

Work in the European Union has been a vital part of the success of the UK Creative Industries and was facilitated by frictionless trade, the free movement of creative people and goods and access to European funding. While many creative sub-sectors trade in physical goods, the Creative Industries are a major trader of services and Intellectual Property (IP) – relying on the movement of its creative workforce to facilitate the exchange of ideas and services. However, under the terms of the UK’s Withdrawal Agreement, those freedoms were terminated at the end of the transition period (31 December 2020).

Due to a lack of specific provision for the Creative Industries in the Trade and Cooperation Agreement (TCA) between the EU and the UK, creative practitioners and their teams must now comply with individual Member State regulations. Navigating the different regulations, requirements and charges across the 27 EU Member States can be expensive, complex and time consuming. The renewal of the TCA in 2025 is an opportune moment for government to address the unresolved issues outlined in this paper.

While the UK’s departure from the EU offers greater national regulatory flexibility, these benefits are yet to outweigh the financial, administrative and legal burdens for the sector. Similarly EU funds for culture have not been replaced like-for-like. The Creative Industries Policy and Evidence Centre highlights that “with the exception of some specific services (delivery, telecommunications, maritime transport, and, partly, legal services), the TCA raises trade costs and barriers for all other services, including creative services.”¹

Based on extensive consultation with our members, including trade bodies and unions from across the UK’s Creative Industries, this paper outlines a series of recommendations that will unlock the sector’s post-Brexit potential and ensure that the UK is not limiting opportunity to those with access to money and resources.

This paper covers:

1. Movement of People
2. Movement of Goods
3. Intellectual Property

About Creative UK

Creative UK supports, invests in, connects and champions the Creative Industries and their ability to catalyse social and economic change. We fuel creativity by investing in people and businesses, empowering innovators and entrepreneurs by connecting them with each other, and with finance, business development and skills training, to enable them to reach their full potential – without compromising their ideas. wearecreative.uk

This briefing was produced by Creative UK, in partnership with members and bodies representing the breadth of the Creative Industries across the UK.

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¹ <https://pec.ac.uk/blog/the-uk-eu-trade-and-cooperation-agreement-whats-in-it-for-the-creative-industries-and-the-steps-ahead-1>

SUMMARY OF RECOMMENDATIONS

Movement of People

- Introduce a Creative Support Fund that provides financial assistance to those unable to absorb additional costs and talent looking to enter new markets.
- Improved guidance must be provided to UK creative professionals looking to travel within, and trade with, the EU - to ensure that regulatory and customs requirements are understood.
- Provide greater transparency around conversations, and prioritise negotiations, with Member States that do not currently offer work permit or visa exemptions.
- Undertake urgent negotiation with Member States that do not currently offer visa or work permit exemptions and on improvements to existing exemptions. A Visa Waiver Agreement provides a simplified and systemic solution.
- Reform existing visas to allow creative workers to undertake multiple engagements with multiple organisations on a temporary basis.
- The Home Office and HM Revenue and Customs must improve wait times for visa applications and financial information, to ensure creative workers can continue to operate effectively.
- High Potential Individual visa eligibility should be reviewed to reflect the specialist nature of Creative Industries education and training.
- Specialist roles and trades that are in high demand in the Creative Industries should be considered for addition to the Shortage Occupation List, which should be regularly revisited.

Movement of Goods

- Efforts must be increased to inform border officers of new processes and procedures, including the provision of thorough, updated guidance.
- Introduce a cultural waiver from road haulage limits, covering both 'hire and reward' and 'operating on own account.'
- Introduce a UK-EU Carnet exemption for the Creative Industries, to reduce the resource burden on creative professionals moving goods without sale. Consider options to digitise Carnets.
- Eurostar must become a designated CITES port to ensure goods, such as musical instruments, can be transported freely and affordably. Expansion of CITES ports remains a priority.

Intellectual Property

- Future Trade Agreements must enshrine, protect and/or improve the UK's robust Intellectual Property (IP) framework. The sector must be consulted as part of negotiations.

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MOVEMENT OF PEOPLE

Outbound movement: Visas and work permits

As part of the Withdrawal Agreement, the UK and EU agreed on reciprocal visa-free travel – up to 90 days in any 180-day period across *all* Member States – within the Schengen area for the purposes of tourism, visits to family and friends, business meetings, cultural or sports events, or for short-term studies or training. However, both parties failed to reach agreement on a visa waiver for short-term creative work in the EU.

UK creatives, and their teams, require visas for stays of longer than 90 days in a 180-day period *and* additional work permits for certain EU Member States. Creative professionals must now navigate the specific requirements of individual Member States in order to undertake paid work in Europe – a particular logistical challenge for a sector characterised by micro-businesses and a freelance workforce.

The full impact of Brexit on the Creative Industries has been masked by the unprecedented restrictions imposed during the COVID-19 pandemic. Prior to the pandemic, 70% musicians travelled abroad to work, and 40% visual artists travelled to Europe in the year up to July 2017. It is vital that the success of the creative industries, which relies heavily on this ability to travel, is not diminished as a result of the UK’s changed relationship with the EU.

