



ALLIANCE

FOR INTELLECTUAL PROPERTY

Future relationship with the European Union

The Alliance for Intellectual Property is pleased to provide evidence to the Government in relation to the UK's future relationship with the EU.

The Alliance for Intellectual Property is a unique association of 20 organisations representing IP rich businesses and creators – sectors that continue to grow and outperform the wider economy. Our members include representatives of the audio-visual, music, toy and games, business software, sports rights, branded manufactured goods, publishing, retailing, art, image, and design sectors. They share a collective interest in ensuring that Intellectual Property (IP) rights are valued in the UK and around the world and that legislative regimes exist that enable the value and contribution of those rights to be fully realised.

Our members have views on a number of issues regarding the UK's future relationship with the EU, including movement of people and the trade in goods and services, but we have confined our views in this paper to issues concerning IP.

IP and Trade

The UK has one of the best developed and applied IP regimes in the world. Creators and businesses have been able to use that framework to develop exciting and innovative products, designs and content using the latest technology and manufacturing techniques. Whilst not perfect in all aspects, for example in relation to the protection of unregistered designs and some aspects of unfair competition, our advantage must not be jeopardised as we seek to develop new trading relationships.

It is vital therefore that the protection and promotion of IP is at the heart of trade policy, ensuring that everything we create in the UK has the potential to achieve its maximum value and that creators are properly rewarded. The opportunities provided by new trade relationships should not threaten the UK's world leading regime, but rather be used to raise standards in the jurisdictions with which we negotiate, building wider confidence and stimulating more investment. This will not only protect and promote British IP, but provide opportunities for creators and rights holders worldwide to benefit socially, culturally and economically from effective recognition of rights of intellectual property in the same way that both UK rightsholders and the wider UK economy have.

Principles for Free Trade Agreements (FTAs)

The Alliance has some high level principles in relation to IP that we believe should be the basis of any FTA.

Provisions within IP Chapters of future FTAs should promote both ratification and adherence to the terms of the International Treaty provisions for recognition and enforcement of copyright, trade mark, design and other intellectual property rights, which provide the foundations for development of the businesses represented by members of the Alliance.

Given that the EU is a signatory to the same treaties as the UK, it will already adhere to these principles. We want any negotiations to encourage national reform in other territories where current practice falls short of standards that UK legislation has already recognised are necessary for the effective development of intellectual property laws. These principles should also apply correspondingly to online as to offline so that tackling infringements can be equally effective.

In the context of the UK/EU future relationship, we would want the negotiations to reinforce the high standards for IP protection that already exist.

Specifically:

(a) **defending standards**, such as the Three Step Test for defining the scope of exceptions and limitations to copyright against efforts for “watered down” or overly vague descriptions that require litigation to interpret, alongside detrimental costs to businesses. Such defence also means taking into account the huge importance of the UK creative sector – which is now growing at five times the rate of the national economy¹ - and the central role that IP rights play in allowing creators, producers and designers to contribute to the UK both culturally and economically;

(b) **allowing flexibility** for higher levels of protection to be applied, whilst pushing for new standard levels of protection where international norms have already moved beyond minimum levels established under International Treaty provisions (for example, on the terms of protection for copyright and building on recent UK changes to registered design rights, recognising the further steps needed to bring parity with the current European system);

(c) **promoting recognition** at the international level of rights such as the Artists’ Resale Right, when International Treaty provisions have yet to be adopted at global level;

(d) **making provision for effective enforcement of rights**, including in a digital environment through concepts of civil liability for infringement, ability to identify businesses that infringe IP, the application of systems of good practice developed between traditional and new platforms, including the enabling of injunctive relief and addressing outmoded systems for rights owners to serve notice and takedown, and;

(e) **sustaining the UK’s trademark exhaustion regime**, ensuring that no trade agreement is inconsistent with, or undermines, the UK’s regional exhaustion approach resulting from current EU status.

The EU

The European Union is the largest single market for all of our members’ industries and so the nature of our future trading relationship is vital.

¹ <https://www.gov.uk/government/news/uks-creative-industries-contributes-almost-13-million-to-the-uk-economy-every-hour>

Members: Anti-Copying in Design, Anti-Counterfeiting Group, Association of Authors’ Agents, British Association of Picture Libraries and Agencies, BASE, British Brands Group, BPI, BSA | The Software Alliance, British Toy and Hobby Association, Design and Artists Copyright Society, Educational Recording Agency, English Football League, Entertainment Retailers Association, Film Distributors Association, Motion Picture Association, Premier League, Professional Publishers Association, Publishers Association, UK Cinema Association, UK Interactive Entertainment

Given our previous long-standing membership of the EU, the UK's IP framework largely mirrors that of the EU and should not prove an obstacle in the UK's trade negotiations with the EU. There are, however, some key issues that we believe must be resolved in any discussions.

Unregistered design rights

EU unregistered design laws offer more protection than the UK equivalent and these basic laws enable design businesses to exist.

Current UK unregistered design laws protect only the shape and configuration of a design, whereas EU unregistered design laws protect the individual character of a design such as texture, patterns, colour combinations, contours, line drawings etc. These features provide crucial protection to design-led industries such as the furniture, lighting and fashion, and without this protection the impact on these sectors could be damaging.

After the transition period, we recognise that the Intellectual Property Office will automatically recognise Registered Community Designs and that during the transition period unregistered design rights will continue to be protected for the remainder of their three year term. However, after the transition period, unregistered designs will not receive the same protection as their EU equivalent. The UK Government should ensure that British designers have the same protection in the UK as they had previously as part of our membership of the EU and as they do during the transition period.

In addition, after the transition period, if there is no agreement with the EU, then if a design is disclosed in the UK, that design will not be offered protection across the EU. This is a significant issue for many designers who, for example, show designs at trade fairs. If a fashion designer shows their wares at London Fashion Week, for example, it could be copied at will across the EU. It is therefore vital that the UK agrees reciprocal arrangements with the EU during trade negotiations for the disclosure and protection of unregistered designs in its future FTA.

Exhaustion of Rights

The Exhaustion Regime for IP rights is a crucial element for the business models of our members. It enables UK creators to build consumer confidence in the consistency and relevance of their products and services, invest in their quality, range, choice and reputation, and price them accordingly, providing some certainty over the return on their investment. We recognise that during the transition period there will be no change to the current regime. As part of the trade negotiations with the EU, we believe the UK should strive to maintain the UK's participation in the EEA's regional exhaustion framework. A default position linked to wider international exhaustion of the distribution right would have very severe economic consequences for members of the Alliance and the UK creative industries.

For example, an English textbook might be adapted by a UK publisher for the Indian market to reflect local curriculum and sold at a suitable price. But if this book can come back into the UK market through a secondary seller under an international exhaustion regime, publishers may not have any incentive to export as the risk to creating disruption and confusion among readers in their core domestic market would be too great.

Enforcement of rights

Counterfeiting and piracy crosses borders and has clear links to serious and organised crime. Fighting this criminality requires significant international law enforcement co-operation. The Police Intellectual Property Crime Unit (PIPCU), based at the City of London Police has built a significant international

reputation for its operations. European co-operation has been an important part of its operations and therefore maintaining equivalent partnerships with European policing organisations, including EUROPOL, is vital and should be a priority in discussions regarding our future relationship with the EU.

Rights of Representation

Many of our members require legal advice to establish and protect their IP rights and they are free to select advisers, knowing they can operate across the EU. Such freedom maintains competition in the legal services industry. As part of any free trade agreement, our members would value continuing mutual recognition of the rights of representation with the EU to ensure they can continue to have access to justice with competitive pricing.