

Title: The copyright country-of-origin principle in satellite broadcasting - The Intellectual Property (Copyright and Related Rights) (Amendment) (EU Exit) Regulations 2018 IA No: BEISIPO018 RPC Reference No: RPC-4293(1)-BEIS Lead department or agency: IPO Other departments or agencies:	Impact Assessment (IA)			
	Date: 17/10/2018			
	Stage: Final			
	Source of intervention: Domestic			
	Type of measure: Secondary legislation			
Contact for enquiries: david.burns@ipo.gov.uk				
Summary: Intervention and Options			RPC Opinion: GREEN	

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB in 2014 prices)	One-In, Three-Out	Business Impact Target Status
N/A	N/A	N/A	Not in scope	Non qualifying provision

What is the problem under consideration? Why is government intervention necessary?

The EU Satellite and Cable Directive introduced the copyright country-of-origin (COO) principle: when a copyright work is broadcast between Member States, copyright permission is needed only for the COO of the broadcast, rather than for each receiving Member State. The UK applies the COO principle to broadcasts from all countries but exceptionally treats certain broadcasts originating outside the EEA but commissioned in an EEA State as originating in the EEA. This exception will require amendment after exit to continue to function properly. Furthermore, under 'No Deal', UK-to-EU broadcasts will not be covered by the EU COO principle and UK broadcasters may face new costs when broadcasting to the EU.

What are the policy objectives and the intended effects?

If the UK leaves the EU without a deal, the chosen policy should:
 Provide continuity and certainty for broadcasts into the UK to support UK consumers' continued access to cross-border satellite broadcasts; and
 Ensure right holders continue to be protected when their works are broadcast to or from the UK.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 0.1: Status quo (current arrangements). Broadcasts of copyright works into the UK from any country are considered to take place in the country-of-origin of the broadcast (COO principle) - if this is outside the UK, no right holder authorisation is needed in the UK, save for a limited exception (or 'safeguard').
 Option 0.2: Do nothing (after the UK withdraws from the EU). The UK continues to apply the COO principle to all broadcasts and the safeguard continues to reference the EEA and will cease to function as intended.
 Option 1: The safeguard in section 6A is amended to replace references to EEA with UK; the UK otherwise continues to apply the COO principle to broadcasts originating in any country.
 Option 1 is preferred as it provides continuity and certainty for broadcasts to the UK and maintains existing protection for right holders.

Will the policy be reviewed? It will not be reviewed. If applicable, set review date: Month/Year				
Does implementation go beyond minimum EU requirements?			N/A	
Are any of these organisations in scope?			Micro Yes	Small Yes
			Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A	Non-traded: N/A

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister: _____ **Chris Skidmore** _____ Date: _____ **12/12/18** _____

Summary: Analysis & Evidence

Policy Option 1

Description: In a no-deal scenario, the safeguard in section 6A is amended to replace references to the EEA with UK; the UK otherwise continues to apply the COO principle to broadcasts originating in any country.

FULL ECONOMIC ASSESSMENT

Price Base Year 2018	PV Base Year 2018	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/a	High: N/a	Best Estimate: N/a

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/a	N/a	N/a
High	N/a	N/a	N/a
Best Estimate	N/a	N/a	N/a

Description and scale of key monetised costs by 'main affected groups'

It has not been possible to monetise the costs due to a lack of available data, but, as this option maintains the status quo as far as possible, the costs to UK broadcasters and UK right holders of this option are expected to be negligible and are limited to minor familiarisation costs which may arise relating to the small change in the law.

Other key non-monetised costs by 'main affected groups'

This option maintains the status quo for broadcasts into the UK and has no impact on UK-to-EEA broadcasts (which instead will be subject to the policies of individual Member States). This may produce small familiarisation costs, which would primarily affect EEA broadcasters who transmit to the UK and the right holders whose works are contained in those broadcasts. There are an estimated 33,000 UK businesses in the film, video, photography etc. sectors, who could fall into the latter category.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/a	N/a	N/a
High	N/a	N/a	N/a
Best Estimate	N/a	N/a	N/a

Description and scale of key monetised benefits by 'main affected groups'

As this option maintains the status quo as far as possible, there are not expected to be any benefits relative to existing arrangements.

