



**RECOMMENDATIONS TO GOVERNMENT
ON THE UK'S NEW ARRANGEMENTS WITH
EUROPE**

**FROM
THE BRITISH SCREEN ADVISORY COUNCIL (BSAC)**

21 October 2016

Executive Summary

- The Creative Industries make up one of the most important sectors in terms of their economic contribution – as measured by GVA, employment, exports and growth – and by looking at non-economic factors such as soft power and the power of culture to engage everyone and not just “the privileged few”. To ensure that this continues it is vital that this sector is treated as a high priority in the Government’s new industrial strategy.
- Following the UK’s “Brexit” decision, we believe that over time there will be substantial global opportunities for the Creative Industries to exploit by negotiating new trade deals (with fast-growing countries such as China, for example). These would enable the Creative Industries to deliver more value to the UK economy and bring additional “soft power” benefits. We also believe that there are a range of areas where other opportunities exist. These require further work over the coming months.
- In the immediate term, our primary concern relates to the UK’s trading relationship with the single market and the need to mitigate the potential downsides of leaving the EU. This paper makes recommendations to the Government as it develops its position on its post-Brexit arrangements with Europe.
- We would ask the Government to take into account the following principles in developing its position for negotiations with other members of the EU and countries outside the EU:
 - i. Provide the maximum possible certainty – in order to minimise disruption to decision-making, investment and people’s jobs.
 - ii. Do no harm – support policies that help UK businesses and avoid initiatives that will make it harder to adapt in a post-Brexit world.
 - iii. Be active and smart in EU negotiations – to influence outcomes that will affect UK businesses long after Brexit is completed.
 - iv. When negotiating future trade deals with other international countries, maintain freedom of manoeuvre to adopt regulatory interventions as necessary to support the audiovisual sectors and meet consumer expectations.
- We urge the Government to take into account the following key priorities when negotiating post-Brexit arrangements for the UK:
 - i. Ensure the UK – as a global audiovisual hub – is open to the skilled workers that are an essential precondition to success in the creative sectors.

- ii. Maintain the benefits provided by the AVMS Directive, in particular the single market access that results from the Country of Origin Principle.
 - iii. Ensure that UK content continues to meet the requirements to qualify as “European works” post Brexit, by remaining a signatory to the European Convention on Transfrontier Television and doing everything possible to ensure that the AVMS Directive continues to classify programmes made in Convention countries as “European Works”.
 - iv. Support the Intellectual Property protections that underpin the success of the Creative Industries, and resist damaging encroachment on territorial and exclusive copyright licensing.
 - v. Ensure reciprocal freedoms for Creative Industries businesses operating in the UK and EU to invest in each other, at a time when media companies are consolidating and expanding their global footprints.
 - vi. Allow data to flow freely between the UK and the EU, so the games industry and other Creative Industries can develop new business models and enhance consumers’ experiences.
- Our preliminary work has identified three broad areas where there are potentially opportunities for the Creative Industries. These remain high-level suggestions for now: as with any business opportunities, it would be necessary to balance the potential upside against the associated risks, and further work would be required to explore their impact in more detail:
 - i. Explore ways to enhance UK investment support models such as EIS, co-production treaties and the Creative Sector Tax Reliefs.
 - ii. Build on the strengths of different regions of the UK and reinforce success in those areas.
 - iii. Embrace synergies with other sectors of the economy, and with training and education bodies.
- BSAC would be happy to develop its thinking in any of these areas, should the Government wish us to do so.

Introduction

1. The British Screen Advisory Council (BSAC) is an independent, industry-funded umbrella group bringing together many of the most influential people working across the value chain in the audiovisual industry, including television, film, video games and digital media, including leading technology firms and ISPs¹. BSAC works closely with policymakers across UK government departments and the relevant Directorates of the European Commission to provide an informed lead on emerging business trends and to provide advice on policy.
2. Following the UK’s “Brexit” decision, we believe that – over the medium- to long-term – there will be substantial global opportunities for the Creative Industries to exploit by negotiating new trade deals (with fast-growing countries such as China, for example). These would enable the Creative Industries to deliver even greater value to the UK economy than they do now, as well as bringing additional “soft power” benefits. BSAC plans to undertake more work on this in due course.
3. In the immediate term, the primary concern of the Creative Industries in BSAC’s membership relates to the impact of Brexit on the UK’s trading relationship with the single market, and the need to mitigate the potential downsides of leaving the European Union, as well as exploiting the opportunities. Therefore, this initial BSAC paper makes recommendations to the UK Government as it develops its position on the new arrangements with Europe that will follow the UK’s exit from the EU.

