origin/customs-unions/turkey-customs-unions-preferential-arrangements_en) (“Turkey”) or a Comprehensive Economic and Trade [*Agreement*](http://ec.europa.eu/trade/policy/in-focus/ceta/index_en.htm) (“Canada Plus”). Given the pace of changes, all of this could change after the Parliament Easter recess. Given the uncertain status of discussions, we are not providing links to Government advice, in particular on ‘no deal’ scenarios at this stage, but will do so once there is more clarity.

As a principal and general [observation](http://www.britishcopyright.org/news/2017/impact-brexit-uk-copyright-law/) on copyright, the United Kingdom remains bound by international copyright treaties it signed up to herself, currently (Berne Convention, TRIPS, WIPO Internet Treaties 1996) and going forward (e.g. the Marrakesh Treaty for visually impaired persons 2013 once ratified by the UK).

Florian Koempel, 24th April 2019