Other key non-monetised benefits by 'main affected groups'

This option maintains the status quo for broadcasts into the UK and provides continuity for broadcasters and right holders. In turn, this should support continued UK consumer access to existing cross-border satellite television content. This option also ensures that right holders whose works are broadcast to the UK continue to benefit from the 'safeguard' provided in Section 6A of the Copyright, Designs and Patents Act 1988.

Key assumptions/sensitivities/risks	Discount rate	3.5%
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The impacts on UK broadcasters of the EU COO principle no longer covering broadcasts originating in the UK are not considered as costs for this policy option, as they do not arise out of any domestic UK policy.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: N/a	Benefits: N/a	Net: N/a	N/A

Evidence Base (for summary sheets)

Satellite television broadcasting in the EU is a multi-billion Euro industry. In 2014, of the €86 billion in EU-wide broadcasting revenues, 37% came from paid subscriptions, half of which were for satellite services¹. Within the EU, the UK is the largest market for paid satellite subscription revenues, representing over a third of the total EU revenue and twice as much as the second largest, Italy². Across broadcasting as a whole, the UK television industry was worth £13.8 billion in 2016³.

Although the majority of television channels in the EU are available only in the country in which they are broadcast, a significant minority of channels established in a Member State are broadcast to at least one other Member State⁴. This is particularly relevant for the UK, which is the only net exporter of television channels in the EU (57% of channels established in the UK are unavailable to domestic audiences⁵), largely due to the UK acting as a base for a number of international distributors. It is not known how many channels established in the UK that broadcast to other Member States do so via satellite. The MAVISE database⁶, which lists channels established and available in each EU Member State, specifies over 700 UK-based channels that broadcast primarily to other countries by cable, satellite, IPTV, or other non-terrestrial means; it may be expected that satellite channels make up a significant portion of this number, given that satellite subscription revenues make up half of all EU television subscription revenues⁷.

Prior to the early 1990s, cross-border satellite broadcasting between Member States (MS) was hampered by uncertainty for broadcasters due to disparities in copyright and related rights across the EU. To overcome this, in 1993, the Satellite and Cable Directive⁸ was introduced to better facilitate cross-border satellite broadcasting between MS. The Directive, which has been extended to the EEA as a whole⁹, provides a right for authors to restrict the broadcast of their works and a 'country-of-origin' (COO) principle that underpins this right; according to this principle, permission of a right holder only needs to be obtained by a broadcaster for the Member State in which a broadcast originates – e.g., the country in which the satellite uplink station is located – rather than for every Member State in which the broadcast is received.

Effectiveness and usage of mechanism

The current COO principle provides legal clarity and simplifies the rights-clearance process for cross-border satellite broadcasts. In principle, this allows broadcasters access to wider markets through lower administrative costs and burdens, in-turn providing audiences with a greater range of content. Right holders, however, have criticised the mechanism in a 2015 consultation performed by the European Commission (EC) as part of an evaluation¹⁰ of the Directive, believing that the COO principle has not facilitated rights clearance between Member States because multi-territorial licences are already available and broadcasters have no trouble acquiring these. In the same consultation, certain broadcasters supported this, saying they do not rely on COO because they acquire the rights they need through direct negotiation, the licensing being based on actual or potential audience figures. Furthermore, those right holders and broadcasters claim there is limited consumer demand for cross-border broadcasting.

However, other broadcasters, public authorities, and consumers each asserted in the same consultation that the mechanism has facilitated rights clearance in cross-border broadcasting at least to some extent. The EC evaluation of the Directive came to similar conclusions, stating that the mechanism had

¹ Figures 2.2, 2.6 of Survey and data gathering to support the evaluation of the Satellite and Cable Directive 93/83/EEC and assessment of its possible extension, available online at <https://ec.europa.eu/digital-single-market/en/news/study-satellite-and-cable-directive>.

² Ibid., Figures 2.6, 2.7.

³ https://www.ofcom.org.uk/__data/assets/pdf_file/0016/105442/uk-television-audio-visual.pdf

⁴ Ibid., Table 2.2.

⁵ Ibid., Tables 2.22, 2.23.

⁶ <http://mavise.obs.coe.int/about>

⁷ See ref. 1.

⁸ Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission.