While the sector is beginning to emerge from post-pandemic restrictions, the changes to touring and trade with the EU are yet to be fully tested and understood. Until such a time as there is a systemic solution that addresses the needs of the Creative Industries, government should provide a creative support fund that offers financial assistance to those touring and operating in the EU, emerging talent looking to enter new markets and those sole traders, SMEs and micro-businesses unable to absorb additional costs.

Short-Term Business Visitor provisions: A missed opportunity

Under the TCA, the UK and EU agreed arrangements that facilitate the short-term business travel and temporary placements of high-skilled employees and independent professionals. The relevant commitments are set out in Chapter four of Title II ‘Services and Investment’², and the provisions are referred to as Mode 4 services³.

Chapter four sets out conditions for the mobility of five groups of business travellers, including Independent Professionals and Short-Term Business Visitors (STBVs). STBVs can stay within a Member

² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948119/EU-UK_Trade_and_Cooperation_Agreement_24.12.2020.pdf

³ <https://researchbriefings.files.parliament.uk/documents/CBP-9130/CBP-9130.pdf>

State for up to 90 days in any six-month period, to carry out certain, “permitted” activities, as stipulated in ANNEX SERVIN-3⁴. These permitted engagements do not include provision for the Creative Industries.

If work carried out by creative professionals and their support staff had been captured in the list of permitted business activities, it would have allowed the Creative Industries to deliver services in the EU more easily, without the need for work permits. However, the World Trade Organization has stated that Mode 4 provision “does not concern persons seeking access to the employment market in the host member.”⁵ This would suggest that the renegotiation of the STBV list is not an appropriate solution for the temporary movement of UK creative workers in the EU.

Work permit negotiations: The need for transparency

Work permit exemptions are critical to the success of the UK Creative Industries. It is vital that there is greater transparency around conversations with individual Member States on exemptions and increased urgency around bilateral negotiations.

Currently, where exemptions do not exist, creative practitioners and their teams encounter significant financial and administrative burdens. These may be prohibitive for many in the Creative Industries, due to resource constraints (particularly in smaller and early-stage businesses and for individual freelancers and sole traders).

Visa Waiver Agreements: A potential systemic solution

It is important to remember that work permits and visas serve different purposes, and different issues arise for both. Individual Member States hold sovereign power over work permits. However, Visa Waiver Agreements (VWAs) do exist between the EU and third countries⁶. A VWA typically allows visa-free, short-term visits on a reciprocal basis.

Organisations such as the Incorporated Society of Musicians (ISM) argue that a bespoke visa waiver agreement between the EU and the UK for the Creative Industries:

- Would not require the TCA to be renegotiated.
- Would allow government to retain control of its borders: VWAs can use precise and restrictive language, providing exemptions for only a limited number of creative professionals, such as ‘artists performing on an ad-hoc basis’.
- The term ‘ad-hoc’ could be interpreted to cover creative practitioners carrying out specific engagements such as short, temporary work or a series of performances. In practice, it may be similar to the Permitted Paid Engagement (PPE) route operated by the UK.⁷

The VWA represents a uniform, systemic solution to the current challenges faced by creative practitioners – namely that they must navigate the regimes of all 27 Member States individually, incurring significant resource burdens that disproportionately affect early career individuals and early-stage businesses. And

⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948119/EU-UK_Trade_and_Cooperation_Agreement_24.12.2020.pdf

⁵ https://www.wto.org/english/tratop_e/serv_e/mouvement_persons_e/mouvement_persons_e.htm

⁶ <https://www.ism.org/images/files/ISM-briefing-a-bespoke-visa-waiver-agreement-for-the-creative-and-cultural-sector.pdf>

⁷ <https://www.ism.org/images/files/ISM-briefing-a-bespoke-visa-waiver-agreement-for-the-creative-and-cultural-sector.pdf>

while a VWA would only address the issues of visas, and not that of work permits, this reduction in administration would provide the Creative Industries with a greater degree of certainty.

On 30th September 2021, the Cabinet Office confirmed to the ISM that the proposed VWA would not require the TCA to be renegotiated. It was suggested that the reluctance to pursue a VWA is down to political, rather than legal, factors.

A VWA could maximise the potential of the UK Creative Industries in one of their largest markets. However, for it to be successful, arrangements must include not only creative practitioners, but their support teams. While Creative UK welcomes efforts made by organisations such as the four Arts Councils, which are working on pilot programmes to improve artist mobility and collaboration, a systemic solution would ensure the UK Creative Industries remain world leading.

Visa/work permit free routes for short-term work

DCMS has engaged with EU Member States regarding visa and/or work permit free routes for creative professionals undertaking short-term work (namely musicians, performers and their support staff)⁸. As of July 2022, routes are in place in 24 out of 27 member states⁹. Arrangements have not yet been reached with Portugal, Malta and Cyprus.

