

Public Affairs and Policy Update – Highlight

Article 50 vote and new Industrial Strategy

- The Supreme Court decided 8-3 to uphold the High Court's ruling that Parliament would need to vote on triggering Article 50. Theresa May also outlined her Brexit plan.
- This month, the Government also released its long-anticipated Industrial Strategy, which features the creative industries as a key sector.

[Read more](#)

Legal Update – Highlight

Section 52 CDPA key dates

- Government repealed a law that limited copyright for certain artistic works. That took place on 28 July 2016
- On 28 January 2017, all stock which were 2D or 3D copies of those artistic works needed to be sold or destroyed. That includes replica furniture and publications containing these works without a licence.

[Read more](#)

Wider News in Brief

- Visual Artists Ireland and IVARO, our sister society, have launched a [campaign](#) to reduce the ARR threshold from €3,000 to €1,000 in line with the UK.
- Culture Secretary Karen Bradley and Brexit Minister Robin Walker [met](#) with arts and culture organisations and gave assurances they would play a key role in promoting the UK abroad, post Brexit.
- In a surprise [move](#), Labour MP Tristram Hunt resigned as an MP to become the new Director of the V&A.
- Creative Industries Federation launched a new [survey](#) for its members on the opportunities and challenges presented by the decision to leave the EU.
- Arts Council England's outgoing Chair, Sir Peter Bazalgette, will chair an [independent review](#) of the creative industries as part of the recently announced Industrial Strategy and lead any eventual proposal for an official 'sector deal' between the Government and the creative industries.

UK Political News

Jo Johnson confirmed as New IP Minister

During a Science and Technology Committee meeting, Jo Johnson MP confirmed that he will be taking on the IP brief from Baroness Neville-Rolfe who was reshuffled to HM Treasury in December. Jo remains Minister for Universities, Science, Research and Innovation.

Government loses Supreme Court appeal

Just days before the Supreme Court ruling, Theresa May outlined her '[Plan for Britain](#)' for exiting the European Union. The speech featured 12 objectives in leaving and included that the UK will quit the single market and control EU immigration, seek an 'associate' membership of the customs union, pursue a Free Trade Agreement with the EU, give MPs and Peers a vote on the final Brexit deal and introduce a 'phased' approach to Brexit that would prevent a cliff-edge scenario.

On 23 January, the Supreme Court decided 8-3 to [uphold](#) the High Court's judgment that an Act of Parliament is needed to trigger Article 50. However, the devolved administrations do not have to be consulted.

David Davis, Secretary of State for Exiting the European Union, responded with a statement to the House of Commons that the Government still plans to trigger Article 50 by the end of March and they will be producing a short bill in the coming days. A white paper on Brexit would also be published shortly. Labour also confirmed that it would not seek to thwart the process.

Legislative Update

Industrial Strategy Green Paper

The UK Government also published its long-awaited green paper on the Industrial Strategy – [Building our Industrial Strategy](#). A [consultation](#) was published alongside this that will close on 17 April. The strategy outlines 10 key pillars and the creative industries features as one of the five key sectors recognised within the paper. The 10 pillars are:

1. Investing in science, research and innovation
2. Developing skills
3. Upgrading infrastructure
4. Supporting businesses to start and grow
5. Improving procurement
6. Encouraging trade and inward investment policy
7. Delivering affordable energy and clean growth
8. Cultivating world-leading sectors
9. Driving growth across the whole country
10. Creating the right institutions to bring together sectors and places

Specifically, for IP the Government has made a new commitment: “We are reviewing how to maximise the incentives created by the Intellectual Property system to stimulate collaborative innovation and licensing opportunities – including considering the opening up of registries to facilitate licensing deals and business to- business model agreements to support collaboration. We will place Intellectual Property Office representatives in key UK cities - starting with pilots in the Northern Powerhouse and Midlands Engine to build local capability to commercialise intellectual property.”

