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## Culture, Media and Sports Select Committee: The impact of Brexit on the creative industries, tourism and the digital single market

DACS welcomes the opportunity to respond to this inquiry. The terms of reference covered a number of topics with certain questions and our approach has been to treat these as overarching categories of: Copyright, Digital Single Market, European Funding, Employment and Tourism, and Trade Priorities.

## Overview

The UK arts and creative industries are a success story. This success is underpinned by the protection of creators' rights and the revenues derived from the creation of their work, driving the market forward. The decision for the UK to leave the European Union (EU) will have a significant impact; however, by safeguarding the rights and remuneration to creators, the UK will continue to be able to invest in its cultural economy ensuring that the arts and creative industries continue to thrive and prosper.

DACS makes the following points in response to the inquiry:

### Copyright:

- Artist's Resale Right (ARR) is fit for purpose and it is essential that ARR is preserved after the UK leaves the EU to continue to drive creators' input into the art market and the creative economy and to ensure a lasting cultural legacy that is revered across the world. It is a vital source of income for artists, particularly when public funding is being squeezed in a challenging financial environment. Since its inception, £47 million has been distributed to artists and estates by DACS.
- Copyright should not be re-opened after the UK leaves the EU. It is a well-balanced framework that benefits creators and users, and which creators rely on for remuneration. It facilitates licensing deals between UK and EU businesses worth £6m in 2015 alone.

### Digital Single Market

- The proposed Copyright Directive from the European Commission contains concepts that the UK should embrace into UK law as it protects creators' rights, particularly in closing the value gap with online platforms. The UK can also implement the proposal's concepts into non-copyright laws such as contracts.
- There is an opportunity to ensure that reciprocity of trade is made a key feature in negotiating deals, and to preserve intellectual property laws that enforce this.

### European Funding

- Greater certainty and a clear path is still needed for current and future funding applications leading up to the UK's departure and for the UK's position in collaborating in the arts and research space with European partners following the exit.

### Employment and Tourism

- Whilst the Government's opportunity here is to keep the UK a compelling place to be an artist by ensuring a strong arts educational programme and access to funding, it is also important to safeguard the freedoms that have allowed business to prosper.

### Trade Priorities

- Whatever exit deal that the UK negotiates should not discriminate nor penalise between different interests from artists to art market professionals, such as any changes to ARR or triggering import VAT. Any policy impact on the art market is an equal impact on artists and estates and vice versa. The Government must safeguard the continued success of British cultural highlights that are world famous and add vastly to the creative industries.

DACS is a member of the British Copyright Council (the BCC) and the Alliance for Intellectual Property and we support their responses to this consultation.



## About DACCS

Established by artists for artists, DACCS is a not-for-profit visual artists' rights management organisation. Passionate about transforming the financial landscape for visual artists through innovative new products and services, DACCS acts as a trusted broker for 90,000 artists worldwide. Founded over 30 years ago, DACCS is a flagship organisation that has and continues to campaign for artists' rights, championing their sustained and vital contribution to the creative economy. In its support of artists and their work, DACCS collects and distributes royalties to visual artists and their estates through Artist's Resale Right, Copyright Licensing, Artimage, and Payback. More information can be found on the DACCS website, in particular our latest annual review [here](#).

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## Copyright

### What should happen in relation to copyright after the UK leaves the EU?

1. When the UK leaves the EU, copyright and related rights must not be diminished: users must be able to access works and creators must be fairly remunerated for this.

### Artist's Resale Right

2. Artist's Resale Right (ARR) is an important right that falls within the scope of copyright – indeed it only applies to the resale by an art market professional of a work of art in which copyright subsists once it sells above a threshold. DACS has administered ARR, which celebrated its 10<sup>th</sup> anniversary in February 2016, since its inception. DACS has paid out nearly £47 million to artists and estates in this time, which in turn benefits the wider art market and helps preserve our cultural heritage. Derived from the EU Resale Right Directive, ARR has been implemented into UK law as the Artist's Resale Right Regulations.
3. ARR is not only valuable to British artists but also to public arts institutions as it continues to provide resources to artists and estates to contribute to their legacies and the collections of these institutions, preserving the UK's cultural heritage for future generations.