⁹ Point 8, Annex XVII to the EEA Agreement, available online at <http://www.efta.int/media/documents/legal-texts/eea/the-eea-agreement/Annexes%20to%20the%20Agreement/annex17.pdf>

¹⁰ Evaluation of the Council Directive 93/83/EEC on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission, available online at <https://ec.europa.eu/digital-single-market/en/news/evaluation-council-directive-9383eec-coordination-certain-rules-concerning-copyright-and-rights>.

improved consumer access to content from other MS, had reduced transaction costs for licensors and licensees, and that it had not created administrative or compliance-based burdens, either for stakeholders or MS. The effect of the cross-border mechanism therefore appears to be positive for broadcasters and consumers. The EC evaluation is the most substantial analysis that has been carried out on the policy at this stage.

Current mechanism and the effect of exiting the EU

The Directive specifies that, where a copyright work is broadcast between Member States, the act of communicating the work to the public is considered to take place only in the Member State in which the broadcast originates. Therefore, a broadcaster who broadcasts a copyright work from a first member state to a second Member State only needs to obtain the permission of the right holder in the first member state, and not in the second Member State, because no restricted act occurs there. This is the COO principle.

The Directive also introduces a mandatory exception to the COO principle: if a broadcast of a copyright work originates in a non-Member State that does not restrict the broadcast of copyright works or performances, and that broadcast was commissioned by a person in a member state or the satellite uplink station is located in a Member State, the act of communication to the public is considered to occur in that Member State¹¹. This 'safeguard' protects right holders by preventing EEA-based broadcasters circumventing copyright protection in the EEA by commissioning a broadcast from a country with weaker protection.

The Directive does not set rules for broadcasts that originate in non-Member States but do not fall within the scope of the safeguard¹². Member States are free to extend the COO principle to broadcasts originating in non-member states or, alternatively, to set their own restrictions on those broadcasts.

In the UK, broadcasts of copyright works are restricted by section 20 of the Copyright, Designs and Patents Act 1988 (the CDPA). The rules of the Directive are implemented in the UK by sections 6(4) and 6A of the CDPA, as amended by the Copyright and Related Rights Regulations 1996¹³. Section 6(4) provides the COO principle and does not limit this to particular countries; it covers broadcasts originating in the UK, other EEA states, and non-EEA states. If a broadcast of a copyright work originates outside the UK, then, under section 6(4), the restricted act is not taken to occur in the UK and so no right holder permission is required in the UK.

The only qualification to section 6(4) is section 6A, which implements the safeguard of the Directive, so that if a broadcast of a copyright work originates in a non-EEA country that does not provide certain protections for right holders and performers, and the broadcast was commissioned in the EEA or the uplink station is located in the EEA, the act of communication is taken to occur in the relevant EEA state – if this is the UK, then permission of the right holder is required in the UK.

The UK, therefore, currently applies the COO principle broadly: to other EEA states on a reciprocal basis; and to non-EEA states on a unilateral basis, save for a limited exception.

When the UK leaves the EU and EEA, unless the UK and EU agree otherwise, Member States will no longer be required by the Directive to apply the COO principle to broadcasts originating in the UK and may choose not to do so; this could lead to administrative burdens for those in the UK who broadcast to the EEA and the right holders whose works are contained in those broadcasts (e.g. composers and film producers); which, in turn, may reduce EU consumer access to satellite broadcasts from the UK. The UK's implementation of the safeguard to the COO principle will require amendment to ensure that it operates effectively post-exit.

This impact assessment considers the potential policy options concerning the COO principle for when the UK leaves the EU.

Rationale for intervention

The Government is seeking to correct problems in UK legislation that will arise as a result of the UK's withdrawal from the EU. This will ensure the UK's regulatory framework functions on exit day. In line with this general aim, action is necessary if the UK leaves the EU without an agreement on the COO principle

¹¹ Art. 1 (2)(d) of Directive 93/83/EEC.

¹² See Part II, Art. 1(7) of Proposal for a Council Directive on the coordination of certain rules concerning copyright and neighbouring rights applicable to satellite broadcasting and cable retransmission.

¹³ SI 1996/2967

for satellite broadcasting to ensure that our law on copyright clearance for broadcasts continues to function in the intended manner after exit.

