



Follow – up

“Creative Industries: from idea to business”

Development of Creative Industries in the EU: Policy, Legislation, Evaluation

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Development of Creative Industries in the EU: Policy, Legislation, Evaluation

The term **<Creative Industries>** developed in the late 1990 during the government of Tony Blair in the UK. The UK's attempt to gain in competitiveness contributed to the global exportation of the concept.

<Creative industries> encompasses:

- essentially copyright based industries: literature and press, audiovisual, music and software, advertising;
- industrial inventiveness;
- cultural tourism.

Essential move: to aggregate distinct fields of cultural practice, to designate these as “industries”, and so to constitute a new policy object whose central purpose was – and remains – to “maximise economic impact at home and abroad”. Contribution of Copyright Based Industries to the GDP: varying significantly from over 11% in the USA to an average of some 5.18%.

The first national centre of creative industries, Creative Hub, will be opened in Moldova in late 2018.

In May 2007, the European Council endorsed the role that the Creative and Cultural Industries might play in supporting the Lisbon Strategy and in April 2008, the European Parliament welcomed the Council and Commission's recognition of the importance of culture and creativity for the European project.

The EU Commission's Green Paper (EC 2010, 5) aimed “at capturing the various connotations ascribed to the terms ‘cultural’ and ‘creative’ throughout the EU, reflecting Europe's **cultural diversity**”. The Green Paper pointed forward to what has since become a strategic concern with the “digital economy”: the creation of “a true single market for online content and services”; an Innovation Union that would “strengthen the role of Creative and Cultural Industries as a catalyst for innovation and structural change”; and the Strategy on Intellectual Property, especially “the use and management of rights”.

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Copyright Based Industries and Copyright Policy

The EU's internal market is established with regard to patent law and trademark law – however, with regard to copyright law the fragmentation into national markets continues.

A key issue for policy-makers: how to mitigate the hindrance to the internal market caused by territorial protection of copyright.

Several approaches to Facilitate Cross-border Marketing of Copyright-Protected Products in the EU

- 1) fostering cross-border online access and the portability of content across borders and to prohibit some specific territorial restrictions (for instance, the unjustified practice of geo-blocking);
- 2) clarifying copyright rules applicable to online transmissions on the model of the Satellite and Cable Directive (licence covering the territory of the EU)
- 3) harmonising exceptions from and limitations of copyright throughout the EU;
- 4) introducing a unified legal framework for EU copyright law.

Basic Copyright System in the EU

The EU acquis of copyright is contained in **11 directives** and **2 regulations**:

- 1) InfoSoc Directive
 - 2) Rental and Lending Directive
 - 3) Resale Right Directive
 - 4) Satellite & Cable Directive
 - 5) Software Directive
 - 6) Directive on Enforcement of IPR
 - 7) Database Directive
 - 8) Term Directive
 - 9) Orphan Works Directive
 - 10) Collective Rights Management Directive
 - 11) Directive on Certain Permitted Uses of Certain Works
- 1) Regulation Implementing the Marrakech Treaty
 - 2) Cross-border Portability Regulation

Basic International CR-Framework

Berne Convention - Rome Convention – TRIPS Agreement – WIPO Copyright Treaty

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Economic Rights Afforded by Copyright:

- Reproduction of the work;
- Distribution of the original or copies of the work;
- Rental of copies of the work;
- Lending copies of the work;
- Importing copies of the work for the purposes of distribution;
- Presentation of the work in public;
- Public performance of the work;
- Communication of the work to the public;
- Simultaneous retransmission of the work without modifications;
- Making the work interactive and available to the public;
- Translation of the work; and
- Transformation or other modification of the work.

Moral Rights Afforded by Copyright:

- The right to disclose the work;
- The right of authorship;
- The right to be named;
- The right to respect for the integrity of the work; and
- The right to withdraw the work.