Digital Economy Bill – Ministerial Letter following Second Reading in the House of Lords

Parliamentary Under-Secretary of State for Culture, Media and Sport Lord Ashton of Hyde has [written](#) to Peers following the Second Reading of the Digital Economy Bill in the House of Lords. Although this was written in December, it was only published in early January.

Key sections include:

- **Repeal of Section 73 of the Copyright, Designs and Patents Act 1988** – Lord Ashton explained that in relation to any transitional arrangements, the IPO is currently consulting on this and the Government’s intentions on how the reform will be implemented will be announced shortly.
- **Harmonising the penalties for online/offline copyright infringement** – In his letter, Lord Ashton clarifies: “The revised criminal offences penalise communicating a copyright work to the public and infringing a performer’s making available right, both of which entail distributing content without the permission of the rightsholder. Both of these acts are considered criminal where a person knows or has reason to believe that they are infringing the right and either intends to make a monetary gain or knows or has reason to believe that they will cause loss or expose the rights holder to a risk of loss in money. As such, these offences focus on those causing harm either for monetary gain or a monetary risk of loss to the rights holder.”
- **Search** – Lord Ashton also acknowledged the issue of copyright infringing material showing up on search engines that was raised during Second Reading. He made reference to the ongoing Search Roundtables and the draft code of practice that will be discussed at the next roundtable on 10 January. Lord Ashton stressed that the government has not ruled out legislating, but is keen to wait for the outcome of the roundtable process.

Parliamentary Business

House of Lords Debate

Brexit: [Creative Industries](#) – 19 Jan

Lord Clement-Jones (Lib Dem) moved a debate on the impact of Brexit upon the creative industries. He explained to the house that the creative industries had highlighted a number of issues in light of Brexit; the need for access to talent and free movement of people; the future of intellectual property enforcement and co-operation; loss of European funding streams and access to EU markets.

He called for a commitment to action by the Government on a Brexit which supported the creative industries. The industrial strategy must also support the creative industries, he added.

Lord Foster of Bath (Lib Dem) spoke about how the creative industries had benefitted "enormously" from the UK's membership to the EU. He felt there was little evidence that the Government was taking the creative industries seriously, in spite of its important economic contributions.

Baroness Chisholm of Owlpen (Con) noted the cultural and creative life was important for cities in the UK to be "successful, competitive and sustainable". She argued that the museum sector was well placed to shape global perceptions of the UK and project an image of the country as open, progressive and positively engaged. However, she called on the Government to recognise the possible impact that Brexit could have upon museums and galleries. In particular, she spoke about removing the UK from the European loan circuit.

Lord Taylor of Warwick (Non-Aff) spoke about the British legacy of talent and success within the creative industries, but stressed that for this to continue "we first need to refresh the education and training system to provide young people with the skills needed for great jobs in the creative sector".

Shadow education spokesperson Baroness Jones of Whitchurch (Lab) raised the issue of intellectual property rights and copyright, stressing how valuable the EU legal regime had been, and asking then minister to confirm if the great repeal Bill would ensure that existing creative rights could be protected and enhanced.

Parliamentary Under-Secretary of State at the Department for Culture, Media and Sport Lord Ashton of Hyde agreed with Peers about the importance of the creative industries to the country. He said the Creative Europe programme provided about 40 million Euros to UK organisations between 2014 and 2016 then added "the Treasury has confirmed it will guarantee funding for structural and investment fund projects that continue after we have left".

Turning to points on copyright, he said the Intellectual Property Office was currently analysing feedback from its call for evidence on the digital single market copyright reform "but care needs to be taken to ensure that the impact of changes is fully understood and that they do not damage incentives to invest in the creation of copyright content".

