European Commission: Commission Notice on Brexit and EU rules in the field of copyright

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On 28 March 2018, the European Commission published a Notice to stakeholders on the effect of UK withdrawal from the European Union under Article 50 of the Treaty on European Union, and the consequences in the field of copyright and related rights. The Notice on copyright follows a previous Notice on Brexit and EU rules in the field of audiovisual media services (see IRIS 2018-5/8). The Notice reiterates that unless a ratified withdrawal agreement establishes another date, all EU primary and secondary law will cease to apply to the United Kingdom from 30 March 2019, and the United Kingdom will become a third country. Furthermore, in the absence of any transitional arrangement that may be contained in a possible withdrawal agreement, the EU rules in the field of copyright will no longer apply to the United Kingdom. In view of considerable uncertainties, the purpose of the Notice is to explain the specific consequences in the field of copyright.

At the outset, the Notice states that the United Kingdom and the European Union are contracting parties to the main international copyright treaties, such as the World Intellectual Property Organization Copyright Treaty, the WIPO Performances and Phonograms Treaty, and the Agreement on Trade-Related Aspects of Intellectual Property Rights (the United Kingdom is furthermore a party to the Berne Convention for the Protection of Literary and Artistic Works, whereas the European Union is not). Thus, as of the withdrawal date, the international framework will govern the protection of copyright and related rights; the term of protection of copyright and certain related rights; the obligations concerning technological protection measures and rights management information; and the enforcement of copyright (as one of the intellectual property rights in part 3 of TRIPS), including border measures. The Commission notes that the multilateral international agreements mentioned “do not provide for the same type or level of protection in relation to certain rights and where applicable exceptions or limitations to those rights as that set out today in the EU copyright acquis.”

The Notice then notes a number of specific consequences. First, in relation to broadcasters, as of the withdrawal date, broadcasters in the United Kingdom will no longer benefit from the mechanism provided for by Directive 93/83/EEC when providing cross-border satellite broadcasting of only having to clear rights in the member state where the signal is introduced. Correspondingly, broadcasters in the European Union will no longer be able to benefit from the mechanism

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provided for by the Directive when providing cross-border satellite broadcasting services to customers in the United Kingdom and they will have to secure clearance of the rights of all relevant rightsholders if they wish to broadcast to the United Kingdom. Secondly, Article 30 of Directive 2014/26/EU on the collective management of copyright and related rights and the multi-territorial licensing of rights in musical works for online use in the internal market provides for an obligation on a collective management organisation to represent another collective management organisation for multi-territorial licensing (for the online rights in musical works) in certain cases. As of the withdrawal date, EU collective management organisations will not be subject to the obligation to represent collective management organisations based in the United Kingdom for multi-territorial licensing in accordance with Article 30 of Directive 2014/26/EU and vice versa. Thirdly, as of the withdrawal date, the mechanism of mutual recognition provided for by Directive 2012/28/EU on orphan works will no longer apply between the United Kingdom and the European Union. Consequently, orphan works which have been recognised in the United Kingdom by the withdrawal date will no longer be recognised in the European Union under Directive 2012/28/EU and the same will apply for orphan works recognised in the European Union, as the system of mutual recognition under Directive 2012/28/EU will no longer be available in the United Kingdom. As a consequence, this means that the uses of orphan works from the United Kingdom allowed under the Directive, notably as regards making them available online, will no longer be allowed for cultural institutions in the European Union and vice versa. Finally, the Notice also sets out the consequences for the access to published works for persons who are blind, visually impaired or otherwise print-disabled under Directive (EU) 2017/1564, and notes “in this context it is important to note that the United Kingdoms is currently not a party to the Marrakesh Treaty”.

European Commission, “Notice to stakeholders: withdrawal of the United Kingdom and EU rules in the field of copyright”, 28 March 2018

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