
Building our Industrial Strategy

DACS welcomes the Green Paper, "Building our Industrial Strategy" and are pleased to see that this strategy has recognised the importance of the creative industries as one of its 5 key sectors. We consider that the Green Paper has identified the correct areas to focus on, particularly the inclusion of intellectual property within the separate pillars. We look forward to participating in Sir Peter Bazalgette's independent review of creative industries.

DACS is a member of the Alliance for Intellectual Property and we support their response to this consultation.



About DACS

DACS, the Design and Artists Copyright Society, is a not-for-profit visual artists' rights management organisation in the UK. We act as a trusted broker for 90,000 visual artists worldwide. Founded over 30 years ago, DACS is a flagship organisation that campaigns for artists' rights, championing their sustained and vital contribution to the creative economy. We collect and distribute royalties to visual artists and their estates through Payback, Artist's Resale Right, and Copyright Licensing. Since we were founded in 1984, we have paid over £90 million in royalties to artists and their estates – a significant source of income supporting artists' livelihoods, their practice and legacy.

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Supporting research and innovation – the priorities for investment

Question 5. What should be the priority areas for science, research and innovation investment?

Question 7. What else can the UK do to create an environment that supports the commercialisation of ideas?

Question 9. How can we best support research and innovation strengths in local areas?

DACS welcomes the Green Paper's recognition of the importance of intellectual property (IP) in research and development (R&D). The UK is not only skilled at innovating on existing ideas but is also home to world-renowned creators of creative content and new technologies.

The Green Paper identifies a lack of commercialisation of IP, but also a lack of protection, highlighting that fewer patents are registered in the UK than elsewhere.

The creation of IP is the most valuable part of the chain, and whilst it is important for IP to be used by others for research and innovation, it is equally vital that UK creators can trust sufficiently in the UK's strong IP law framework. This allows the creators themselves to exercise control over their work and exploit its value.

Recommendation: Whilst we very much support the intention to undertake independent research on the licencing and commercialisation of IP, we urge the Government to ensure that creators' IP rights are safeguarded.

Copyright is particularly strong within the UK IP framework as it provides creators with sufficient control over their work. This is where value can be extracted to benefit the UK, as creators can select the best licensing deal in a free and competitive market. For instance, a UK visual artist may prefer a British publisher to produce a coffee-table book of their work, and to have this distributed across the world. They receive appropriate remuneration for this and their work supports the creative industry.

A system that opens up licensing through registries, but which could remove the choice of the entity who holds the IP rights, risks undervaluing those rights. This would be detrimental to the UK's incredibly prosperous creative industries.

Recommendation: We urge the Government not to weaken creators' rights under the current copyright framework in the UK.

The Green Paper acknowledges that there will be opportunities for the creative industries in R&D investment.

Recommendation: We urge the Government to consider including R&D tax credits to be open to cultural institutions and organisations, which could seek to invest in new technologies and innovations that could capitalise on creators' IP and introduce new revenue streams, such as through blockchain technology. See page 5 for more.

Recommendation: We consider that Intellectual Property Offices throughout the UK will be an excellent way of reaching all types of creators to safeguard their own creations and to help these people, who range from individuals and freelancers to small and medium enterprises, from maximising on the commercial benefits of their own creation. The emphasis on protection and support of IP will ensure the maximum return on creative input.

Strengthening skills shortages through institutions

Education

Question 11. Do you agree with the different elements of the vision for the new technical education system set out here? Are there further lessons from other countries' systems?

Question 13. What skills shortages do we have or expect to have, in particular sectors or local areas, and how can we link the skills needs of industry to skills provision by educational institutions in local areas?

As the Green Paper announced that the UK now has a record 5.4 million small business, there is no greater time to ensure that small businesses, freelancers and individuals are equipped with the right tools to excel in their job. Technical education systems need to ensure that these skills extend beyond numeracy and literary skills into those required to help people maximise revenue from their work.

The UK's creative industries are worth over £81.7bn a year to the UK economy and the visual arts is a huge proponent of this: the annual art market in London has been estimated at US\$13.2bn¹, and UK galleries and museums receive over 50 million visits a year.

However, arts education is eroding, putting at risk the creative talent pipeline for future artists and those working in related creative industry fields. Evidence from the 2016 GCSE figures showed that the percentage of pupils taking at least one arts subject declined by 1.7% in 2016, the first time it has declined since 2012. From 2015-2016 there was an 8% decline in uptake of creative subjects (arts + D&T) the largest year on year decline in a decade². This has also affected A level subjects – there were 4,300 fewer candidates for A level arts subjects in 2016³.