Importance of the Creative Industries

The Creative Industries make up one of the most important sectors in terms of their economic contribution – as measured by GVA, employment, exports and growth – and by looking at non-economic factors such as soft power and the influence of culture and its capacity to contribute to social inclusion in communities throughout the UK. It is vitally important for further growth that this sector is treated as a high priority in the Government’s new industrial strategy.

4. The UK’s Creative Industries represent a global success story in both economic and cultural terms.

¹ See a full list of BSAC’s Membership, at <http://bsac.uk.com/membership-list.html>

5. The most recent DCMS statistics, published in January 2016, highlight the size and growth of the sector. The latest figures, for 2014, show that:²
 - i. Gross Value Added (GVA) of the Creative Industries was **£84.1bn**, accounting for **5.2%** of the UK economy.
 - ii. When people in Creative Occupations outside the Creative Industries are included (the “Creative Economy”), this rises to **£133.3bn**, or **8.2%** of the UK economy.
 - iii. The Creative Industries have grown **for each of the last four years** as a proportion of total UK GVA.
 - iv. The most recent year-on-year comparison (between 2013 and 2014) shows GVA for the Creative Industries increasing by **8.9%**, **almost double the corresponding growth for the whole of the UK** (which was 4.6%).
 - v. The Creative Industries accounted for **1.8 million jobs**, increasing to **2.8 million** across the Creative Economy.
 - vi. Employment rose by **5.5%** between 2013 and 2014 in the Creative Industries, and by **5.0%** in the Creative Economy, compared to just 2.1% in the wider UK economy.
 - vii. The Creative Industries generated **£17.9bn** of exports in 2013, **3.5%** up year-on-year. This accounted for **8.7%** of total UK exports of services.

6. The following statistics for individual sectors give a flavour of their dynamism and importance as drivers of economic value:
 - i. The UK is the **world’s second most successful exporter of TV content** (behind the USA)³. Total revenues from TV exports are worth over **£1.2bn** per year⁴.
 - ii. The UK film sector had a turnover of **£7.7bn** in 2014 and made a direct contribution to GDP of **£4.3bn**. The UK is the third largest film market in the world, after the USA and China⁵.
 - iii. The UK is a world-leading hub for visual effects (VFX) production: it houses four of the world’s largest VFX companies, whilst the overall facilities sector has an annual turnover in excess of **£2bn** and employs more than **25,000 people**⁶.
 - iv. The UK games sector is a highly dynamic and global success story. Today there are almost **2,000 games firms** – including the creator of *Grand Theft Auto*, the best-selling entertainment product of all time – employing **24,000 people** across 12 established games clusters⁷.

² Source: “Creative Industries Economic Estimates”, DCMS, January 2016

³ Source: EURODATA TV / Relevant partners - reproduction forbidden, all rights reserved by MEDIAMETRIE. Figures relate to the period March 1st 2015 to February 28th 2016.