However, in reality, many of these routes offer much less than 90 days access in a 180-day period. For example, the arrangement with Sweden provides work permit exemption for 14 days within a 12-month period. In Austria, there is no visa exemption for 'independent work' and work permit exemptions apply for up to four weeks within an overall project. Some creative workers who operate in the EU for sustained periods, such as opera singers¹⁰, are unable to make use of these arrangements.

While bespoke exemptions do relieve the sector of some of its burdens, agreements may not satisfy the needs of many projects and remain complex to navigate. For instance, the recently negotiated exemption for audiovisual professionals working in Spain requires workers to prove their exemption, such as via a Foreigner Identity Number (NIE) or social security cover certificate.¹¹ And in France, musicians must be employed by a registered venue and may be required to register in the host state. Some of the agreed exemptions, as is the case with Greece, may be reviewed and potentially discontinued.

Government negotiations must not focus solely on securing visa and work permit free routes in remaining Member States, but also on improving arrangements in those countries whose limits fall below the 90 in 180 days permissible under the TCA. A standardisation of arrangements across the EU would increase flexibility and reduce confusion for the sector.

The management of the 90 in 180 days Schengen visa allowance is problematic for creative professionals working across the EU. Companies plan tours on the basis that they know when their 90-day limit will be

⁸ <https://www.gov.uk/government/news/visa-free-short-term-touring-allowed-in-20-member-states>

⁹ Since the [DCMS announcement on visa-free short-term touring in October 2021](#) for 20 Member States, similar routes have been confirmed with Spain and Greece. Croatia and Bulgaria are also included in the total of 24 routes for creative professionals. Croatia offers a Work Registration Certificate route for up to 30 or 90 days, depending on the profession; and in Bulgaria, [a work permit route is already available for posted workers](#) (where the eligibility criteria is met).

¹⁰ <https://www.ukmusic.org/news/let-the-music-move-opera-singer-jennifer-johnston-on-the-challenges-she-now-faces-working-in-europe/>

¹¹ <https://www.gov.uk/guidance/travel-to-spain-for-work>

reached, and a separate visa/work permit needed. However, many have not been allowed to apply for visas in advance, before the 90-day limit has been used. A solution must be found to enable tour arrangements to be made in advance in a way that can enable Schengen visa allowances to work alongside other visa/work permit arrangements. Anecdotally, Creative UK has heard examples of performers and crew being told not to holiday in the EU, so as not to 'use up' time from the 90 in 180 days Schengen visa allowance, which highlights the complexity of managing these allowances across EU Member States.

The need for clear guidance

Creative UK welcomes steps being taken to negotiate new paths into the EU, such as the recent announcement around visa free travel in Greece for touring performers¹². However, it is important to remember that concessions such as these do not exist for many Creative Industries sub-sectors.

The 'patchwork' of different arrangements is impeding creative workers when they travel to and within the EU, and entry to a country may still be at the discretion of border officials. Anecdotally, we have heard from performers that border officials are applying the rules differently in the different regions of Germany, even though a waiver is in place nationally. Similarly, Creative UK is hearing from members that creative workers continue to be confused by the complex and varied rules for visas and work permits. It is therefore crucial that the government is clear in its external communications - to ensure that variations between regimes are clearly demarcated and understood. This is due, in part, to the risk that creative practitioners will act based on government communications, without seeking costly legal advice.

Concerns have been raised regarding the ability of UK creative workers to take-up employment in the EU at short notice, because of the time taken to process visas, work permits and other paperwork. The ISM is concerned that UK performers are being overlooked, in place of EU talent, leading to lost opportunities and lost revenue. We have also heard anecdotal concerns that performers and support staff may move to the EU to circumnavigate the issues, which would drain the UK's creative workforce and economy.

Electronic travel authorisation in the UK and EU

From 2023, the European Travel Information and Authorisation System (ETIAS)¹³ will be introduced for visitors from countries who do not need a visa to enter the Schengen area. Security checks will be undertaken for all applicants.

The UK is implementing its own Electronic Travel Authorisation (ETA) system by 2025, digitising its borders for visa-free visitors¹⁴. All foreign travellers will need permission to enter or travel within the UK.

These processes will create additional administration for creative workers able to travel under existing visa/work permit exemptions. Given the frequent flow of creative talent between the UK and EU, the Home Office must ensure the sector is consulted and briefed on proposals in a timely way.

Supporting the export of UK talent

A number of programmes currently exist to support the export of creative talent and goods, including the UK Tradeshow Programme¹⁵. However, some sector-specific schemes, such as the Music Export Growth

¹² <https://completemusicupdate.com/article/uk-artists-will-no-longer-need-a-visa-when-touring-in-greece/>

¹³ <https://www.schengenvisa.info.com/etias/>

¹⁴ <https://www.etauk.uk/>

¹⁵ <https://www.gov.uk/guidance/uk-tradeshow-programme#full-publication-update-history>

Scheme¹⁶ and the International Showcase Fund¹⁷ are hampered by short-term funding arrangements that inhibit forward planning. An improved funding arrangement would provide greater security and allow the programmes to support export growth over time.