DACS supports the Bacc for the Future campaign, which is a campaign of more than 200 creative industry businesses, universities, conservatories and education bodies and more than 100,000 individuals united in opposing the compulsory EBacc.

We believe there should be a broad and balanced curriculum, as the Government suggested in the Culture White Paper⁴, that facilitates creative, artistic and technical subjects in schools to revert any trends with drop-offs in arts education. DACS supports the idea of 'STEAM not STEM' – that the UK's industry and economy would benefit from a combination of the arts and sciences, as reported by Nesta⁵.

¹ Cultural times, p.51

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/559919/SFR48_2016.pdf

³ <http://www.artsprofessional.co.uk/news/exclusive-arts-schools-plummets-new-figures-show>

⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/510798/DCMS_The_Culture_White_Paper__3_.pdf

⁵ The Fusion Effect: The economic returns to combining arts and science skills – a report for Nesta: http://www.nesta.org.uk/sites/default/files/the_fusion_effect_v6.pdf

Also, with such a flourishing visual arts scene, it should be the Government's priority that those working in and contributing creatively to this industry know how to protect their rights and seek remuneration from them.

Copyright is an incredibly important tool that allows creators to maximise their revenue, make smart choices about exploitation of their works and to contribute to the economy. Rights like the Artist's Resale Right, a royalty whenever a work within copyright is resold on the secondary market, enables artists and their estates to fund the cataloguing and archiving of works, which is vital to the success of galleries and institutions. DACS has administered the Artist's Resale Right for over 10 years and has found that artists use these royalties to invest in their practice and estates to archive and catalogue works, which in turn benefits institutions and the wider art market.

Recommendation: Creative, artistic and technical subjects need to remain within school curriculum to feed new talent into the creative industries pipeline. Copyright and rights management should also feature in education more prominently and the Government should include copyright as a technical education subject.

Supporting other institutions

Question 36. Recognising the need for local initiative and leadership, how should we best work with local areas to create and strengthen key local institutions?

Question 37. What are the most important institutions which we need to upgrade or support to back growth in particular areas?

Question 38. Are there institutions missing in certain areas which we could help create or strengthen to support local growth?

Galleries and Museums

Galleries and museums play an incredibly important role as institutions that display and preserve cultural heritage, educate audiences and draw in tourism. Additionally, institutions have a highly beneficial impact on local economies: in 2013 the 500,000 visitors to the Hepworth Wakefield Art Gallery in Yorkshire contributed an estimated \$15.6m to the local economy in Wakefield, according to the EY study *Cultural Times*⁶.

This phenomenal contribution cultural heritage institutions have is not always matched with local authority or governmental support for growth and with increasing pressures on local arts funding versus core services. The same study found that the very people providing the content the galleries thrive on are the worst effected: 71% of artists exhibiting in publicly funded galleries received no fee for their work and 59% did not even receive payment for their expenses.

The effect of a lack of remuneration to artists is highly negative, not only to the artists themselves, but this will soon chip away at the institutions' abilities to educate, draw tourism and support local communities. *Cultural Times* state that 63% of artists have had to turn down requests from galleries to exhibit their work because they cannot afford to do so without pay. These effects are already being felt: a study by the Department of Culture Media and Sport⁷ reported that the

⁶ Ibid.

⁷ DCMS Sponsored Museums Performance Indicators 2015/16: <https://www.gov.uk/government/publications/sponsored-museums-annual-performance-indicators-2015-16/sponsored-museums-performance-indicators-201516>

number of visitors to the UK's DCMS-funded galleries and museums fell by nearly 1.4m people last year.

Furthermore, whilst Britain's public museums and private galleries have legacy management programmes, these do not have the capacity to address the need for British artists to manage their estates on a national scale. Instead, independent legacy and archiving programmes take an active role in trying to plug that gap to ensure that cultural heritage is preserved and not damaged by the lack of legacy planning.

