

The Intellectual Property (Copyright and Related Rights) (Amendment) (EU Exit) Regulations 2018 – the copyright country-of-origin principle

Department for Business, Energy and Industrial Strategy

RPC rating: fit for purpose

Description of proposal

The copyright country-of-origin (COO) principle was introduced by the EU satellite and cable directive in 1993 to facilitate better cross-border satellite broadcasting between EEA states. The COO principle simplifies the rights-clearance process for cross-border satellite broadcast so that copyright permission is needed only for the COO of the transmission, rather than for each receiving member states. This is intended to help reduce uncertainty and burden for broadcasters, in turn providing them with greater market access and offering consumers a wider range of content.

The directive was implemented in the UK by section 6(4) and 6A of the Copyright, Designs and Patents Act 1988 (CDPA). Section 6(4) provides the COO principle, and it covers broadcasts originating in the UK, other EEA states, and non-EEA states. The only qualification to section 6(4) is section 6A, which implements the safeguard of the directive, it exceptionally treats certain broadcasts originating outside the EEA but commissioned in an EEA state as originating in the EEA. In the absence of a mutual agreement, this safeguard will require amendment after exit to continue to operate effectively.

The impact assessment (IA) considers three options: *status quo* (option 0.1); do nothing (option 0.2); amend the safeguard in section 6A of CDPA to replace references to EEA with the UK, the UK otherwise continues to apply the COO principle to broadcasts originating in any country (option 1). The Government's preferred option in the "no deal" scenario is option 1. This proposal aims to provide continuity and certainty for broadcasts into the UK to support UK consumers' continued access to cross-border satellite broadcasts and maintains current protection for right holders.

Impacts of proposal

The Intellectual Property Office (IPO) has reviewed the impacts of the COO principle to inform the Government's policy choice. The IA assesses the costs and benefits of the preferred policy option qualitatively and has not attempted to monetise these impacts.

Impact of proposal (option 1)

The IA provides a qualitative comparison of costs and benefits against the *status quo* and do nothing options.

Benefits

The IA explains that, as the proposal maintains the *status quo* as far as possible, there are not expected to be any benefits relative to existing arrangements. The proposal, however, provides significant benefits in comparison to the do nothing option which would make the COO principle unworkable. The absence of such safeguard would allow UK broadcasters to circumvent copyright protection in the UK and result in right holders losing control of their works and the associated licensing royalties. UK broadcasters that did seek the proper copyright permissions would experience a competitive disadvantage to those who exploited the unamended safeguards.

Costs

The IA states that the proposal maintains the *status quo* as far as possible and, therefore, minimises the potential costs to business. Broadcasters and right holders in the UK would experience a one-off familiarisation cost relating to the amendment of the safeguard in section 6(A). However, this would be expected to be negligible as it involves only a minor change to replace references to EEA with the UK. The IPO explains that familiarisation costs to businesses would be mitigated by engaging with stakeholders, publishing 'no deal' technical notices and holding a series of roundtable meetings with industry. The IPO explains also that the proposal would maintain the *status quo* for broadcasts into the UK and has no impact on UK-to-EEA broadcasts. The latter is subject to the policies of individual member states and does not result from the proposal. The IA does, however, provide a brief description of this impact.

Non-UK and wider impacts

The IA states that, as the proposal maintains existing arrangements, its wider impacts on UK consumers of foreign broadcasts and right holders should be minimal. This proposal would be expected to create familiarisation costs to EEA broadcasters which transmit to the UK and the right holders whose work is contained in those broadcasts. There are an estimated 33,000 UK businesses in the film, video and photography sectors that fall into this category.

Small and micro business assessment

The IA estimates that the creative industries in the EU are dominated by micro firms with 95 per cent having fewer than 10 employees. The IPO, therefore, expects that, for the UK, small and micro business will make up a significant proportion of the market. The IA states that the proposal would place the least burden on small businesses as it would retain the *status quo* as far as possible thus minimising familiarisation costs, which could have a disproportionate impact on small businesses. The IPO mitigates the familiarisation costs to businesses by engaging with stakeholders, publishing ‘no deal’ technical notices and holding a series of roundtable meetings with industry.

Quality of submission

The IA provides a comparison of the policy options against both the *status quo* and do nothing. This is appropriate and consistent with government guidance on appraisal of EU exit measures. The *status quo* is the appropriate baseline for the assessment of business impacts for better regulation framework purposes; the comparison against do nothing is important in demonstrating the case for the policy option. The IPO has provided a qualitative description of business and wider impacts against these counterfactuals. The IA indicates that the only impact against the *status quo* counterfactual is a one-off familiarisation cost to broadcasters and right holders in the UK relating to the amendment of the safeguard in section 6(A). The IPO explains that this is expected to be negligible as it involves only replacing references to the EEA with the UK. The overall direct impact on business, therefore, appears to be very low. On this basis, the IPO’s qualitative assessment is sufficient.

The IA could be improved by addressing the following issues:

Justification for not monetising costs

The IA would benefit from addressing explicitly why it considers monetisation of costs not to be proportionate.

Monitoring and evaluation plan

The IA would benefit from including a brief outline of how the proposal would be monitored and evaluated. This would be helpful to facilitate a proportionate post-implementation review, should this be required.

Small and micro business assessment

The small and micro business assessment would be improved by providing some indication of the scale of the number of small and micro-businesses affected or explaining why this is not possible or proportionate to provide. The IPO assessed the impact on small businesses primarily by comparison with the do nothing. The IA would benefit, however, from assessment against the *status quo*.

Departmental assessment

Classification	Non-qualifying provision (EU withdrawal)
Equivalent annual net direct cost to business (EANDCB)	N/A
Business net present value	N/A
Societal net present value	N/A

RPC assessment

Classification	Non-qualifying provision (EU withdrawal)
Small and micro business assessment	Sufficient

Regulatory Policy Committee