⁴ Source: “UK Television Exports FY 2014-15”, PACT, 2015

⁵ Source: “The UK Film Market as a Whole”, BFI, August 2016

⁶ Source: UK Screen

⁷ Source: UKIE/Nesta

- v. British music acts generated **£2.2bn** of export revenues in 2015, and accounted for five of the top 10 best-selling artists in the world⁸.
7. The Creative Industries are unique with respect to the non-economic benefits that they provide, in terms of soft power and cultural value. In TV, film, video games and other creative sectors, British content and creative talent are recognised and loved all around the world. In the BBC, we boast one of the most respected media brands in the world; while the likes of *Harry Potter*, *James Bond*, *Downton Abbey* and Adele (to name just four) are global phenomena. Creative Industry organisations play a huge “soft power” role in projecting British values outside the UK, and this in turn draws large numbers of tourists from around the world to the UK. As the Minister for Digital and Culture put it in his recent Creative Industries speech: “We make immersive stories, uplifting music, iconic characters, and beautiful designs.”⁹ In terms of embodying our culture and what it means to be British, it is hard to imagine any other sector or Government initiative whose output has a greater ambassadorial value, helping the UK to punch well above its weight. Portland Communication’s 2016 Soft Power 30 Report placed the UK second in the world for cultural influence, on the basis of metrics such as the number of international tourists, the number of films appearing in major film festivals and the size of the country’s music market.
8. The economic and cultural value generated by the Creative Industries make this sector one of the most important in the UK economy, and it is vital that it lies at the heart of the Government’s new industrial strategy. We welcome the Minister’s recognition of the significance of our sector in his recent speech, when he said:

“[C]reative industries will be absolutely central to our post-Brexit future. Economically, because where artistic design intersects with digital capability is the nexus at the heart of the future economy. This nexus of art and technology is how Britain will pay her way in the 21st Century. But not just economically. Perhaps more importantly culturally”¹⁰.
9. With the right policies and framework, this sector can be a key driver of investment and growth in the years ahead. But the Government must not take the success of this sector for granted, as we are operating in an increasingly competitive global environment. In audiovisual and digital media industries, economies of scale confer huge advantages, and we need to be able to compete effectively against competitors that enjoy the benefits of much larger domestic markets. Meanwhile, competition is

⁸ Source: UK Music

⁹ Source: “Matt Hancock addresses the UK’s creative industries”, see <https://www.gov.uk/government/speeches/minister-for-digital-and-culture-creative-industries-speech>

¹⁰ *ibid.*

intensifying from new sources such as Dubai and Singapore, which are investing heavily to attract new talent and develop their own creative industry hubs.

10. Given these challenges, it is vitally important to maintain ongoing dialogue between the Government and the sector as it develops its post-Brexit negotiating position for the UK. In particular, we would urge the Government, when developing its new industrial strategy, to pay as much attention to services as to manufacturing, as the former includes some of the sectors with the greatest growth potential.

Structure of this paper

11. The following three sections of this paper look at:
 - i. The **principles** that underpin the Government's negotiating position.
 - ii. The **key priorities** to maintain and strengthen the success of the Creative Industries and the UK economy.
 - iii. Areas where **potential opportunities** may lie that would strengthen the economic value generated by the Creative Industries.
12. BSAC would welcome the opportunity to discuss the issues raised in this paper with the Government, and to assist with further work relating to any areas of the audiovisual sector that would be of help to the Government, including exploring the potential opportunities of Brexit in greater detail.

Principles

13. In developing its Brexit position for negotiations with other members of the EU and with countries outside the EU, BSAC would urge the Government to take into account the following four principles. While these principles have broader relevance to other sectors, each one includes elements that are specific to the Creative Industries.

(i) Provide the maximum possible certainty – in order to minimise disruption to decision-making, investment and people’s jobs

14. As in all sectors, uncertainty can be hugely damaging, causing businesses to postpone important strategic decisions and respond with low-risk short-term solutions rather than those that would be optimal over the medium- to long-term. This has a damaging effect on investment and employment and serves to reduce global competitiveness. It is especially acute in parts of the Creative Industries where investment is highly mobile, and the UK competes with other creative hubs to house projects such as feature films and high-end TV dramas. To the extent that these decisions have an effect on the stock of capital and skilled labour, and on productivity levels, short periods of uncertainty can have a negative economic impact for long periods of time.
15. BSAC welcomes the recent confirmation that, when the European Communities Act 1972 is repealed, all existing EU legislation will be transposed into UK law. However, given that all such legislation will then be open to domestic review, the audiovisual sector would welcome certainty on the Government’s long term position with regards the Audiovisual Media Services (AVMS) Directive (see below).
16. With regards to the movement of labour, we would also welcome the Government taking account of the sector’s need for certainty regarding the ability of EU employees who are already living in the UK to continue to work here, and of firms operating in the UK to continue to be able to move people around the EU (including UK workers) easily.
17. The Creative Industries are strong supporters of continued access to the single market with as few restrictions as possible. This has been a major contributor to the dynamism of our sector, creating a positive business environment that has enabled UK companies to grow, export and to expand their activities in other European countries, and also to attract investment in UK content and companies from overseas. Given that the Government’s policy on this will be a central element of its post-Brexit position, we would welcome clarity on this position as soon as possible.