Inbound movement: An unequal playing field

The UK government treats musicians, actors, artists and other creative workers travelling to the UK from the EU as 'non-visa nationals'. This means there is an unequal playing field between outbound UK nationals and their EU counterparts. It is easier for EU nationals to travel to the UK to undertake creative work, than it is in reverse. This disadvantages UK creatives and has a knock-on effect for the UK economy, international competitiveness and soft power.

However, there remain issues for incoming EU nationals utilising specific visa routes, particularly where creative workers and their teams are using the Temporary Worker route (formerly known as Tier 5). Under this route, creative workers must:

- be sponsored by an employer for the duration of their stay
- have no gaps in work of a period longer than two weeks
- not undertake multiple engagements with different employers under the same visa.

This raises challenges given the project-based nature of creative work (e.g. where auditions or castings must take place between periods of work - which often require longer than two weeks) and also prevents creative workers from undertaking multiple engagements. Similarly, costs can be a prohibitive factor. In addition to the cost of the visa fee itself, there is a substantial health surcharge (currently £624 per year) to be paid¹⁸.

A gap has been identified in the visa system for inbound creative professionals undertaking regular freelance engagements in the UK. The Skilled Worker visa is only relevant for creatives seeking permanent employment and the Permitted Paid Engagement visa presumes a single, short-term undertaking (the Home Office expressly states that this is not appropriate for frequent or successive visits). This is proving challenging in certain sub-sectors such as orchestras, where there is a dependence on an international freelance pool, including musicians with specialist skills. These visas must be reformed to enable creative workers to undertake multiple engagements with multiple organisations on a temporary basis.

While other visa options do exist for creative talent, such as High Potential Individual¹⁹ and the Global Talent²⁰ visas, these are not a panacea for the Creative Industries. The High Potential Individual visa takes a very prescriptive, academic view of talent and does not recognise that many high potential individuals study through private or specialist institutions, such as film schools. A solution would be to create a list of specialist higher education institutions for the Creative Industries that reflects the specific needs of the sector. Similarly, the Global Talent visa is only suitable for those at the very top of their creative careers – those who have won the highest industry accolades or who can be endorsed by a sector body as a 'leader in the field'. For example, in fashion, only designers are eligible for the Global Talent visa. A broader definition would enable other talent, such as fashion photographers, stylists and art directors, to make use

¹⁶ <https://www.bpi.co.uk/news-analysis/music-export-growth-scheme/>

¹⁷ <https://prsfoundation.com/funding-support/funding-music-creators/international/international-showcase-fund/>

¹⁸ <https://www.gov.uk/creative-worker-visa>

¹⁹ <https://www.gov.uk/high-potential-individual-visa>

²⁰ <https://www.gov.uk/global-talent>

of this visa. And while the visa will satisfy the needs of well-established creative talent, those in the early stages of the career, but with significant potential, will struggle to meet eligibility criteria.

Anecdotal feedback suggests that, for international creative workers seeking a visa, significant delays in processing UK applications, and the Home Office policy of holding passports while an application is processed, have put some EU touring work in jeopardy – with creatives unable to travel to other countries while awaiting a visa decision. Home Office officials must look to reduce delays wherever possible and bring wait times back in line with declared processing times²¹. We are also hearing of delays in HM Revenue and Customs that are affecting the processing of A1 Certificates (clarifying social security contributions) and Foreign Entertainer tax.

Expanding the shortage occupation list

Several factors have led to workforce shortages in the Creative Industries, including increased demand as a result of a post-pandemic upturn, a decreased supply of international workers and demand created by the onshoring of production and shortened supply chains. As a result, it remains essential to attract international creative workers to the UK to help meet this need. And while developing homegrown talent is part of the solution, some sub-sectors, such as the computer games industry, have urgent shortages in mid to senior level roles that cannot currently be met by new entrants. Recruiting skilled staff from overseas is the quickest way to plug those gaps, however recruitment from within the EU is now costly and administratively burdensome.

Following the UK's departure from the EU there has been an increased focus on border controls, with a greater onus upon attracting skilled workers. Requirements around skills and salary can be prohibitive in attracting the best talent to the UK Creative Industries. For instance, in the fashion and textile industry, specialist skills may not align to qualifications and low pay rates mean that many specialist migrant workers do not qualify to work in the UK Creative Industries. Similarly, the Barbican has voiced concerns regarding the challenges of securing visa sponsorship for talented early-career visual artists.²²

One solution would be to add additional specialist skills and trades, such as pattern cutters, to the Shortage Occupation List. The list must be revisited regularly to ensure it is future-proofed for roles that may evolve or have not yet been created.