*"I use most of the income to support scholarly interest in the artist's [Keith Vaughan] work (I donate significantly to the Tate Archive, for example, for resources on this artist and others related to him); and I enable free access to reproductions of his work for educational and public purposes."*

**Jonathan Gosling, Keith Vaughan estate**

4. Artists and estates are worried now that ARR in the UK after Brexit could be under threat as it has always received a strong opposition from some within the UK art trade before and even after the right was introduced. However for the art market to challenge this, they are putting at risk those artists and the value of the work that is so dependent on attracting buyers and collectors to the market.
5. ARR is vital for an artist's income as it helps them to reinvest in their practice and continue to drive up the value of their work that will go onto the secondary market. For estates, it supports the artist's legacy by providing revenues to be used for managing the estate or foundation and for conservation – all which adds to the UK's cultural heritage, and for authenticating provenance, which is very valuable to the art market as it assures buyers the work is authorised and authentic.

*"ARR is a fair and justified right that enables artists to take a small percentage of the profits made by commercial institutions from their originality, their courage, their commitment and the contribution they make to the cultural life of the society they live in. In my own situation I use ARR to fund the running of the Kyffin Williams Estate and I am currently working on a new book to mark the centenary of Sir Kyffin's birth in 2018. Without ARR it would be impossible for me to devote the time to the picture research, photography, design, editing and planning that go into the publication of an artist's monograph."*

**Nicholas Sinclair, Estate of Sir Kyffin Williams KBE, RA**

6. For many visual artists the capacity to earn from their work is diminished with additional pressures due to funding streams drying up and additional costs like rising rents on studio spaces. Over the last three years 71% of artists exhibiting in publicly funded galleries in the UK received no fee for their work and 57% of artists generate less than a quarter of their income through their art.<sup>1</sup> It can be very challenging for many to sustain their practices and careers, even though it is these careers and the work created that make the UK's cultural offerings some of the best in the world and helps to drive the art market forward. ARR is a vital source of income in this challenging financial context.

*“Resale royalties are a valuable investment in the life blood of the UK’s art market at a time when public funding cuts are significantly reducing artists’ incomes.”*

**Stuart Semple, artist**

7. Furthermore, 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.

*“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, artist**

8. **Recommendation:** ARR is fit for purpose and it is essential that ARR is preserved after the UK leaves the EU to continue to drive creators' input into the art market and the creative economy and to ensure a cultural legacy that is revered across the world.

## UK Copyright framework

9. The UK's copyright regime has been amended over the last decade to ensure it is fit for purpose in the digital age, where policy decisions have been evidence-led and have undergone vigorous debate and review. In addition, the changes have been benchmarked against the European *acquis communautaire*, which has resulted in a well-balanced legal framework that allows economic benefit from use of rights both at home and abroad.
10. The current level of harmonisation between copyright in the UK and EU Member States has facilitated a reciprocity on which to secure licensing deals, leading to stable remuneration for rightsholders and allowing them control over how their works are used. Over the last three years DACS has paid at least £6 million in licensing royalties, however this is only a proportion

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<sup>1</sup> Cultural times – The first global map of cultural and creative industries, prepared by EY for CISAC, December 2015. [http://www.worldcreative.org/wp-content/uploads/2015/12/EY\\_Cultural\\_Times2015\\_Download.pdf](http://www.worldcreative.org/wp-content/uploads/2015/12/EY_Cultural_Times2015_Download.pdf).

of the market as many rightsholders undertake their own licensing and other bodies such as picture libraries license works also. Reciprocity is a key feature of smooth and seamless licensing of rights, which is a business-led solution to copyright. Any barriers to the current level of reciprocity will harm the creators.

11. **Recommendation:** DACS considers that the UK copyright regime should not be reopened to further review as it is a successful regime that has been carefully considered. Both the owners and users of copyright protected content require stability and clarity from the copyright framework. Any future changes that take place should be evidence-based and well informed, and should aim to reflect the best interests of creators to strengthen their place in both a domestic and international market.

## Proposal for a Directive of the European Parliament and the Council on copyright in the Digital Single Market

12. **Recommendation:** DACS supports the new EU copyright reform proposals where they intend to make a better deal for creators and allow for fairer remuneration.
13. The proposals seeking to address the value gap for creators in disparity with the dominant position of online platforms is particularly well received. Images of visual art works and photographs protected by copyright are disseminated widely through online platforms and social media sites without authorisation from or remuneration to the creators of such works. Online platforms depend on such content, yet as a “mere conduit” under the E-Commerce Directive (2000/31/EC) they are absolved from liability to remunerate creators of such works. Creators are powerless to effectively grant licences to the platforms or receive any compensation from the use of their works. This in turn reduces the value for creative content, weakening the bargaining position for rightsholders even further.
14. **Recommendation:** It is important to ensure artists are fairly remunerated and are a key part of the value chain in a well-functioning online market. The proposals initiate the first steps by proposing online platforms should cooperate with rightsholders and ensure they use technology that identifies uses of copyright protected materials on their sites. Whilst there needs to be further clarity on how this proposal would work in relation to safe harbour provisions, this is a concept that should be emulated in UK law to provide protection to British creators.
15. The proposed Directive also demonstrates the European Commission’s recognition that creators are often paid a disproportionately low fee for their work without being able to benefit later if the work becomes more successful than the initial contract. The new proposals seek to address this imbalance to safeguard creators’ rights with a contract adjustment mechanism, which DACS supports. As there is a similar concept under UK patent law<sup>2</sup>, the UK is in fact best placed to implement a similar solution into UK law which could set the blueprint for European countries. **Recommendation:** The UK must ensure that contract law sufficiently supports the rights of creators as it has for consumers for many years<sup>3</sup>, making the UK the best place for creators to work in for the protection of their rights.
16. A new right for press publishers has also been proposed in the Directive, giving publishers of newspapers, journals or magazines the exclusive rights that previously only creators enjoyed

