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NOTICE TO STAKEHOLDERS

WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES IN THE FIELD OF COPYRIGHT

The United Kingdom submitted on 29 March 2017 the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union. Following a request by the United Kingdom, the European Council (Article 50) agreed on 29 October 2019¹ to extend further² the period provided for in Article 50(3) TEU until 31 January 2020. This means that the United Kingdom will be, as of 1 February 2020 ('the withdrawal date') a 'third country'.^{3 4}

Preparing for the withdrawal is not just a matter for EU and national administrations but also for private parties.

In view of the uncertainties surrounding the ratification of the Withdrawal Agreement,⁵ all interested parties, and especially economic operators, are reminded of legal repercussions, which need to be considered when the United Kingdom becomes a third country.

Subject to the transition period provided for in the Withdrawal Agreement,⁶ as of the withdrawal date the EU rules in the field of copyright will no longer apply to the United Kingdom.

¹ European Council Decision (EU) 2019/1810 taken in agreement with the United Kingdom on 29 October 2019 extending the period under Article 50(3) TEU, OJ L 278, 30.10.2019, p. 2.

² Following a request by the United Kingdom, the European Council had decided earlier on a first extension on 22 March 2019 (European Council Decision (EU) 2019/476, OJ L 80I, 22.3.2019, p. 1) and on a second extension on 11 April 2019 (European Council Decision (EU) 2019/584, OJ L 101, 11.4.2019, p. 1).

³ A third country is a country not member of the EU.

⁴ In addition, if the Withdrawal Agreement is ratified by both parties before that date, the withdrawal takes place on the first day of the month following the completion of the ratification procedures or on 1 February 2020, whichever is the earliest.

⁵ Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, OJ C 384 I, 12.11.2019, p. 1.

⁶ It is recalled that, in order for the transition period to apply, the Withdrawal Agreement has to be ratified by the EU and the United Kingdom.

1. THE MAIN INTERNATIONAL (MULTILATERAL) COPYRIGHT TREATIES WILL GOVERN THE EU-UNITED KINGDOM RELATIONSHIP IN THE FIELD OF COPYRIGHT

The United Kingdom and the EU are contracting parties to many of the main international (multilateral) copyright treaties, such as the World Intellectual Property Organization (WIPO) Copyright Treaty (WCT), the WIPO Performances and Phonograms Treaty (WPPT)⁷ and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).^{8 9}

In accordance with the obligations under these agreements and in particular the principles of 'national treatment' and 'most favoured nation' of nationals and legal persons that meet the criteria of eligibility for protection within the scope of the TRIPS Agreement, the international framework will govern as of the withdrawal date:

- the protection of copyright and related rights (e.g. exclusive rights of reproduction, distribution, rental, communication and making available for authors; and where applicable also to holders of related rights, such as phonogram producers, performers and broadcasting organisations);
- the term of protection of copyright and certain related rights;
- obligations concerning technological protection measures and rights management information;
- databases, except as set out below;
- computer programs;
- semiconductor topographies;
- enforcement of copyright (as one of the intellectual property rights in part 3 of TRIPS), including border measures.

It should be noted that the multilateral international agreements mentioned above 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. In addition, the EU acquis provides for certain forms of *lex specialis* or particular cross-border measures for the benefit of rightholders or users in the internal market and/or the management of rights which have no counterpart in the international conventions.

Against this background, the withdrawal of the United Kingdom will have in particular the following consequences in the field of the copyright and related rights:

⁷ <http://www.wipo.int/treaties/en/>

⁸ https://www.wto.org/english/tratop_e/trips_e/trips_e.htm

⁹ The United Kingdom is furthermore a party to the Berne Convention for the Protection of Literary and Artistic Works, which the EU is not. However, the EU is required pursuant to Article 1(4) WCT to apply Article 1-21 and the Appendix of the Berne Convention.

2. SPECIFIC CONSEQUENCES IN THE FIELD OF COPYRIGHT

- **Broadcasters:** Directive 93/83/EEC on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission¹⁰ provides *inter alia* that the act of communication to the public by satellite occurs solely in the Member State where the broadcast signals are introduced, thus localising the copyright relevant acts for the purpose of licensing. Consequently, in order to broadcast a work or other subject matter, broadcasters only have to clear rights in the Member State where the signal is introduced. As of the withdrawal date, broadcasters in the United Kingdom will no longer benefit from the mechanism provided for by the Directive when providing cross-border satellite broadcasting services to EU customers and they will have to clear rights in all Member States where the signal reaches. Correspondingly, broadcasters in the EU will no longer be able to benefit from the mechanism provided for by EU law when providing cross-border satellite broadcasting services to customers in the United Kingdom and they may have to secure clearance of the rights of all relevant rightholders if they wish to broadcast to the United Kingdom.
- **Collective Rights Management (online rights in musical works):** Article 30 of Directive 2014/26/EU on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market¹¹ 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.
- **Orphan Works:** Certain cultural institutions in the EU can benefit from a system of mutual recognition of orphan works in Directive 2012/28/EU on certain permitted uses of orphan works.¹² This system allows them to digitise and make a work available online in all Member States once it is recognised as an orphan work in one Member State.