Objectives

The selected policy option should:

- Provide continuity and certainty for broadcasts into the UK to support UK consumers' continued access to cross-border satellite broadcasts; and
- Ensure right holders continue to be protected when their works are broadcast to or from the UK.

Description of options considered (including status-quo)

- Option 0.1: Status quo (current arrangements). The UK applies the COO principle to broadcasts from the EEA on a reciprocal basis, and non-EEA countries on a unilateral basis, apart from the limited exception.
- Option 0.2: Do nothing. The COO principle and the associated safeguard will be unamended. The UK will continue to apply the COO principle to broadcasts originating in any other country, but the safeguard will continue to be defined by reference to the EEA, which will result in the safeguard not functioning as intended.
- Option 1: Amend the safeguard in section 6A to substitute references to the EEA with the UK but otherwise continue to apply the COO principle to broadcasts originating in any other country. (This option applies only in the event that the UK leaves the EU without an agreement.)

Costs and benefits of the options considered

The following policy options are considered in the context of the UK leaving the EU and broadcasts originating in the UK no longer being covered by COO principle of the Directive. This may lead to significant changes to the rights clearance process for UK-to-EEA broadcasts because Member States have discretion in how they treat broadcasts originating in non-Member States. Any change to the status of these broadcasts post-exit will depend solely on the domestic policies of individual Member States and does not arise out of any domestic UK policy choice. However, for the sake of completeness, the effect of leaving the EU on UK-to-EEA broadcasts is briefly described in the following.

After the UK leaves the EU, EEA Member States may choose to continue to apply the COO principle to broadcasts from the UK. This may be likely for states that, like the UK, currently unilaterally apply the COO principle to broadcasts from non-Member States. If and where this is the case, UK-based broadcasters would not need to change their right-clearance process and would face no new administration costs. This would, in principle, not lead to any reduction in UK-based content for consumers in those Member States.

Alternatively, Member States may apply the COO principle only to broadcasts originating in other Member States, in which case they may require that a broadcast of a copyright work originating in a non-Member State is explicitly cleared for the Member State in which it is received, regardless of whether permission is already obtained for the country-of-origin of the broadcast. For Member States where this is the case, UK broadcasters will need to explicitly provide for multi-territorial broadcasting in their licensing agreements with right holders. For the broadcasters who already 'build-in' these provisions to their contracts (who stated, in their response to the EC consultation, that they do not rely on the COO principle), this would presumably introduce no new burden. For other broadcasters who currently rely on the COO principle, there may be impacts arising after exit. However, these impacts would depend on policies in individual EEA Member States and on the actions of UK broadcasters and right holders; therefore, they are outside the scope of the SI and are not analysed further in this IA. Any costs that do arise for UK-to-EEA broadcasts do not arise as a result of, nor can be entirely 'fixed' by, domestic UK policy; rather, these costs should be understood as existing alongside or as a background to the policy options considered in this Impact Assessment.

Option 0.1: Status quo (current arrangements)

As discussed in the preceding, the UK currently applies the COO principle for copyright clearance to broadcasts into the UK originating in any country, EEA or non-EEA. That is, when a copyright work is broadcast into the UK, the copyright-restricted act of communicating the work to the public is considered to occur only in the country in which the broadcast originated; if a broadcast originates outside the UK, right holder authorisation is not required by the UK. The exception to this is if a broadcast originates in a

non-EEA country that does not provide a specified level of copyright and performers' rights and that broadcast was commissioned by a person in the EEA, or the uplink station used by the broadcast is located in the EEA; in which case, the broadcast is considered to take place in the relevant EEA state (again, if that state is not the UK, no right holder authorisation is required by the UK).

The existing arrangements result in a simple rights-clearance process for broadcasts into the UK by EEA-based broadcasters (as right holder permission obtained in their home state will cover broadcasts to any other Member State), with the safeguard ensuring that right holders are protected against unauthorised broadcasts of their works into the UK.

Option 0.2: Do nothing.

Under this proposal, no changes will be made to sections 6(4) or 6A of the Copyright, Designs and Patents Act (1988). The UK will continue via section 6(4) to apply the COO principle to broadcasts originating in the UK, EEA, and the rest of the world. As is the case prior to exit, the only exception to this will be the safeguard provided by section 6A, which will also be unchanged and will continue to be defined by reference to the EEA.