Culture, Media and Sports Select Committee

Oral Evidence Session: The Impact of Brexit on the Creative Industries, Tourism and the Digital Single Market – 31 Jan

Witnesses

- Sir Peter Bazalgette, Chair, Arts Council England
- John Kampfner, Chief Executive, Creative Industries Federation
- Nicola Mendelsohn CBE, Vice President, Europe, Middle East and Africa, Facebook and Chair of the Creative Industries Council

Brexit negotiations

Sir Peter Bazalgette felt the most pressing issues were the flow of talent in and out of the country as well as the need for a new IP regime. John Kampfner noted the economic importance of the creative industries. Sir Peter went on to advocate remaining part of Creative Europe and at the

very least remaining engaged with it. Mendelsohn agreed and asked the committee to look favourably on the work of Creative Europe.

Kampfner added that it was very difficult to quantify the actual money from Europe that had gone into the arts and the creative industries, urging DCMS to work with DCLG and others to conduct a better analysis of the funds coming from Europe. He specifically pointed to the macro-regeneration projects, where the arts had played a large role.

Visas

Kampfner outlined the three types of staff required by the creative sector; long term staff appointments, medium term collaborations, such as for galleries and museums; and emergency cover, such as a particular soprano to cover an opera. He recommended a caveat for the visa process that looked beyond earning potential and measured value in different ways.

Skills

The lack of home grown skills was not being bolstered by the UK's education sector, Kampfner argued. He suggested that alongside looking at the visa system, reforms to the education system should be considered. Brexit could be the trigger for progress in this area, he observed.

Intellectual Property

Looking at the risks to IP with the UK not having a seat at the EU table, Sir Peter highlighted original content and the ability to sell territorially. He said he remained concerned on these issues both for television and music purposes.

House of Lords – Oral Question

Brexit: [Creative Industries](#) – 30 Jan

Baroness Bonham-Carter of Yarnbury (Lib Dem) asked: Her Majesty's Government what steps they are taking to ensure that, following the United Kingdom's withdrawal from the European Union, the creative industries will continue to receive economic benefits from an international workforce.

UK News

Depletion date arrived following s.52 CDPA repeal

As previously reported, the Government repealed a law that put a limitation on copyright term on certain artistic works when they had been industrially manufactured. This predominantly affected works of design, which under the law only enjoyed a 25-year term of copyright protection from the date the item was first marketed.

The repeal of the law took place on 28 July 2016 after consultation with stakeholders, including DACS. Read more about that process [here](#).

As part of the transition process, the Government implemented a timetable for businesses dealing with copied artistic works, such as replica furniture, to deplete their existing stock made before the repeal of section 52. This also included 2D copies of the work, such as images in publications. The depletion date was **28 January 2017** – now no unauthorised 2D or 3D copies of industrially manufactured artistic works within copyright may be sold or communicated to the public.

UK News in Brief

- The University of Cambridge Centre for IP and Information Law submitted a [response](#) to the IPO's call for views on the copyright framework. They limited their response to denouncing the introduction of a press publishers right.

EU News

E-Privacy law reform – new European Commission proposal

European legislation is keeping up with the fast pace at which IT-based services are developing. Recently, the European Commission (EC) started a major modernisation process of the data protection framework, which culminated in the adoption in May 2016 of the new General Data Protection Regulation (the GDPR). The existing e-Privacy legislation (the Privacy and E-communications Directive, or PECD) will now be adapted to align with these new rules.

PECD was adopted in 2002 and contains rules on cookies and similar technology. Since the last review of the PECD in 2009, applications such as Skype, Gmail and WhatsApp have offered communication services comparable to calls and text messages, but those services were not subject to the old rules. The new law will change that to comply with the stricter definitions in the GDPR, and will also come into force on the same date: 25 May 2018

The law will change how information and consent is obtained from users. Collecting device information for Wi-Fi logins will be prohibited, and web browsers and mobile devices will need to include default settings to preclude third parties from storing information on an end-user's device. Users should be able to select higher privacy settings with more ease. There are also some changes to opt-in and opt-out marketing communications, and on metadata.