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<sup>2</sup> s.40(1) Patent Act 1977)

<sup>3</sup> Unfair Contract Terms Act 1977, Sale of Goods Act 1979, Consumer Rights Act 2015

under the existing EU copyright Directive<sup>4</sup>. This right has a real risk of being detrimental to creators who will lose part of their rightful remuneration to publishers. **Recommendation:** We want to work with Government to ensure that rightsholders are still protected and that any new right does not come to the detriment of creators.

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<sup>4</sup> Article 2 and Article 3(2) of Directive 2001/29/EC

## Digital Single Market

### How has the UK membership of the EU helped to shape the Digital Single Market?

17. The UK has had an important role in engagement with the Digital Single Market, with both rightsholder groups and Government providing evidence to the consultative process. We consider that the UK is a benchmark for a number of legal developments in Europe – for instance the mandatory exceptions to copyright under the proposed copyright Directive already exist in UK law.
18. British collective rights management organisations (known as CMOs) have had a good record of openness and transparency – with the UK implementing its own regulations for CMOs independently of the law in Europe that sought to standardise CMOs across Member States<sup>5</sup>. DACS welcomed the European Directive on collective rights management as this levelled the playing field across EU Member States and intends to give our rightsholders and users the best service whether they are using rights management schemes in the UK or abroad.
19. **Recommendation:** A level of reciprocity not only in terms of rights but also operational standards makes business more efficient and more economically sound. This is a strength of Europe and any changes to operating standards should have a UK equivalent to ensure continued relations with European and international counterparts.

### What are the fears and advantages from the UK being outside the developing Single Market?

20. The influence the UK has had in the EU has been at times very positive, especially as the UK has a very successful cultural output that inspires other countries. As the UK leaves the EU the lack of influence in the legislative process is a concern. **Recommendation:** The opportunity is to ensure that reciprocity of trade is made a key feature in negotiating deals, and to preserve intellectual property laws that enforce this. Changes to the UK law should take into account the comparable European framework to ensure the gulf between the UK and EU Member States is not widened.
21. The UK must recognise that the digital age we live in allows British citizens to step into a borderless world from their phones, tablets and computers. Already the use of content online and the platforms hosting them are viewed predominantly in American terms. There is a real threat to the UK concept of ‘fair dealing’ from the US concept of ‘fair use’ which is a wider and less tailored approach to providing exceptions to copyright. **Recommendation:** The UK must resist a weakening of the fair dealing concept by continuing to align with Europe where possible in the legal framework that the UK has already helped to create.
22. **Recommendation:** The UK will have more control over its laws and therefore these laws should reflect ideas that are good for Britain, such as the Artist’s Resale Right (ARR). This right has for the last decade continued to provide for the creative economy, by remunerating artists fairly who in turn contribute to our cultural heritage. The UK law is framed often by art market professionals as having a negative impact on trade – but in a decade where the UK art market

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<sup>5</sup> The Intellectual Property Office’s *Guidance on the CRM Directive’s Implementing Regulations* states the following at p.6: “The Directive’s provisions for improved transparency and governance broadly complement existing UK legislation for the regulation of domestic CMOs. The *Copyright (Regulation of Relevant Licensing Bodies) Regulations 2014* require UK CMOs to adhere to codes of practice that comply with minimum standards of governance and transparency set by the Government. UK CMOs self-regulate in the first instance, but Government has a reserve power to remedy any failure to self-regulate and impose sanctions where appropriate.”

has soared, this argument is not based on evidence. In fact, the UK art market is second in the world and is valued higher than when ARR was introduced in 2006, according to 2015 TEFAF figures.<sup>6</sup> Additionally, in 2015, the amount of ARR royalties distributed by DACS compared to the total value of the UK's post-war and contemporary, and modern art auction sales, which are the predominate categories for ARR works, was only 0.81%. The benefits to artists and estates and the value that is then added to the industry hugely outweighs any negligible impact on the market.