Creative UK supports a movement away from criteria based purely on qualifications and salary, instead focusing on where skills shortages exist, and need is unmet. There is a need for greater flexibility that can take account of demand for highly specialist skills and encourage the best creative talent to UK shores.

Border force improvements

Anecdotally, Creative UK hears that there is confusion among border officers about the requirements and processes for inbound creatives attending the UK for temporary work - such as requirements to activate Certificates of Sponsorship and to stamp passports. This has led to discrepancies in the treatment of different individuals and has exposed UK sponsors to legal risk.

²¹ <https://www.gov.uk/creative-worker-visa>

²² https://cvan.art/wp-content/uploads/2022/06/21_06_22-International-Connections.pdf, p.16

Efforts to inform border officers of new processes and procedures must be improved and clear guidance issued. It would be helpful for this guidance to be shared with the sector, to carry while travelling as a further means of security and reassurance.

MOVEMENT OF GOODS

It is not just the movement of people that poses a challenge to the Creative Industries. Limitations on the movement of goods - such as through cabotage, Carnets and CITES - also negatively impact creative practitioners' ability to provide services across the EU.

While, under the TCA, the UK and EU agreed to zero tariff and zero quota trade on goods²³, customs declarations must now be made for UK-EU imports and exports. The number of regulatory processes has significantly increased, which, in turn, increases the resource burden and legal risk on creative organisations looking to trade within the EU.

Cabotage: A cultural waiver for 'hire and reward' and 'operating on own account'

UK creatives seeking to tour, or undertake multiple engagements across the EU, now face increased challenges. Under cabotage rules, UK hauliers operating within the EU are only permitted to make three internal stops before they must return to the UK. This is not workable for many UK touring companies and has resulted in some companies engaging EU haulage operators – at significant damage to the UK haulage industry.

Hiring EU hauliers comes at significant cost and is likely to price smaller UK creative businesses and freelancers out of the market. Before the UK's departure from the EU, many creative organisations were able to use their own specialist vehicles without restriction. This exemption was not included in the TCA and now varying rules apply to the use of 'own account' vehicles.

In September 2021, the Department for Transport clarified that splitter vans were not subject to the TCA and their use is therefore subject to Member State law, as was the case before Brexit.²⁴ This is welcome news for specific parts of the Creative Industries, as vans carrying both equipment and a maximum of nine people can move more freely around the EU.

In May 2022, the government announced further changes to rules for specialist hauliers serving music, sport and cultural events. From late summer 2022, hauliers with a base in both the UK and the EU "will be able to transfer their vehicle between operator licences without the need to change vehicles, have their journeys limited or pay Vehicle Excise Duty in Great Britain".²⁵ Creative UK welcomes dual registration and recognises that this will be a positive step for many of its members who work with established hauliers. However, this is only a partial solution and is unlikely to meet the needs of small and medium-sized creative businesses and those operating their own vehicles. There is a risk that dual registration may encourage UK-based specialist hauliers to move their operations to the EU, which, again, would be detrimental to the UK economy.

Members of the Association of British Orchestras estimate that for those orchestras who operate on 'own account', factoring in cabotage limits under the TCA can cost up to an additional £16,000 a day over the

²³ <https://www.cbi.org.uk/global-trade-hub/exporting-goods-from-the-uk/>

²⁴ <https://musiciansunion.org.uk/news/mu-welcomes-uk-government-announcement-that-splitter-vans%E2%80%9D-can-be-used-for-european-tours>

²⁵ <https://www.gov.uk/government/news/major-boost-for-live-music-and-touring-industry-specialist-hauliers-to-move-more-freely-between-countries>

course of a European multi-country tour, based on additional accommodation, travel and musician costs incurred by having to allow for gaps to allow the vehicle to return to the UK and back²⁶. The government must engage with sector bodies to ensure that revised cabotage rules do not cut the legs from under vital parts of the creative ecosystem. The Association of British Orchestras, alongside the wider UK live events industry, has developed detailed proposals for a creative and cultural waiver from the cabotage limits imposed by the TCA for 'hire and reward' and 'operating on own account.'

Significant increases in haulage and other shipping costs have had a profound effect on the Creative Industries, especially on smaller creative businesses and professionals, where the ability to absorb additional costs is limited. For visual artist Paul Meheke, rather than incur expensive shipping costs, a partner gallery suggested he travel to France and produce his work there²⁷. And a theatre company lost a recent booking in the EU as a result of increased freight costs. This demonstrates the unintended consequences for the UK economy of costly shipping and import/export costs, which are exacerbated by an increase in associated administration.

ATA Carnets

Required for goods entering and exiting international territories without sale, Temporary Admission Carnets are currently issued at a cost of £360 + security deposit (at 30-40% goods value). They are valid for up to 12 months and can be used multiple times throughout multiple countries during the period of validity.