It is unclear whether the new rules will take effect before Brexit and whether the UK will also need to update its own law on e-privacy, but given that was adopted in 2003 to follow the PECD it may be.

EU News in Brief

- On 17th January, the European Parliament announced that Antonio Tajani has been elected as its new President.
- A case was decided in the CJEU that did not prevent punitive damages – i.e. increased damages – for copyright infringement in Poland under the Enforcement Directive. Case reference: [C-376/15](#).
- The INGRES conference took place in Switzerland where senior European IP lawyers, advocates and judges met to discuss all aspects of IP law. A senior lawyer advocated for a consolidated EU copyright law.
- Another opinion on the copyright reform package from the EU came from the European Copyright Society. The [response](#) to the new Directive was against introduction of the press publishers' right and to the extension of the panorama exception

Worldwide News

USA

Appealing to Trump (mark 2)

Last month US music industry organisations signed an [open letter](#) to the incoming President asking for a fair deal for musicians in terms of copyright. Now, the US Copyright Alliance, representing over 13,000 organisations across various creative sectors in the US have written their own [letter](#) to President Trump.

The letter appealed to Trump as the owner of the most diverse and sizable copyright portfolio in presidential history and as an insightful businessman to ensure the protection of copyright. It pulled out key facts of the creative industry's input into the US economy and the blight on economy and culture that piracy has. The letter also said that copyright "in many ways epitomises the American Dream". Hopefully it will strike a chord.

Appointments

Donald Trump has nominated federal appeals court judge Neil Gorsuch to the vacant role in the Supreme Court. Gorsuch has had some IP litigation experience: in copyright cases he has never found in favour of the rights owner, while out of three trade secret cases, he has twice found in favour of the owner.

Meanwhile, the Librarian of Congress was [seeking views](#) on what essential qualities the new Register of Copyrights would need to have. DACS responded to the survey supporting ARS and their call for implementation of a resale right law.

January Meetings and Events

Alison McGovern MP (Lab), Alliance for IP Meeting – 10 Jan

Following on from the Parliamentary Lunch, Abby along with Eddy from the Alliance for IP met with Alison McGovern MP. She is very supportive of IP and the arts and happy to support the campaign to safeguard ARR. She is also supporting the proposal to the Backbench Business Committee to table a debate on the importance of IP for the creative industries.

BCC meetings – Jan

DACS attended the Council, copyright and technology working group and the copyright education working group of the BCC. The focus was on how our copyright laws were derived from EU law or international treaties; the industrial strategy and the digital economy bill.

CISAC Meetings – Jan

Throughout January, DACS met with Gadi Oron and Silvina Munich to discuss the forthcoming plans for the WIPO Conference on ARR in April in Geneva.

Elipse Roundtable with Susan Wilson, US IP Attaché to Brussels – 27 Jan

In a Chatham House meeting, Susan Wilson outlined the forthcoming priorities for the new administration in the US in engaging with Europe. This includes the DSM, Brexit and US FTA, IP Enforcement Review and IPTV.

Alliance for IP, Contact and Events Working Group – 30 Jan

The Alliance confirmed that British IP Day and the Summer Reception would take place on 11 July. They will also be looking to hold a series of lunches/dinners throughout the year.

Alliance for IP Board meeting – 31 Jan

At the Alliance Board the MPA gave a presentation on set top box devices that are aggressively bringing copyright infringement into the home. The group also discussed the government's industrial strategy

Forthcoming Key Dates

2 Feb – Creative Industries and the Business of IP – Creative Industries Federation and Alliance for IP event in Manchester

7 Feb – Alliance for IP copyright working group

8 Feb – Copyright Law and Freedom of Speech seminar

8 Mar – Spring Budget Statement

28 Apr – WIPO ARR Conference in Geneva

11 Jul – British IP Day and Alliance for IP Summer Reception