For the majority of broadcasts to the UK, the status quo for copyright clearance of broadcasts will be maintained under this policy option. However, without amendment, the safeguard will no longer function properly. This issue is discussed in detail below.

This option will have no effect on UK-to-EEA broadcasts, which will be subject to the policies of individual Member States.

Benefits

Relative to the status quo, this option will not offer any new benefits, but will largely maintain existing arrangements for copyright clearance for broadcasts to the UK that originate outside the UK, providing continuity and certainty to those broadcasters and the right holders whose works are contained in their broadcasts; in turn, this option will support continued UK consumer access to cross-border content.

Costs

Under this option, no change would be made to the safeguard in section 6A, which states that, where a broadcast originates in a non-EEA state that does not provide the specified level of copyright and performers' rights, and the broadcast is commissioned by a person in the EEA or the satellite uplink station is located in the EEA, the broadcast is considered under UK law to take place in the relevant EEA state. Post-exit, this will lead to two issues.

First, because "EEA" will no longer include the UK, this safeguard will no longer apply to broadcasts commissioned by a person in the UK or whose uplink station is located in the UK. This means that a person in the UK could commission a broadcast into the UK of a copyright work from a country with weaker restrictions on broadcasts of copyright works and they would not be required to obtain the right holder's permission for the UK – whereas, under the current arrangements, they would be. This 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. This would be detrimental to right holders, such as composers and film producers. UK broadcasters that do seek the proper copyright permissions would also be at a competitive disadvantage to those who exploit the unamended safeguard, as they would have additional costs (both time and monetary, the latter including licensing fees) in obtaining permission from right holders. The extent of this impact on right holders and UK broadcasters is difficult to assess as it will depend on the licensing costs of copyright works broadcast within the UK – which varies depending on the work and broadcast – the actions of those in the UK, who may or may not choose to exploit the unamended safeguard, and the involvement of UK right holders in each broadcast. However, it is likely that the number of UK right holders, creators, and businesses who could be affected by this option would number in the thousands – although the exact figure is difficult to estimate as the relevant data is not collected in a systematic way and spans a wide range of types of copyright works¹⁴.

Second, consider the (unlikely) scenario in which the EEA ceases in future to restrict broadcasts of copyright works or performances. In this situation, a person in the UK could commission a broadcast of a copyright work or performance from an EEA state to the UK and would not be required in the EEA state

¹⁴ NESTA estimates that in 2015-16 there were approximately 282,500 businesses in the Creative Industries in the UK. Of this around 33,000 (11%) related to Film, TV, video, radio and photography in 2015-16. s.6A would not be relevant to all of these businesses and so this figure likely provides an upper bound on the number of impacted businesses.

or in the UK to obtain the right holder's permission – i.e., the safeguard would have no effect. In practice, it is considered extremely unlikely that any EEA state will weaken or remove their restrictions on broadcasts of copyright works and performances. However, were this to occur, it could significantly negatively affect right holders and broadcasters (though, as above, the impact would be difficult to quantify).

Taking no action (i.e., introducing no legislation) after the UK leaves the EU will, therefore, undermine the existing restrictions on broadcasts of copyright works. The costs to UK right holders and, to some extent, UK broadcasters could be significant and could affect a large number of UK businesses. The cost would also be disproportionate to the minor amendment to section 6A necessary to correct this deficiency, which constitutes option 1. Therefore, option 0.2 is discounted.

Option 1: Amend the safeguard in section 6A to substitute references to the EEA with the UK but otherwise continue to apply the COO principle to broadcasts originating in any other country.

This policy option consists of amending section 6A of the CDPA to substitute references to the EEA with references to the UK. The COO principle in general (i.e. section 6(4)) would be unamended.

Under this option, the UK would continue to unilaterally apply the COO principle to broadcasts originating in the UK, the EEA, and any other country, save for the exception in section 6A (which implements the safeguard of the Directive), which would be amended to state that where a broadcast of a copyright work originates in a country that does not provide the specified level of protection and that broadcast is commissioned by a person in the UK, or the satellite uplink station is located in the UK, the broadcast is considered to take place in the UK – such that right holder permission is needed for the UK.

This option will have no effect on UK-to-EEA broadcasts, which will be subject to the policies of individual Member States.