(ii) Do no harm – support policies that help UK businesses and avoid initiatives that will make it harder to adapt in a post-Brexit world

18. The years ahead will be a time of significant change, whichever post-Brexit arrangements are finally agreed. The Government should take great care to ensure its domestic policies and regulatory environment are as supportive as possible of UK businesses, and should seek to “do no harm” by avoiding initiatives that may harm them.
19. The Government should think “commercially” in terms of what will work for high-growth sectors such as the Creative Industries; this will help it to ensure its industrial strategy has the greatest impact. For example, in terms of its regional strategy, it should draw on work looking at the competitive advantages of each region, and help strengthen the key clusters (see “Opportunities” below). In the Creative Industries, it will be important to strike a balance between maintaining the unique economies of scale that London offers whilst also building on other clusters across the UK to the benefit of both businesses and ordinary people.
20. In terms of doing no harm, we refer to new arrangements with Europe, and also domestic policies. With regards to Europe, even during the process of debating its post-Brexit position, we welcome the Government continuing to actively rebut any damaging impression that could cause immediate harm in economic terms, e.g. suggestions that the UK is closed for business, or that skilled non-UK citizens will not be welcome. The Government should strengthen its cultural diplomacy, to emphasise the bonds that will remain between the UK and other European countries after the UK has left the EU.
21. A second area relates to the benefits that accrue to the UK from access to European funds such as Creative Europe (which supports culture and the audiovisual sectors) and Horizon 2020 (a research and innovation programme). Many parts of the Creative Industries – such as films, games and TV animation – are intrinsically international in terms of their funding models: projects are often co-productions drawing on investment from several countries. Schemes such as these not only provide sources of funding, but also act as a forum for producers and researchers to test ideas in an international context and draw on their partners’ creative input. Non-EU countries are often able to participate in such schemes, and we would encourage the Government to commit to the UK’s continuing participation in them.

22. Turning to domestic policies, we welcome the Government's recent decision not to impose new restrictions on the advertising of HFSS products on TV, the costs of which, by impeding commercial broadcasters' growth, would have outweighed the intended benefits.
23. Another domestic policy that is still in the process of implementation is the new Apprenticeship Levy. We are concerned that, as currently constituted, this proposal would have material negative unintended consequences in the Creative Industries. Earlier this year, the Government agreed to convene a working group with our sector to look at the scope for flexibilities which could enable the new Levy to deliver the desired positive outcomes. Creative Skillset, working with industry representatives, has put forward proposals to address a number of key issues such as alignment with the current voluntary levies, ensuring quality standards, enabling collaboration between employers, compatibility with project-based working, and appropriate transitional arrangements. We would urge the Government to continue to engage actively with the sector, and to support and implement the proposals that are being developed in order to provide the skills and training necessary to meet the demands of continued growth. This will help to promote inclusion and opportunities for everyone.

(iii) Be active and smart in EU negotiations – to influence outcomes that will affect UK businesses long after Brexit is completed

24. Perhaps paradoxically, it is more important than ever for the UK to engage proactively with current policy debates on EC policies, on issues such as the AVMS Directive and the Digital Single Market, particularly the copyright workstream and also the draft Directive on contracts for the supply of digital content. Regardless of what new arrangements with Europe are finally agreed, many British companies will continue to trade with, and be affected by, European laws and regulations. Indeed, as we indicate below for the AVMS Directive and the draft portability Regulation, it is essential that the UK continues to be treated in the same way as a Member State for these European laws. It is important that, while it remains in the EU, the UK should take part in these discussions and seek to influence the outcomes as much as possible, as these rules will impact on British companies and consumers long after the UK has left the EU.

