

EUROPEAN WORKS AND BREXIT

18th March 2019

Introduction

In the past few weeks, we have received number of questions regarding the status of UK audiovisual works as European works once we have left the European Union. We thought it would be helpful to produce this note clarifying the position, and also to provide some useful points of reference for industry.

European works - what are they?

The EU promotes European works on TV and on video on demand platforms through the quota provisions of the Audiovisual Media Services Directive (Articles 13, 16 and 17 AVMSD). These envisage:

- A majority proportion of transmission time for European works (excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping);
- A 10% transmission time or alternately, at the discretion of the member state, at least 10 % of their programming budget for independent European producers (excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping);
- The promotion of the production of/access to European works on VoD services.

AVMSD rules concerning the definition of European works state that a work can qualify in three ways. The first two ways of qualifying are; the work originates in an EU Member State, or in a European third State party to the European Convention on Transfrontier Television of the Council of Europe. The conditions attached to these definitions are that the work is;

- Mainly made with authors and workers residing in one or more of the States referred to provided that they comply with one of the following three conditions:
 - they are made by one or more producers established in one or more of those States;
 - the production of the works is supervised and actually controlled by one or more producers established in one or more of those States;
 - the contribution of co-producers of those States to the total co-production costs is preponderant and the co-production is not controlled by one or more producers established outside those States.
- Alternatively, a work can qualify as a European work if it is 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 those agreements. Works that are produced within the

framework of such agreements are European works provided that the co-producers from the EU supply a majority share of the total cost of production and that the production is not controlled by one or more producers established outside the territory of the Member States.

What is the status of UK content now?

Providing it meets the conditions, UK content qualifies for European works status because the UK is a Member State. This means that UK works can make up part of the quota obligations placed on European broadcasters and video on demand platforms.

What happens when we leave the EU?

After Brexit, works originating in the UK would still be considered European works since the definition laid down in Article 1(n) AVMSD includes works originating in European third States party to the European Convention on Transfrontier Television (ECTT) of the Council of Europe. UK signed and ratified the ECTT in 1993 and will continue to be a party to the convention once we leave the EU.

So will the UK still qualify post-Brexit?

The short answer is yes, and statements from the European Commission and the UK Government as well as the European Audiovisual Observatory reports confirm this. This is because the UK remains party to the ECTT.

Useful references

Commission Notice to Stakeholders

In its '[Notice to stakeholders: Withdrawal of the United Kingdom and EU rules in the field of audiovisual media services](#)' of 19th March 2018, the European commission sets out that 'under its Articles 13, 16 and 17, the Audiovisual Media Services Directive lays down specific rules for the promotion of distribution and production of European works, such as minimum quota reserved for European works. Article 1(1)(n) of the current Audiovisual Media Services Directive considers as "European" works originating in European third States party to the European Convention on Transfrontier Television of the Council of Europe and fulfilling the conditions of paragraph 3 of the above mentioned Article. Therefore, pursuant to the current version of the Directive and without prejudice to any change to the legal framework, works originating in United Kingdom are considered European works even after the withdrawal date for the purpose of fulfilling the quotas under Article 13, 16 and 17 of the Directive.'

UK Government technical notice

In its technical [notice on broadcasting and video on demand if there is no Brexit deal](#), the UK Government states that 'European Works [...] forms part of both European Convention on Transfrontier Television (ECTT) and the Audiovisual Media Services Directive. European Works classification requires a programme to originate in either an EU country or a non-EU European country which is party to the ECTT. The UK's position as a party to the ECTT will not be affected by the UK's withdrawal from the EU. Further, the EU's 'Notice to Stakeholders' for audiovisual media services has confirmed works originating in the UK will continue to be classed as European Works after exit.'

European Audiovisual Observatory report on Brexit

Section 2.2.3 of the European Audiovisual Observatory's report '[Brexit: The impact on the audiovisual sector](#)' sets out that 'after Brexit, works originated in the UK would still be considered European works since the definition laid down in Article 1(n) AVMSD includes works originating in European third States party to the European Convention on Transfrontier Television of the Council of Europe, to which the UK is a party'.

[European Audiovisual Observatory report mapping European works

In its recent report mapping the [national rules for the promotion of European works in Europe](#), the EAO states that 25 out of the 31 states examined in the report provide a definition of European works in their national law. The definitions are rather harmonised since the AVMS Directive provides for such a definition (as outlined above).

Where can I find out more about other issues related to Brexit for the screen sectors?

The BFI has produced a Brexit Q&A for the screen sectors. It can be found at bfi.org.uk/brexit. In addition, if you have any further questions, you can email brexitadvice@bfi.org.uk.