DACS Foundation – Art360

DACS Foundation is an independent charitable organisation established to promote the visual arts for the public benefit, and is supported by the organisations such as DACS, Art Fund, The Henry Moore Foundation, The National Archives, Tate and National Galleries Scotland. DACS Foundation developed a dynamic new scheme called Art360, a major pilot project that offers support to develop and sustain the archives of 100 leading modern and contemporary British artists, offering participants expert and bespoke legacy consultancy. Its aims are to:

- Enable participants to attend to culturally undervalued or unseen aspects of their practice, to direct the wider understanding and potential critical re-evaluation of their work over time;
- Convene discussion and raise awareness of the personal and public benefit of legacy planning for artists and the wider arts and heritage sectors;
- Increase the number of art works and archives that are accessible to institutions, academics and audiences;
- Build evidence and understanding of the true status of artists' legacy planning in this country;
- Develop a versatile toolkit and make it accessible to tens of thousands of artists beyond the lifetime of this project.

Artists' legacies are vital to the public's enjoyment of the visual arts but DACS Foundation's research has revealed a critical gap in the understanding of systems and processes available to British artists to plan and manage their estates. This is a challenge for artists regardless of their career stage, or their critical and commercial success during their lifetime.

Recommendations: Cultural heritage institutions require support and strengthening in funding to enable them to continue to provide value to local communities, and to be in a position to properly remunerate the artists contributing to the economy. The Government must safeguard copyright and preserve the important Artist's Resale Right, which provides essential revenues to artists that frequently feed back into the cultural heritage cycle.

International trade and technologies

Technology and IP

Question 33. How can the Government and industry collaborate to enable growth in new sectors of the future that emerge around new technologies and new business models?

Technology Innovations

Technology industries have often been seen to be hampered by IP; however, this is far from the truth. Rather than requiring more exceptions to copyright that weakens the framework and rendering it insufficient for creators, many tech companies are seizing on the importance of a system that values rights.

Blockchain technology is widely considered to shift the way in which people use online systems and engage with each other. Blockchain, which creates immutable records on a decentralised database, can be used to democratise contracts and make transactions between strangers safer. There have been innumerable tech start-ups that are seizing on blockchain applications to create smart contracts or mini licences that allow creators to be remunerated for their work and to control how their work is used, such as experiments by the musician Imogen Heap.

Recommendation: We urge the Government to consider these ground-breaking applications of technology happening in the UK as part of the pipeline of talent for an innovative economy and to help facilitate R&D investment for the creative industries to be able to actualise the potential revenues derived from the deployment of these technologies for both creators and the industry.

IP framework

i. Sir Peter Bazalgette review

DACS welcomes the independent review by Sir Peter Bazalgette into the creative industries and a further exploration into capitalising of IP rights.

Recommendation: We urge that this review is conducted in a manner that recognises how significant the creation of IP rights is in the value chain and seeks first and foremost to protect IP in order to capitalise on IP.

ii. Copyright

The exceptions to copyright under UK law were examined in the Government's two vast reviews of the IP framework, Gowers and Hargreaves, and the latest amendments in 2014 have made copyright exceptions fit for purpose. There is no evidence of the need for further copyright exceptions or the expansion of existing exceptions, which would only weaken the protections for creators.

Recommendation: We urge the Government to safeguard the existing IP regime as the UK hosts a copyright framework that is robust, stable and works for creators, other rightsholders and users alike. Any move to reopen the current list of exceptions would only serve to harm creators and likely disrupt the creative industries.

iii. Artist's Resale Right

Furthermore, the Artist's Resale Right (ARR), has been implemented into UK law as the Artist's Resale Right Regulations 2006, even though it is derived from an EU Directive. Many artists and estates are worried now that ARR in the UK could be under threat after Brexit, as ARR has received strong opposition from some within the UK art trade who claim it is a trade barrier and uncompetitive.

"Whenever something like [ARR] starts, people say 'it's going to end the art world, it's going to be terrible' but it never happens. The art world just carries on and

gets bigger and bigger. It's important for artists to benefit from the sale of their work. The thing is that auction houses make so much money on a single sale. Obviously that's not pure profit but they make incredible amounts of money – much more than virtually any artist, much more than any museum has to spend on art so I think it's good that they put something back to the people who made it. A lot of people do very well out of the art market and obviously the artists aren't always the ones doing that."

Jeremy Deller

However, just earlier this year, auctioneers were saying that the UK art market is "bulletproof"⁸. The latest TEFAF Art Market Report 2017, reported that since 2008 commercial art galleries have grown more than five-times, the dealer market has surged since 2011, international dealers have opened gallery spaces in London, and while the UK has a much smaller number of commercial art galleries than the US, the turnover for this sector is much larger per dealer⁹.