23. The proposed copyright Directive from the European Commission has introduced concepts that are aimed at making a better deal for creators. This is particularly important in an online environment where visual artists are suffering from ongoing infringement and a lack of remuneration for the use of their works from internet companies that are shielded by safe-harbour laws. **Recommendation:** DACS considers that the European proposals should be implemented in UK law and that this is an opportunity for Britain to lead the way in protecting and fairly remunerating rightsholders.

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<sup>6</sup> The European Fine Art Foundation, Art Market Report 2016.

## European Funding, Employment and Tourism

**Funding: What will be the impact of the loss of European Union funding, both specialised (such as the Creative Europe fund) and more general (such as the Regional Development Fund). Will the UK Government replace these? Can tax exemptions or private sponsorship fill the gap?**

24. Many significant and ambitious arts and research projects depend on collaboration and funding across more than one European country and often derive from major European funding streams such as Creative Europe and European Regional Development Funds.
25. It was encouraging that the Treasury confirmed in August that all multi-year projects administered by Government, with signed contracts or agreements in place or to be signed before the 2016 Autumn Statement, will be fully funded, even where these projects continue beyond the UK's departure from the EU. This also goes for the eligibility of UK businesses and universities to continue to bid for competitive EU funds while the UK remains a member of the EU.<sup>7</sup>
26. However, there are still serious concerns about current and future funding applications for partnership projects that might be signed after the Autumn Statement, which if they were delayed, suspended or cancelled would have a consequent negative impact on UK artists and institutions who may cease to benefit from significant financial, intellectual and artistic exchange from partners across the EU.
27. **Recommendation:** Greater certainty and a clear path is still needed for these projects leading up to the UK's departure and for the UK's position in collaborating in the arts and research space with European partners following the exit.

**Employment in the creative industries: Will the UK be able to attract and retain talent from across the world in order to maintain its high reputation in these industries?**

28. The success of the art industry in the UK is built on the work of highly-skilled practitioners with an international and, in particular, European background. Cultural institutions and arts educational institutions in the UK are some of the best in the world<sup>8</sup>. This makes the UK arts industry an incredibly popular place to work – the result being that these institutions are rewarded with internationals who add an impact culturally, who are very gifted and who provide diversity and perspective. The DCMS Culture White Paper 2016 demonstrated the real value in diversity in the arts which 'challenges and rejuvenates' cultural sectors and breaks down barriers to types of audiences<sup>9</sup>.
29. The UK arts scene is world famous because it provides a space to champion UK artists and also international artists. Benchmarking against international artists is essential, not only to

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<sup>7</sup> Letter from the Chief Secretary to the Secretary of State for Exiting the European Union on EU funding. 12 August 2016. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/545767/CST\\_letter\\_to\\_SoS\\_for\\_DExEU\\_August\\_2016.PDF](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/545767/CST_letter_to_SoS_for_DExEU_August_2016.PDF)

<sup>8</sup> The Royal College of Art is ranked number 1 in the world for Art and Design in 2016; University of the Arts London is ranked number 5: [http://www.topuniversities.com/university-rankings/university-subject-rankings/2016/art-design#sorting=rank+region="+country="+faculty="+stars=false+search="](http://www.topuniversities.com/university-rankings/university-subject-rankings/2016/art-design#sorting=rank+region=); "London offers the best cultural experience of any city in the world": <http://www.londonandpartners.com/media-centre/press-releases/2016/20160817-london-offers-best-cultural-experience-of-any-city-in-the-world-with-us-and-uk-visitors-flocking-to-leading-cultural-attractions>

<sup>9</sup> DCMS Cultural White Paper, p.26  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/510798/DCMS\\_The\\_Culture\\_White\\_Paper\\_3\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/510798/DCMS_The_Culture_White_Paper_3_.pdf)

represent diversity, which is important in our galleries' educational remit, but also to ensure the quality of the work being represented is the highest it can be. When a work shows in a gallery that does not have appropriate international benchmarking, the value gained by the exhibition will not be as significant.