25. In particular, negotiations on the AVMS Directive are ongoing and a package of copyright proposals has recently emerged from the EU Commission. There remain a number of live issues that could have a significant impact on the UK. We encourage the Government to engage closely with these issues throughout their duration, to ensure that a satisfactory outcome is secured, e.g. (i) minimising any changes to the Country of Origin Principle in the AVMS Directive, (ii) ensuring that there are no changes to the current recognition in the AVMS Directive that programmes made in countries that are signatories to the European Convention on Transfrontier Television are “European Works” for the purposes of its quotas, and (iii) resisting any encroachment on territorial and exclusive copyright licensing beyond that to facilitate portability (see “Key priorities” below).
26. Finally, when looking for opportunities in a post-Brexit world, it may be tempting to look for “quick wins”, for example relaxing some of the AVMS provisions. We would suggest adopting a cautious approach when considering quick wins, for two reasons: first, any such changes might cause longer-term strategic harm that outweighs the benefits. The more the UK departs from EU framework, the harder it will be to re-secure access to markets on any terms. And second, such quick wins risk aggravating other EU countries, which could have a negative impact on the Brexit negotiations with them.

(iv) When negotiating future trade deals with other international countries, maintain freedom of manoeuvre to adopt regulatory interventions as necessary to support the audiovisual sectors and meet consumer expectations

27. The success of many parts of the Creative Industries, including the audiovisual sector, is underpinned by a vibrant ecology comprising both public and private sector organisations, supported by a complex set of policy interventions that are designed to nurture creativity, boost investment in original content, and promote British culture.
28. These interventions help to deliver the public purposes of PSB, address market failures and counterbalance the inherent asymmetry between the size of the markets in the UK and in bigger economies with which British companies are competing. This is important as key parts of the Creative Industries are characterised by high-risk hit-based businesses with high fixed costs and low marginal costs of production. These economic factors confer an overwhelming advantage to firms that can exploit economies of scale and scope in large domestic markets, which gives them a head start in exploiting their content globally.

29. British companies and policymakers need the freedom to adapt their business and regulatory models in response to fast-changing and uncertain market and technological developments, so they can compete in increasingly globalised markets against multi-billion-dollar media and technology companies and innovate with new forms of content and digital distribution. Therefore, when it is negotiating future trade deals with other international countries, the Government should, in the context of an overall high level of ambition to create favourable conditions for exports of UK film and television, maintain freedom of manoeuvre to adopt regulatory interventions as necessary to support the Creative Industries and meet audience expectations, and must preserve the elements of the UK regulatory framework that have contributed to the success of this sector.

Key priorities

30. In this section, we highlight the key priorities for the Creative Industries which we urge the Government to take into account when negotiating the UK's post-Brexit arrangements with Europe, in order to maintain and strengthen the success of the sector, and its contribution to the UK economy and society.

(i) Ensure the UK – as a global audiovisual hub – is open to the skilled workers that are an essential precondition to success in the creative sectors

31. Many parts of the Creative Industries – such as the video games, VFX and other digital media sectors – need access to, and investment in, skilled labour. The supply of people with high-end digital skills in the UK workforce falls far short of demand.

32. The long-term solution is to invest in new generations of young people with the right STEAM (Science, Technology, Engineering, Art, Mathematics) skills for the modern workforce. But it will take time to develop these people. The only possible solution in the short-term is to enable Creative Industry companies to bring skilled people in from wider talent pools, when there are insufficient high-end skills in the UK workforce – this is our primary concern with regards freedom of movement.