Additionally, the UK art market is the second largest in the world and the amount of ARR royalties paid to artists is less than 1% of the UK post-war and contemporary and modern art sales. The argument of ARR having a negative impact on the UK art trade is unfounded.

ARR is a significant source of revenue supporting artists' practices and estates' legacies, which in turn benefits the art market, the creative economy and the UK's cultural heritage.

Recommendation: ARR is fit for purpose and it is essential that ARR is preserved after the UK leaves the EU.

iv. WIPO

The World Intellectual Property Organisation's Standing Committee on Copyright and Related Rights is holding a conference on the Artist's Resale Right on 28 April in Geneva. This will be an opportunity for artists, collecting societies, national and international officials and industry to put forward evidence and testimony to help advance an international treaty for the right. Recognising ARR on an international scale would ensure all artists would benefit from the right, no matter where their work is sold. Currently over 80 countries recognise ARR.

"An international treaty for the Artist's Resale Right would be a huge global step in the right direction, as it will enable artists all over the world to benefit from resale royalties, wherever the sale takes place. I think this is incredibly important, as so many sales take place in countries which don't recognise the right, such as the US and China. This unfairly disadvantages artists based in these countries, as well as artists whose work sells in these countries. It is fair that all artists can benefit from resale royalties, particularly when these types of rights already exist for other categories of authors. For the artist it can help bolster their financial circumstances and essentially ensure art can be made for the future of a vibrant culture."

Gordon Cheung

⁸ "Sotheby's Confirms a 'Bulletproof' Art Market with \$143.5 Million Contemporary Sale in London" Artnet, Colin Gleadell. 8 March 2017. https://news.artnet.com/market/sothebys-bulletproof-london-sale-885632?utm_campaign=artnetnews&utm_source=030917daily&utm_medium=email&utm_term=artnet%20News%20-%20European%20List%20Only

⁹ TEFAF Art Market Report 2017. The European Fine Art Federation. Prepared by Prof. Dr. Rachel A.J. Pownall. April 2017.

From the UK's success, British artists have a high profile in the international art market and benefit when their work sells in markets where ARR is collected. Again, any changes to ARR would deprive artists and estates this revenue stream from the success of the UK's international profile. Going further, British artists could be benefitting from additional revenues from overseas territories where ARR currently doesn't exist.

Recommendation: DACS supports the introduction of ARR on an international scale, which would level the playing field across a more globalised art market, benefitting the UK and its artists from a healthier balance of trade. We call on Government to support this position at the World Intellectual Property Organisation's Standing Committee on Copyright and Related Rights.

v. Sales of Artworks Online

There has been a growing trend towards selling artworks outside of the physical gallery and auction house environment. Online sales are being made through well-known auction houses that also have physical premises, as well as by dealers with an online-only presence using social media tools to advertise works of art for sale in that respect. The online auction market is flourishing: online art market sales reached \$3.27 billion globally in 2015, which was a 24% increase from the previous year¹⁰. Hiscox Art Trade Report calculates that the online art market would be worth over \$9.5 billion by 2020. This trend demonstrates a connected, globally-minded audience is buying art, including by British artists. It is important however to ensure safeguards are in place to prevent online salesrooms from selling art works in jurisdictions with weaker IP laws and favourable tax regimes, as this could undercut the competitive and robust British art trade.

Recommendation: We ask the Government to consider the potential ways in which digital marketplaces may be exempt from complying with national legislation at the detriment to creators and the creative industries.

vi. EU Digital Single Market

The European Commission published a proposed Directive on Copyright in the Digital Single Market in September 2016 and the UK's Intellectual Property Office subsequently requested views of stakeholders on the Commission's proposals. DACS supported the provisions of the Directive that seek to ensure creators are duly remunerated for the exploitation of their works.

However, the Directive also seeks to create new rights and exceptions to copyright that go far beyond the existing EU copyright framework, and there is little evidence to support these aims.

Recommendation: We ask the Government to confirm its position on the Commission's Directive and the intention the Government will make on implementing the proposals prior to the UK's departure from the European Union.

¹⁰ Hiscox Art Trade Report 2016: <https://www.hiscox.co.uk/online-art-trade-report/docs/hiscox-online-art-trade-report-2016-v2.pdf>