As of the withdrawal date, the mechanism of mutual recognition provided for by Directive 2012/28/EU will no longer apply between the United Kingdom and the EU. Consequently, orphan works which have been recognised in the United Kingdom by the withdrawal date will no longer be recognised in the EU under Directive 2012/28/EU and the same will apply for orphan works recognised in the EU, as the system of mutual recognition under Directive 2012/28/EU will no

¹⁰ 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, OJ L 248, 6.10.1993, p. 15.

¹¹ Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market, OJ L 84, 20.3.2014, p. 72.

¹² Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works, OJ L 299, 27.10.2012, p. 5.

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 EU and vice versa.

- **Access to published works for persons who are blind, visually impaired or otherwise print-disabled:** Directive (EU) 2017/1564 on certain permitted uses of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled¹³ introduces a mandatory exception for the benefit of persons who are blind, visually impaired or otherwise print-disabled and authorised entities operating on behalf of these persons. The Directive furthermore provides that such authorised entities may rely on the exception for a beneficiary person or another authorised entity in other Member States and that beneficiary persons and authorised entities may have access to accessible format copies from an authorised entity established in any Member State.

As of the withdrawal date, persons in the United Kingdom will no longer be able to obtain accessible format copies from authorised entities in the EU under the framework provided for by Directive (EU) 2017/1564. Conversely, authorised entities and beneficiary persons in the EU will not be able to obtain accessible format copies from authorised entities in the United Kingdom either.

The exchange of accessible format copies between the EU and third countries that have ratified the Marrakesh Treaty¹⁴ is governed by Regulation (EU) 2017/1563¹⁵ on the cross-border exchange between the EU and third countries of accessible format copies of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled. In this context it is important to note, that the United Kingdoms is currently not a party to the Marrakesh Treaty.

- **Online content Portability:** Regulation (EU) 2017/1128 on cross-border portability of online content services in the internal market¹⁶ establishes that the provision of an online content service to a subscriber who is temporarily present in a Member State, as well as the access to and the use of that service by the

¹³ Directive (EU) 2017/1564 of the European Parliament and of the Council of 13 September 2017 on certain permitted uses of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled, OJ L 242, 20.9.2017, p. 6. This Directive must be transposed by 11 October 2018.

¹⁴ Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled.

¹⁵ Regulation (EU) 2017/1563 of the European Parliament and of the Council of 13 September 2017 on the cross-border exchange between the Union and third countries of accessible format copies of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled, OJ L 242, 20.9.2017, p. 1. The Regulation will apply as of 12 October 2018.

¹⁶ Regulation (EU) 2017/1128 of the European Parliament and of the Council of 14 June 2017 on cross-border portability of online content services in the internal market, OJ L 168, 30.6.2017, p. 1. This Regulation will apply from 1 April 2018.

subscriber, shall be deemed to occur solely in the subscriber's Member State of residence.

As of the withdrawal date, persons residing in the United Kingdom will no longer benefit from their digital content subscriptions when travelling to the EU; and a provider of online content services established in the United Kingdom will need to comply with the rules of the relevant EU Member State or States where it wishes to offer services to its subscribers – including the need to clear all relevant rights for that or those Member States.

- ***Sui generis database right:*** Article 7 of Directive 96/9/EC on the legal protection of databases¹⁷ grants under certain conditions protection to the makers of databases in the EU Member States ('sui generis database right'). Article 11 of Directive 96/9/EC restricts the beneficiaries of protection under the sui generis right to the database makers (or rightholders) that are nationals of an EU Member State, have their habitual residence in the territory of the EU or are companies/firms formed in accordance with the law of an EU Member State (and having their registered office, central administration or principal place of business within the EU).

As of the withdrawal date, United Kingdom nationals (unless they have their habitual residence in the EU) and companies/firms formed in accordance with the law of the United Kingdom will no longer be entitled to maintain or obtain a sui generis database right in respect of databases in the EU.¹⁸ Conversely, EU Member States nationals and companies/firms will not be entitled, on the basis of EU law, to maintain or obtain a sui generis database right in respect of databases in the United Kingdom.

The website of the European Commission regarding the Digital Single Market provides general information concerning copyright: <https://ec.europa.eu/digital-single-market/en/policies/copyright>. These pages will be updated with further information, where necessary.

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¹⁷ Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases, OJ L 77, 27.3.1996, p. 20.

¹⁸ For databases protected before the withdrawal date, the EU is trying to agree solutions with the United Kingdom in the withdrawal agreement. The essential principles of the EU's position on Intellectual property rights (including geographical indications) are available here: https://ec.europa.eu/commission/publications/position-paper-intellectual-property-rights-including-geographical-indications_en.