

UK film and TV following IP completion day

TMT analysis: Sean Kia, associate at Lee & Thompson in the Film & Television Group, discusses the impact Brexit will have on the UK film and TV industry. He notes that while there are challenges arising from Brexit, most film and TV makers are optimistic about the future more generally for film and TV.

This analysis was first published on Lexis®PSL on 26 November 2020 and can be found [here](#) (subscription required).

Following IP completion day how will the UK film and TV industry be impacted in the short, medium and long term?

Visas and immigration

Film and TV productions often require the movement of temporary labour to and from the UK. Being able to do so freely benefits production companies which work with tight budgets and are now taking on greater risks after the coronavirus (COVID-19) crisis. On average, the shooting period for a film takes six to eight weeks with some, on rare occasions, taking longer than three months. Following IP completion day, the rules with regard to visas on entering the UK or travelling to EU countries should, on the whole, not have a substantial impact in practice. The UK government announced recently that European Economic Area (EEA) nationals will be classified as non-visa nationals and thus visas will not be required for 'short stays'. If we assume that 'short stays' is applied in the same way as that given to other non-visa nationals (eg citizens in the USA and Canada), then EEA nationals will not require a visa for visits shorter than six months. For travelling from the UK to EU countries (plus Iceland, Liechtenstein, Norway and Switzerland), a visa will not be required for UK nationals if the length of the stay is less than 90 days. As such, for the vast majority of film and TV productions, there will not be a requirement to obtain visas.

UK and EU tax reliefs and credits

Film and TV tax credits in the UK will remain unchanged. Production companies will be able to apply for the relevant UK tax credit or EU state tax credit through the usual means and by satisfying the applicable country's cultural test. At present, UK personnel can qualify for other EU member states' cultural test. Unless changes are made to the legislation in those states, UK productions will lose this benefit. For other EU countries, such as France, there will be no change as access to the French tax credit is governed by the UK-France co-production treaty. The cultural test in the UK will continue to recognise EEA content and personnel.

Co-Productions

Film and TV co-productions will not be affected. All coproduction agreements including the bilateral co-production treaties and the European Convention on Cinematographic Co-Production (which the UK government recently signed) will remain in place following IP completion day.

European works content quotas

Under [Directive \(EU\) 2018/1808](#), the European Union Audiovisual Media Services (AVMS) Directive, Member States are required to promote European works, both in linear and in on-demand audiovisual media services. Following IP completion day, the AVMS Directive will no longer apply to the UK. However, this will not affect European works. [Article 1\(n\)](#) of

Directive (EU) 2018/1808 states that a work can qualify if the work originates in a European third state party to the European Convention on Transfrontier Television (ECTT) of the Council of Europe. The UK is party to the ECTT and will continue to be a party to it following IP completion day. As such, the rules with regard to European works will still apply to the UK.

Creative Europe Funding

The UK government announced in its EU negotiation mandate that it would not be seeking to participate in the next Creative Europe programme, which will distribute €1.46bn to cultural projects. Film and TV productions in the UK will therefore no longer benefit from Creative Europe Funding from January 2021 onwards. This will not, however, impact any UK projects that have already secured funding, even where their funded activity is set to take place after December 2020. It is hoped that the Global Film Fund (which is being set up by the BFI) will act as a replacement to Creative Europe and fill that gap.

Broadcasting to EU Countries

As mentioned above, the AVMS Directive will no longer apply to the UK following IP completion day but the ECTT will continue in force. The effect of this will mean that if a broadcaster's service is currently available in the EU, then it may need two types of licences prior to IP completion day: (i) an Ofcom licence for services receivable in the UK and in other ECTT countries (this includes the 20 EU countries that have signed and ratified the ECTT); and (ii) licences covering services receivable in EU countries that have not signed up to the ECTT (Belgium, Denmark, Greece, Ireland, Luxembourg, The Netherlands and Sweden). For video on-demand services, the ECTT does not provide for freedom of reception. Local law advice is therefore recommended as broadcasters will need to comply with the AVMS Directive rules.

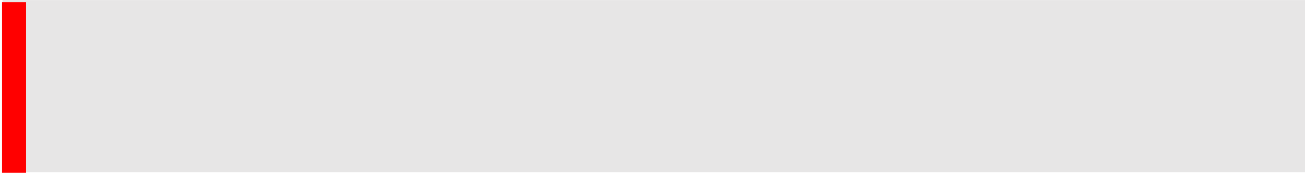
Intellectual property

The UK and other EU countries are parties to the main international treaties on copyright. For the majority of copyright works, the UK's membership of the EU is therefore immaterial. Where cross-border copyright arrangements exist which are unique to the EU, the status of such arrangements will depend on the future relationship between the UK and EU. By way of example, it is unclear whether the portability of online content services will continue, in which EU citizens can use their online subscriptions to video on-demand services (Netflix and Amazon) and online TV services (Sky's Now TV and Voyo) when travelling anywhere in the EU.

What is the mood among UK film and TV makers and what will be the challenges and opportunities for them?

The views among film and TV makers with regard to Brexit is mixed. Some think the effect will be minimal while others are concerned by the lack of certainty. Overall, though, the vast majority are optimistic about the future more generally for film and TV. While there will be notable challenges ahead (including withdrawal from Creative Europe), the demand for content within a coronavirus-induced climate has never been greater. The film and TV industry as a whole is working incredibly hard to meet those demands while simultaneously balancing coronavirus related risks. There may be winners and losers in the industry but the parties which neatly capture the demand of the country will invariably flourish, Brexit or no Brexit.

Interviewed by Pietra Asprou.



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