33. In addition to addressing the short-term skills gap, there will always be a need for firms operating in global markets to employ overseas talent for cultural reasons. For example, firms selling or distributing content around the world need staff who speak multiple languages and have a deep cultural understanding of different local markets. More generally, the UK's position as a global hub relies on its ability to attract – and welcome – the world's best creative talent, including for short-term work.
34. Restrictions on access to creative talent can have broader detrimental effects. If the UK digital media sectors become more inward-looking and less dynamic, we risk losing our ability to attract and retain our own home-grown (and often expensively-educated) talent, who may be tempted to seek jobs elsewhere.
35. The points system that is being introduced for Tier 2 visa applications will make it much harder for businesses to attract labour in areas of skills shortages in the UK jobs market due to cost and complexity, and will quickly do significant harm in areas such as the VFX and digital media sectors. This policy was introduced before the EU referendum as a means to limit immigration from outside Europe. Following the vote for Brexit, the Government should review this policy as part of its development of a new holistic approach that strikes an appropriate balance between addressing immigration concerns whilst also ensuring access to, and welcoming, skilled workers from all over the world.
36. Looking across to the linkages with the higher education sector, it is also important that the UK does not risk losing out on a supply of bright individuals from overseas who are eager to come to the UK by making it unnecessarily difficult for them to come to study here – by making higher education fees too expensive, visa requirements too onerous or overly restricting their right to remain in the country after graduating. The growth of the Creative Industries relies in part on access to skilled people from diverse backgrounds, including those with foreign-language skills and knowledge of different markets around the world.

(ii) Maintain the benefits provided by the AVMS Directive, in particular the single market access that results from the Country of Origin Principle

37. The Country of Origin (COO) principle lies at the heart of the AVMS Directive, which ensures access to the single market for all EU members. The UK has benefited greatly from this: 1,100 channels are licensed by Ofcom in the UK, and more than half of these broadcast to overseas markets. A report commissioned by COBA estimates that non-domestic channels support 18% of UK multichannel jobs, and part-fund 35% of UK commissions by the multichannel sector¹¹. More broadly, they also contribute to the critical mass that helps make the UK attractive to investment.
38. As such, the COO Principle is the most important element of the AVMS Directive from a UK perspective. The impact of the other rules in the Directive is small by comparison: in some cases, Ofcom's regulations for the UK are more stringent than those required in the Directive. While there are also cases where the Directive imposes stricter rules than might be desired by companies operating in the UK, the benefits of the opportunities that would result if the AVMS Directive did not apply in the UK are far outweighed by the damage that would be caused by the loss of single market access through the COO Principle.
39. In summary, the overall impact of the AVMS Directive is positive for the UK. For this reason, there would be significant harm to the UK's television industry if channels licensed in the UK did not have single market access via the Directive or equivalent arrangements established as part of a trade agreement. We also note the recent EU Commission proposals on possible extension of the principles in the Satellite and Cable Directive - Paragraph 47 below is relevant to those proposals.

(iii) Ensure that UK content continues to meet the requirements to qualify as "European works" post Brexit, by remaining a signatory to the European Convention on Transfrontier Television

40. It is vitally important that UK content continues to be defined as "European works", in order that it contributes to the fulfilment of quotas and other requirements by any organisation that is subject to the AVMS Directive. This supports UK programme exports and underpins investment in UK content from companies based in the UK and across the EU.

¹¹ Source: "The UK Multichannel TV Sector – the benefits to the UK economy", O&O, August 2016

41. According to the AVMS Directive, “European works” include not only those originating in EU Member States but also those originating in countries party to the European Convention on Transfrontier Television, and “works co-produced within the framework of agreements related to the audiovisual sector concluded between the Union and third countries and fulfilling the conditions defined in each of those agreements”.
42. The UK will be covered by this post-Brexit so long as it remains a signatory to the European Convention on Transfrontier Television and so long as the AVMS Directive continues to recognise that programmes made in Convention countries are “European Works” for the purposes of its quotas. An additional benefit of the Convention is that it provides some access to European markets for UK-licensed channels, although it does not cover all EU markets, nor does it cover on-demand services. It is essential that these arrangements are at least preserved, to ensure that UK content counts as “European works” once the UK has left the EU. We would not recommend attempting to modify the Convention, as this could cause significant unintended consequences.