30. UK artists need to be able to exhibit across Europe in order for their work to gain recognition and value. One current example is the artist Ed Atkins<sup>10</sup>, whose artist's residency in Finland and European wide exhibitions led to major UK exhibition at the Serpentine Gallery. The Serpentine's programmes attract 1.2 million visitors annually<sup>11</sup>. UK artists do not obtain this kind of value in their work without exhibiting or working in Europe. It is an issue for British artists if they cannot freely exhibit in other countries.
31. Currently the UK art market is the best in Europe, but this is a position that other countries will move to take – Berlin and Paris are thriving cultural hubs that may represent a better alternative to London and look to encroach in this space. **Recommendation:** Whilst the Government's opportunity here is to keep the UK a compelling place to be an artist by ensuring a strong arts educational programme and access to funding, it is also important to safeguard the freedoms that have allowed business to prosper.

*"Hundreds of artists from all over Europe have chosen to live in London, just as many of us live in cities across the continent. We will now lose the right to this ease of movement."*  
**Michael Craig-Martin, artist and Royal Academician**<sup>12</sup>

## **Tourism: What is likely to happen? Is the industry capitalising on the decline in the value of the pound to promote the UK as a destination?**

32. Over the last 30 years of operating DACS has garnered a strong understanding of the position of visual arts in the UK and the draw this has to people all over the world. Whilst cultural tourism is rife, with 7 million visitors to UK cultural institutions a year from overseas tourists<sup>13</sup>, this does not account for the specific art-buying tourism where money is spent. High net-worth collectors from all over the world come to the UK to buy art. They attend fairs like Frieze and they go to blue-chip galleries such as White Cube to spend their money in the UK. They are not the same people who visit the Tate or the British Museum, so traditional tourism statistics do not account for these art-buyers.
33. The decline in the pound has given international art-buyers a discount in the UK, however this is not sustainable for the art market and a fluctuating currency will not encourage further spending. Art-buyers spend considerable sums of money at galleries and art fairs<sup>14</sup>, so a dip in the price of sterling the day after they made their purchase is not compelling. The UK should not rely on the weakness of its currency to entice internationals to spend money in the UK, as this is at best a temporary position and at its worse a disincentive where currencies are not stable.

<sup>10</sup> <http://www.serpentinegalleries.org/exhibitions-events/ed-atkins-0>

<sup>11</sup> [www.serpentinegalleries.org/download/file/fid/10048](http://www.serpentinegalleries.org/download/file/fid/10048)

<sup>12</sup> The Art Newspaper, 6 July <http://theartnewspaper.com/news/brexit-referendum-reactions/>

<sup>13</sup> *Cultural times – The first global map of cultural and creative industries*, prepared by EY for CISAC, December 2015. [http://www.worldcreative.org/wp-content/uploads/2015/12/EY\\_CulturalTimes2015\\_Download.pdf](http://www.worldcreative.org/wp-content/uploads/2015/12/EY_CulturalTimes2015_Download.pdf).

<sup>14</sup> Frieze does not publish sales figures, but journalists reported a 'flurry of sales' as Frieze 2016 opened in October: <https://news.artnet.com/market/frieze-london-sales-report-2016-691073>

## Trade Priorities

34. The art market is a prosperous, yet delicate economy consisting of policy drivers supporting both the creator and commercial. Pull the support out from underneath one issue and the whole market would feel the effect of the imbalance.
35. **Recommendation:** ARR is fit for purpose and DACS does not consider that there is any evidence, as set out previously, that the Artist's Resale Right (ARR) prevents or deters collectors from buying works. Furthermore, the art market should not be subject to any tax burden increase for EU nationals when buying work in the UK as this would have a detrimental effect on all parts of the art market ecology including artists. If moving artworks from the UK to the EU will trigger import VAT, this would have a crushing effect on fairs like Frieze and for the galleries and artists involved. Art market professionals argue this point, concerned that the UK may no longer be a viable place to be positioned as an art dealer<sup>15</sup>.
36. The Government must ensure that art trade in the UK, which pulls in thousands of high-net worth buyers, maintains a pre-eminence in the global art market is not overtaken by European counterparts. Frieze is not the only successful European art fair. In fact, whilst sales are generally considered to be at the highest at Frieze, the visitor numbers in France's FIAC, Holland's TEFAF and Switzerland's Art Basel are higher than Frieze<sup>16</sup>.
37. **Recommendation:** Whatever exit deal that the UK negotiates should not discriminate nor penalise between different interests from artists to art market professionals. Any policy impact on the art market is an equal impact on artists and estates and vice versus. The Government must safeguard the continued success of British cultural highlights that are world famous and add vastly to the creative industries.

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<sup>15</sup> The Art Newspaper, *Fears grow that hard Brexit will damage UK trade*, 10 October 2016: <http://theartnewspaper.com/market/fears-grow-that-hard-brexit-will-damage-uk-trade/>

<sup>16</sup> <http://www.artvista.de/pages/statistics/top-art-fairs-by-number-of-visitors.html>