While, in theory, the system seems flexible, it is not straightforward in practice for the Creative Industries. The Carnet requires the shipment to be exactly the same for each use, which is uncommon. Carnets must be sourced in advance and stamped by border officials upon arrival in the EU and on return to the UK, which can be time-consuming. We are aware of issues with the stamping of Carnets in destinations where border officials have not been present, including the Eurostar. For this system to work effectively, it is essential that designated ports in the UK and EU are resourced and functioning effectively. If this cannot be assured, the government may wish to consider how to remove the necessity for validation.

Creative UK welcomes the Directorate General Taxation and Customs Union's (DG TAXUD) confirmation that portable musical instruments carried by travellers can be declared orally for temporary admissions²⁸ and will not require a Carnet. However, the practical application of this is still to be fully tested. Creative UK has heard of instances where musicians carrying instruments have had them seized, putting performances in jeopardy, and where musicians with Carnets or CITES were expected to purchase freight tickets (instead of passenger tickets) for ferry travel.

It is important to note that Carnet rules have a significant negative impact on larger touring companies, who are often travelling with non-portable, high-cost, items, such as instruments or props. The significant additional cost can be prohibitive and, in many cases, threaten the viability of a whole tour. A reduction in the cost of Carnets would help ease cost pressures for the sector.

²⁶ The £16,000 per day figure is based on the following costs for a group of 50 musicians: £9,000 in musicians' fees, £2,500 in subsistence payments and £5,000 in costs for the musicians to stay in a 3-star hotel during the time that they wait for the truck to come back to the EU and move the instruments onto to the next engagement.

²⁷ https://cvan.art/wp-content/uploads/2022/06/21_06_22-International-Connections.pdf (p.19)

²⁸ https://ec.europa.eu/taxation_customs/system/files/2022-05/Rev17%20SPE%20Guidance%20on%20UCC%20and%20related%20act%20-%20clean%20for%20publication_0.pdf (p.50)

An UK-EU Carnet exemption for the creative and cultural sector would remove the resource burden on the Creative Industries and simplify arrangements for those looking to tour to the EU.

CITES: Making Eurostar a designated port

Where goods to be moved contain protected materials such as ivory, tortoiseshell and some timber species (e.g. as found in violin bows), they must be accompanied by a CITES certificate (Convention on International Trade in Endangered Species of Wild Fauna and Flora). CITES certificates are often required in addition to a Carnet for goods entering the EU.

These goods must be moved through designated ports when being transported. Musical Instrument Certificates (MICs) are free and last for three years, allowing instruments containing CITES specimens to cross international borders several times. However, MICs can take several weeks to obtain, and fees may apply for the transportation of other items, such as props containing CITES specimens.²⁹

The Eurostar is not a designated CITES port, which significantly hinders practitioners' ability to freely move the goods needed to carry out creative services. The government should consider this change and explore the possibility of expanding the list of CITES designated points of entry and exit across the UK and EU.

Members have highlighted issues with ensuring CITES certificates are endorsed. As with Carnets (see above), it is essential that ports in the UK and EU are resourced and functioning effectively, otherwise the necessity for an endorsement should be withdrawn.

Customs and samples

Samples are a crucial part of international trade for the Creative Industries. The fashion and textiles industry are heavy users of samples which may be shown at trade events, to the media, or shared with a manufacturer or buyer. To reflect the look, feel and quality of the final product, samples must be 'like new'.

The current customs regime makes the export of samples problematic. A sample is expected to be something that could not be resold – delivered in parts or clearly marked as a sample. Samples that are set out in this way are exempt from customs duties. Because fashion and textiles samples are rarely produced in this way, the items can be subject to full duty. There are two main ways these samples can be moved within the EU - under a temporary export licence or by using an ATA Carnet, however both processes are costly and complex. Given that every individual sample must be declared, completing the required paperwork can prove time consuming and costly, especially for businesses with large product ranges that change multiple times a year. This burden can prove prohibitive to UK creators looking to expand their business in Europe and beyond. The digitisation of Carnets has been proposed as a potential way to reduce the burden and further guidance for border officials would go some way to addressing confusion that arises when travelling with samples.

Importing and exporting merchandise and other goods

Changes to VAT and customs duties on goods have increased the complexity and cost for creative professionals looking to sell goods in the EU. These tariffs are also compounded by significant increases in

²⁹ <https://www.gov.uk/guidance/working-performing-and-touring-in-europe-guidance-for-musicians-and-accompanying-staff>

shipping costs (as much as 300% in some cases), the need to register as an exporter and to secure an Economic Operators Registration and Identification number (EORI)³⁰.

The additional costs and administration can diminish the financial viability of merchandise and other creative goods, such as artworks or books, which are core income streams for the Creative Industries. Sub-sectors, including crafts, have highlighted significant decreases in exports and some touring music acts have ceased selling merchandise completely due to the prohibitive costs³¹, or have produced merchandise in the EU to shortcut the costs and complexity.