(iv) Support the Intellectual Property protections that underpin the success of the Creative Industries

43. The Government should maintain the current framework for copyright and enforcement of Intellectual Property Rights (IPR), which has been the subject of extensive reviews in recent years. The framework is working well, and strikes a good balance between the needs of the audiovisual and technology sectors. The priority now should be to provide a period of stability.
44. There are various policy debates in the UK and at the EU level that are challenging elements of the current framework. The Government should resist arguments suggesting that weakening IPR protection – for example, by adopting the US concept of ‘fair use’ – would give the UK technology sector a competitive advantage. Any such changes would simply transfer value from one sector to another without resulting in any overall net gain to the UK economy.
45. We therefore welcome the Minister’s recent Creative Industries speech, in which he argued that “there is more that we can do to build on the symbiotic relationship between technology and culture”, whilst stressing the principle that: “Enforcement and fair treatment of rights owners is critical to healthy creative industries”¹².

¹² op.cit.

46. Turning to the EC's Digital Single Market initiative, we can see the consumer benefits of proposals to facilitate the portability of online audiovisual content so long as the regulation includes sufficient safeguards to prevent it from becoming a backdoor to cross-border access, namely robust authentication of a subscriber's residency and limiting the application of the legal fiction to temporary visits outside of the member state of residence. If the consumer benefits of the draft portability Regulation (likely to be agreed next year) are to continue post-Brexit, then it will be necessary for the UK to be treated in the same way as now by EU Member States so that the provisions about copyright licensing apply to UK services that consumers wish to enjoy while in other Member States.
47. Whilst BSAC members support retention of the current Satellite and Cable Directive 1993 post-Brexit, we do not support proposed EC changes to copyright that encroach on the complex model of windowing and territorial exclusivity – per se or in combination with the EU Commission's allegations under EU competition law arising out of current cases and other initiatives which may emerge from the current E-Commerce sector inquiry. Contractual freedom to choose territorial exclusivity and windowing is vital to maintaining high levels of investment in the sector and so ensuring the continued production of the large quantity and diverse range of audio-visual content that UK consumers enjoy. Resisting any encroachment must underpin the UK's line in negotiations on the EU Commission's recent proposals on copyright, including the proposed Regulation on online transmissions by broadcasters and retransmissions of their services.

(v) Ensure reciprocal freedoms for Creative Industries businesses operating in the UK and EU to invest in each other, at a time when media companies are consolidating and expanding their global footprints

48. Many parts of the Creative Industries are experiencing an unprecedented wave of consolidation, at national and international levels, as companies seek to exploit economies of scale and scope. In addition, in many digital and technology markets, network effects confer disproportionate benefits, providing further incentives to growth.
49. Free movement of capital rules in the EU have created the conditions for European media companies to grow their presence beyond their home markets, as the likes of ITV and Sky have done in recent years. The strength of the UK film industry owes a great deal to the investment from overseas companies, who invest in world-class studios and talent, maintaining a scale of activity that supports domestic and inward investment films. Any restrictions that prevent UK firms from investing overseas, or overseas companies from investing in the UK, will have an

immediate impact on the scale of the UK's Creative Industries, with negative knock-on effects on growth and employment.

(vi) Allow data to flow freely between the UK and the EU, so the games industry and other Creative Industries can develop new business models and enhance consumers' experiences

50. Data is of fundamental importance to creative sectors that distribute content digitally, such as the games industry. Continuing digitisation of the Creative Industries renders data increasingly important to the sector as a whole as businesses seize the opportunity of using data to better understand and engage with audiences, pilot products, and increase the efficiency of production processes.
51. The ability to collect data – in a responsible and legally compliant manner – and use it to develop new business models and enhance consumers' experiences significantly contributes to the creative sectors' innovation and growth. Data flows between players, games companies and gaming platforms are intrinsic to the operation of games and the provision of immersive gameplay experiences for players. Games companies continuously analyse data they gather from players and use it to make improvements to their games in order to deliver the best possible experience for players – for example, by altering the strength of an in-game character or readjusting the balance between challenging and rewarding elements of a game. As the success of games companies has heavily relied on their ability to legally gather and move data across national borders, there is an urgent need to ensure certainty and a clear legal basis for data flows going forward.
52. Whilst consideration will understandably be given to the merits of adapting, re-legislating or maintaining the UK's data protection law, any future changes must continue to allow data to flow freely so that companies operating in the UK and doing business in the EU can continue to smoothly transfer information to one another. Other non-EU countries, such as Switzerland and Norway, have managed to obtain the necessary free movement of data in a variety of ways, and the UK should seek to achieve the same outcome in the Brexit negotiations.

