

Copyright

What does it cover?

Copyright operating across borders

What will happen?

Much of the UK's copyright law is based on international treaties, meaning it is not dependant on membership of the EU and will not be affected by the withdrawal from the EU. However, there are specific aspects of UK copyright law which are based on EU directives, and which go beyond the international treaties. Although the EU Withdrawal Act 2018 will preserve relevant EU law derived from Directives and Regulations on copyright and related rights in the UK, the reciprocal EU cross border mechanisms will cease to apply to the UK, as it will be treated as a third country. The guidance note specifically deals with the following:

- Sui generis database rights. EEA states will not be required to protect database rights of UK nationals, residents or businesses, and UK owners of UK databases are unlikely to be able to enforce such rights elsewhere in the EEA.
- Online content service portability. Currently, consumers should be able to access online content services (e.g. online TV services) whilst they are temporarily resident in another EU country. This requirement will cease to apply to UK consumers, who may find access to such services is restricted whilst in the EU.
- Collective management of copyright. There are currently cross border obligations on bodies who manage the licensing of copyright works within the EEA. Following the UK's withdrawal from the EU, these will cease to apply to the UK. An example of this is that collective management organisations in the UK will be unable to require EEA collective management organisations to provide multi territorial licensing of online rights in musical works.
- There is also specific discussion of issues with copyright clearance in satellite broadcasting; the digitising of works with no documented owners (orphan works); and cross border transfer of accessible format copies of copyright works, as rules which may allow such actions across the EU, or the EEA, will cease to apply.

What will businesses have to do?

- As the UK will remain a member of the international copyright treaties following March 2019, most protections for UK works both domestically and abroad will remain predominantly the same.
- However, with regard to EU specific cross border aspects, there may be some impact on UK businesses.
- As it appears that UK database owners will not be offered automatic protection for such database rights in EEA territories, legal advice should be sought as to whether other forms of protection may be available. The guidance suggests that restrictive licensing agreements or copyright may be relevant.
- Contractual agreements between UK and EEA collective management organisations may be an option if the UK wishes to continue existing approaches to multi territorial licences.
- Businesses who are concerned with copyright clearance in satellite broadcasting, institutions who rely on the orphan works exception, or those who wish to transfer accessible formats of copyright works between the EU and the UK should seek legal advice as to whether they can continue such broadcasts, use or transfers, or whether additional permissions from rights holders will need to be sought.

This Technical Notice was compiled with the kind assistance of the law firm Squire Patton Boggs, who are working with a number of businesses in the UK and internationally on their preparations for Brexit, and can be contacted via jeremy.cape@squirepb.com

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