Artist Vlatka Horvat highlighted how increased production, shipping and insurance costs for exporting art to the EU means she is increasingly being asked to produce work within Europe: "Printing photos, they're framing work there, manufacturing sculptural work there, which, in the kind of larger picture, means that I'm no longer contributing to the UK economy, the production costs and the transport and shipping costs and insurance costs, all this which would have been in the UK previously are now all in Europe"³². She also highlights the resulting issue of having to pay import duty to bring her own work home. The only alternatives being to find a gallery who will store the work or destroy it.

While customs declaration arrangements are simpler for goods worth £1500 or less, that are being carried in luggage or in a private vehicle (in that they can be made online), export declarations must still be made, and custom duties may still apply.

Government should clarify import, export and customs rules to ensure they are simpler for the creative professionals and businesses to navigate. Any arrangements that could ease the cost and administrative burden of trade would be welcomed.

Anecdotally, we are also hearing that delays at ports and customs are affecting the flow of creative goods and materials into EU Member States. For example, printed advertising materials being despatched to media outlets in the EU are being excessively delayed at customs or held at ports. It is critical that delays are addressed to ensure the Creative Industries can continue to trade in a viable way with the EU.

Trade complexity: Rules of origin

In order to qualify for tariff-free access to EU markets, creative businesses and individuals must ensure their goods are considered 'local' under Rules of Origin requirements³³. The TCA introduced new rules of origin to determine the economic nationality of an item for the purposes of determining whether customs duties are due. These rules affect all parts of the Creative Industries that trade goods but are especially complex for those trading in goods made of multiple components or via multiple processes, such as fashion.

Product specific rules also exist that outline, in detail, the processes a product must go through, and where the materials must come from, in order to meet preferential tariff requirements. The complexity of product definition is seen in the visual arts, where textiles can be categorised as either 'craft' or 'fine art' and the where the end purpose of the item can affect the tariffs applied³⁴. The interdisciplinary nature of art makes traditional categorisation difficult to apply.

³⁰ <https://www.gov.uk/eori>

³¹ <https://www.bbc.co.uk/news/entertainment-arts-58006647>

³² https://cvan.art/wp-content/uploads/2022/06/21_06_22-International-Connections.pdf, p.23

³³ <https://www.cbi.org.uk/global-trade-hub/exporting-goods-from-the-uk/>

³⁴ https://cvan.art/wp-content/uploads/2022/06/21_06_22-International-Connections.pdf p.15

Rules of origin requirements are especially complex in fashion and textiles. Origin is usually confirmed for items after a ‘double transformation’ has occurred. However, accepted processes will not be the same for every product, and the rules on accepted processes that would lead to a product being transformed and acquiring ‘origin’ are set out in the Annex of the TCA. UK Fashion and Textiles outlines in guidance to members that “major processes such as spinning, weaving, and making-up each counts as one transformation. For some products, dyeing, coating, printing, etc. can also count towards a transformation.” The origin of fabric is also considered in the determination of origin. Under the TCA, only those items that have undergone ‘double transformation’ in the UK or EU are considered as originating from those areas and are eligible for preferential tariffs. It is therefore essential that businesses can evidence where materials come from and where processing took place, in order to ensure they secure the appropriate Rules of Origin certification.

E-commerce with the EU

In July 2021, the EU introduced changes as part of the EU VAT e-commerce package, which affect UK creatives looking to trade online with customers in the EU³⁵. The reforms marked the end of the Low Value Consignment Relief, which had previously exempted goods worth €22 or less from VAT. Without it, all goods are subject to the import VAT of the Member State.

In addition, the reforms introduced the Import One Stop Shop (IOSS), which allows registered businesses to collect the relevant VAT on consumer goods (on consignments of €150 or less) at the point of sale. For UK businesses, the IOSS requires the appointment of an intermediary to act on the business’ behalf. Without registration, variable import charges apply when the goods enter the EU. Sellers may incur a clearance fee and import charges may be passed to the customer.

These changes, again, generate financial and administrative burdens for the Creative Industries, who risk losing business to their EU counterparts. Jack Clothier, Founder of Alcopop! Records has spoken about how new trading arrangements for records and merchandise has led to direct losses in sales, brought about by additional paperwork, increased duty and rising postage costs³⁶. And the visual artist Giles Round ceased online sales of his artworks to international markets: “I wouldn’t send anything internationally unless somebody emailed me first. Because every single time, I’m going to have to learn or discover how much it’s going to cost [...]. And before, it was much, much easier, and so now, because I haven’t had time to understand. I’m going to shut it down”³⁷.