Opportunities

53. This final section looks at the opportunities that are presented by Brexit. As noted above, we believe that there will be substantial opportunities for the Creative Industries to exploit globally in the future. The list below indicates three broad areas where our preliminary work suggests that there is potentially scope to support the Creative Industries. We should stress that these remain high-level suggestions for now and, as with any business opportunities, it would be necessary to balance the potential upside against the associated risks. BSAC would be willing to undertake more work to develop the thinking on any or all of these areas should the Government wish us to do so.

(i) Explore ways to enhance UK investment support models such as EIS, co-production treaties and the Creative Sector Tax Reliefs

54. There may be scope to develop some of the various mechanisms that encourage investment in UK creative content, to help attract more finance. We have identified three areas worthy of investigation.

55. First, the Government should explore the merits and practicality of raising the limits for Enterprise Investment Schemes (EIS) from £5 million to £10 million; this might encourage more aggregators to enter the market and raise EIS investment.

56. Second, it might be worth looking to develop new co-production treaties, either with new countries or by extending their scope from film and television to other IP-generating areas. Co-production treaties have the advantage that they can be agreed much quickly than trade deals, and in addition can sometimes help to open the way for subsequent trade deals.

57. And third, depending on the progress made in the wider Brexit negotiations the Government could consider whether any of the current Creative Sector Tax Reliefs, or potential new ones, might be made more attractive. In line with the points made above, when considering any potential changes, the Government should be mindful of their impact on the UK's overall relationship with the EU; and, moreover, they should not come at the expense of harming market access.

(ii) Build on the strengths of different regions of the UK and reinforce success in those areas

58. BSAC welcomes the Government's desire to develop a strategy to support the nations and regions, and believes that the Creative Industries can play a role in supporting this agenda. Nesta's recent report on creativity in the UK¹³ identifies 47 creative clusters. This highlights the wealth of localised skills and talent that exists in the nations and regions. There is scope to build on those clusters with the greatest growth potential, helping them to attract capital and helping different creative sectors to work more closely together. It will be vital to work closely with the devolved administrations in Scotland, Wales and Northern Ireland.
59. BSAC's view is that targeted investment could help to grow these clusters and help them achieve critical mass, and that funding to support local strategies would be justified. We would add that this national and regional strategy should balance the benefits provided by London's economies of scale with those that would result from building on other clusters (as we noted above under the "Do no harm" principle).

(iii) Embrace synergies with other sectors of the economy, and with training and education bodies

60. In an increasingly connected digital age, the Creative Industries are of growing relevance to other sectors – such as automobiles, aerospace and health – in terms of their output and of the skills of the people working in the sector. There are potentially significant opportunities to be realised from exploiting the synergies between these sectors.
61. The scope for synergies extends also to the training and education sectors, and works in both directions. In one direction, as new types of digital skills are increasingly being required, and more traditional jobs and skills become redundant, there would be considerable benefits of more joined-up links between the Creative Industries and skills, training and education bodies to ensure a better match of supply and demand for people with digital skills, including the potential for re-skilling. This will also help to develop an economy which is much more inclusive. In the other direction, the Creative Industries are well-placed to play a role in the development of Massive Open Online Courses (MOOCS) and other new models of education that rely on digital and audiovisual content.

¹³ "The Geography of Creativity in the UK", Nesta and Creative England, July 2016

62. The recent reconfiguration of government has enhanced the responsibilities for England which now sit at the Department for Education. BSAC sees this welcome change as an important first step towards enabling a more joined up approach across all aspects of education and training in England. This structural change presents an opportunity for Government to engage more effectively with industry, and the training and education sectors, to deliver strategies to address the labour challenges faced by the industry in the longer term, underpinned by appropriate levels of financial support.
63. In summary, this paper has set out the principles and key priorities which the audiovisual sector would ask Government to take into account when developing its position for negotiations with other members of the EU. BSAC would be happy to develop its thinking in any of these areas, should the Government wish us to do so.

*For more information about BSAC
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