Benefits

This option will not introduce any benefit over the status quo because its effect is to maintain the existing arrangements for broadcasts into the UK from the UK, EEA, and outside the EEA. Broadcasters that broadcast to the UK will face no new administrative burdens in clearing rights, which should in turn support continued UK consumer access to cross-border satellite television content.

This policy option is also of significant benefit in comparison to taking no action (i.e., option 0.2), as it will ensure that the safeguard of section 6A continues to protect right holders whose works or performances are broadcast to the UK. The costs identified under option 0.2 will be resolved by this change, which will ensure that the commissioning of broadcasts to the UK from countries with weaker copyright restrictions by persons in the UK are covered by the safeguard and that the safeguard remains effective even if the EEA ceases to restrict the broadcast of copyright works in future. This would benefit UK businesses and right holders.

Costs

This policy option is not believed to give rise to any significant costs or administrative burdens for broadcasters or right holders relative to the status quo, although there would be minor familiarisation costs. Because the legislative change necessary to implement this option is very minor, familiarisation costs should be limited. What is more, this legislation is primarily relevant to broadcasters operating outside the UK and the right holders whose work they broadcast, which further limits potential familiarisation costs of this policy to UK businesses and other UK stakeholders. To mitigate familiarisation costs, the government plans to publish – prior to legislation being made – a series of technical notices explaining the impacts of no deal, covering, among other things, the copyright COO principle; the European Commission has published similar notices explaining how no deal will affect UK (and EU) stakeholders. The Intellectual Property Office has also held a series of roundtables with industry (including broadcasters), in which the effects of withdrawing from the EU on copyright legislation, and the proposed changes thereto, were explained.

This option provides the greatest continuity and legal certainty to broadcasters, right holders, and consumers, including maintaining existing protections for right holders whose works are broadcast to the UK. Option 1 is a preferred policy option.

Risks and assumptions

The assessments in this Impact Assessment are made on the premise that the UK and EU do not choose to mutually extend the COO to broadcasts from the other party on a reciprocal basis after the UK leaves the EU.

Wider impacts

As the preferred policy option maintains existing arrangements, its wider impacts on UK consumers of foreign broadcasts and right holders (e.g. the music and film industries and others involved in the making of television programming) should be minimal. As discussed, there may be impacts on UK broadcasters and the right holders of works contained in their broadcasts to the EU, but these do not arise as a result of domestic UK policy.

The impacts on all stakeholders have been assessed under the costs and benefits of each option. The Government is of the view that no other stakeholders will be impacted.

Small and Micro Business Impact

A large proportion of the creative industries are SMEs with 94% of businesses in the creative sector being micro businesses¹⁵. SMEs have been included in the assessment of costs and benefits of each option. Option 0.2 (“do nothing”) would create a disproportionate impact on SME right holders in comparison to larger businesses, in familiarisation costs in understanding the new effect of the law and as unauthorised use of their works in broadcasts may be of proportionately greater impact than for larger, more diverse businesses.

Option 1 places the least burden on SMEs as it retains the status quo as far as possible, although familiarisation costs will disproportionately burden SMEs. This will be mitigated by communications to businesses and the public from the government and the European Commission. The government plans to publish – prior to legislation being made – a series of technical notices explaining the impacts of no deal, covering, among other things, the copyright COO principle; the European Commission has published similar notices explaining how no deal will affect UK (and EU) stakeholders. The Intellectual Property Office has also held a series of roundtables with industry (including broadcasters) in which the effects of withdrawing from the EU on copyright legislation, and the proposed changes thereto, were explained.

Equalities Impact

We have considered the impacts of the policy on the groups with protected characteristics as defined within the Equalities Act 2010 and do not consider that there would be disproportionate impact on them. This policy is not expected to incur any costs on these groups directly.

Summary and preferred option

The preferred policy option for cross-border broadcasting after the UK leaves the EU, and in the absence of a negotiated agreement on the COO principle, is to continue to apply the COO principle to broadcasts from all countries on a unilateral basis (as in the status quo), save for the limited exception, which will be amended to ensure it functions appropriately (i.e., option 1). This will provide continuity and certainty for broadcasters, right holders, and consumers, including ensuring that right holders continue to benefit from the existing exception to the COO principle.

¹⁵ <https://www.nesta.org.uk/report/creative-nation/>