INTELLECTUAL PROPERTY

The Creative Industries trade in ideas, knowledge, design and all forms of creative expression. The ability to protect and monetise that creativity is essential in ensuring creators are fairly remunerated for their work. A robust copyright regime creates protections for both creators and consumers and ensures creative work remains financially viable. Therefore, any Future Trade Agreements (FTA) must protect, promote or enhance the UK’s legislative framework for IP. The recent trade deal with New Zealand is a good example of how IP rights can be enshrined and enhanced³⁸. The Alliance for IP has set out the high-level principles that should form the basis of any FTA, including ‘allowing flexibility for higher levels of protection to be applied’ and

³⁵ <https://www.fsb.org.uk/resources-page/new-eu-vat-e-commerce-rules-explained-for-online-sellers.html>

³⁶ <https://www.nme.com/news/music/independent-artists-and-labels-say-brexit-has-had-outrageous-impact-in-shipping-music-and-merch-to-and-from-europe-3095986>

³⁷ https://cvan.art/wp-content/uploads/2022/06/21_06_22-International-Connections.pdf, p.16

³⁸ <https://www.ukmusic.org/news/uk-music-welcomes-new-trade-deal-with-new-zealand/>

‘provision for effective enforcement of rights’³⁹. Key to this will be ensuring the sector is consulted on any proposed reforms to IP and copyright.

It is important to the Creative Industries that the reciprocal recognition of Data Adequacy is maintained with the EU. Seamless data exchange with the EU ensures that UK creatives and rights holders are paid for the use of their work in the EU. There are concerns among members that proposed changes to GDPR could lead to the EU withdrawing their recognition of the UK’s data protection regime.

In June 2021, the Intellectual Property Office (IPO) consulted on changes to the UK’s Exhaustion of Rights regime. Many in the Creative Industries voiced concerns that changes would restrict creators’ ability to enforce their intellectual property rights. After Brexit, the EU “no longer considers items first put on the market in the UK as having their rights exhausted in the rest of the EEA, but the UK has continued to recognise the IP rights in goods first put on the market with consent in the EEA as exhausted in the UK”⁴⁰. The consultation considered whether the “unilateral exhaustion recognition by the UK in relation to products first put on the market in the EEA should continue”⁴¹. The Save Our Books campaign argued that the current regime “allows UK authors and publishers to price appropriately for international markets and stops the unauthorised importing of international (non-EEA) copies of books into the UK, undercutting the domestic market”⁴². And while, in January 2022, the IPO announced no immediate plans to change the regime, the matter is to be revisited once further policy work has been completed⁴³. It is essential that any future changes do not undercut the UK’s robust IP framework, diminish returns for UK creators and weaken the UK’s creative soft power on the international stage. The Publishers Association said that “any weakening of our Intellectual Property laws would be devastating to UK creators” - a view echoed by The Society of Authors who note that a “strong copyright framework works to everyone’s benefit – for the creators and the industries that take their work to market, and for the public who consume it.”⁴⁴

The Creative Industries also depend upon the ability to protect, enforce and exploit designs and brands. The previous Unregistered Community Designs regime was not recognised as part of the withdrawal agreement, leaving creative businesses to decide between UK supplementary unregistered design protection, or unregistered Community design protection in the EU. With many creative businesses choosing to disclose in the larger EU market, there is a concern that showcasing platforms in the UK, such as London Fashion Week, are at risk. One potential solution is to recognise ‘simultaneous disclosure’ - using technology in a digital environment to ‘show’ in two different territories to secure protection in both. However, there is not clarity on whether this would represent a valid disclosure and is, as yet, untested in the courts. The UK government recently published its response to a consultation on the UK designs framework, which acknowledged the need for further consideration on key issues, including simultaneous disclosure.

On a related note, the government’s recent consultation on Artificial Intelligence and IP proposed to introduce an exception to copyright for reproduction for text and data mining purposes, with no opt-out for rightsholders. Action must be taken to ensure that the UK’s world-leading IP regime is protected, and this does not set a dangerous international precedent.

³⁹ <https://www.allianceforip.co.uk/ipandtrade>

⁴⁰ <https://hsfnotes.com/ip/tag/exhaustion-of-rights/>

⁴¹ Ibid.

⁴² <https://www.saveourbooks.org.uk/about>

⁴³ <https://www.gov.uk/government/consultations/uks-future-exhaustion-of-intellectual-property-rights-regime>

⁴⁴ <https://www.saveourbooks.org.uk/news>

About the UK's Creative Industries

- The UK's Creative Industries contribute **£116 billion** to the UK economy - more than aerospace, automotive, life sciences and oil and gas sectors combined.
- That equates to **6% of total UK GVA**.
- In 2019, **2.1 million people** worked in the UK's Creative Industries.
- A further 1.4 million jobs were supported by the Creative Industries through their supply chains.
- One third of the workforce is self-employed. 90% of creative businesses employ 9 people or fewer.
- Before the COVID-19 pandemic, creative jobs were **growing at three times the UK average**.
- The UK's Creative Industries **export £46 billion of creative goods and services** each year, and account for 12% of all UK services exports.
- A projected increase in spend and investment in the Creative Industries of 20% on 2019 levels would, by 2025, result in £132.1 billion in Creative Industries GVA and 2.3 million jobs.

These and other statistics can be found in the Creative UK report (2021): [The UK Creative Industries: Unleashing the power and potential of creativity](#).