Limitations and exceptions

The existence of exceptions and limitations is subject to compliance with the 'three-step test' of copyright law. These three cumulative conditions stipulate that exceptions and limitations must: (i) be **limited to special cases**; (ii) **not contravene the normal use of a work** or enter into economic competition with the exercise of rights by the rightholders; and (iii) **not prejudice the legitimate interests of the rightholders**.

'Limitation' means that a right, although in force, is reduced in a particular aspect and that the right of the author is restricted to the payment of remuneration. (e.g. the fees payable with the purchase price of blank sound/video tapes for private copying, which is collected by a Collective Management Organisation)

'Exception' to copyright means that a right, set forth by law, is not applicable in certain cases. In these cases, copying neither requires the consent of the author nor entails the payment of remuneration. Exceptions to copyright ensure the balance between copyright and the public interest in culture, education, humanitarianism, justice and an informed society. For example: reproduction for educational purposes, or quotations.

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European Parliament's Position on Copyright

In its 2015 resolution on the harmonisation of certain aspects of copyright and related rights, the EP called on the Commission to 'study the impact of a single European Copyright Title on jobs and innovation, on the interests of authors, performers and other rightholders, and on the promotion of consumers' access to regional cultural diversity'. The EP therefore expects the upcoming proposal to be based on a comprehensive evidence-based assessment, including the costs and benefits of having a single European copyright title.

The EP pointed out that copyright-intensive industries employ more than 7 million employees in the EU and requested that any legislative initiative to modernise copyright should be preceded by an ex-ante assessment of its impact in terms of growth and jobs as well as potential costs and benefits and that the copyright law should secure the continued development of Europe's creative industries.

The EU Commission's Work Programme 2018 refers in the Annex's no. 4 to the initiative Completing the Digital Single Market, but it is unclear whether the Commission will undertake steps towards the legislation of the Copyright in the Digital Market Directive (COM(2016)593).

Digital Single Market and Technological Trends

Low-cost, high-quality copies can be made easily at cheap prices; costs of dissemination fall; bandwidth becomes cheaper; narrowcasting is technologically and economically feasible; borders become irrelevant for distribution technologies. In principle, these facts should benefit creators and consumers, but also costs of piracy and copyright infringement are reduced.

Reduced production, publishing and distribution costs for audiovisual content and music may have the consequence that the role of distributors (publishers, broadcasters) may decline. Example: streaming services. But new distribution types such as those based on streaming must be able to rely on copyright protection in order to maintain the value chain for the benefit of creators. It is suggested that successful creators who experience success online, rely in turn on traditional gate-keepers. With their support they finance production and distribution so that the traditional superstar scheme of cultural markets may even be strengthened.

The implications for the creative economy of the effects of the digitisation and the internet for copyright is that, on balance, there is no case for increasing the copyright standard and, if anything, it suggests weaker rather than stronger copyright enforcement. The main reason is the reduction in costs of producing and distributing content and the increased benefits to both consumers and producers of network effects. However, new features of Internet trade present a different challenge to copyright as well as to privacy and freedom of expression.

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Moldova and its Creative Cultural Industry

Relations with the EU

In 1998 Moldova and the EU concluded a Partnership and Cooperation Agreement. Moldova was included in the special action of the EU's Culture programme 2009-2010, and in the Eastern Partnership Culture Programme. In 2013 an Association Agreement with EU was signed.

Increasing the Economic Capacity of the Cultural Sector

In November 2014 the first proposal of public policy was drafted on "Increasing the economic capacity of the cultural sector", with the objective to foster the economic growth capacity of the sector through the development of cultural industries. The beneficiaries of this policy document will be service providers and creators of cultural products, the business sector in the Republic of Moldova, local public authorities, local communities and foreign investors. The document is at the stage of public debate and promotion. Adopting this policy document would guarantee creation of a platform for sustainable development of cultural industries.

The "National Strategy for the Development of Culture of the Republic of Moldova / Culture 2020" aims at creating conditions for entrepreneurial development of culture and cultural industries, so that the share of culture will constitute 3% of GDP by 2020.

Priority Actions in the Strategy:

- development of a legislative and regulatory framework in the field of creative and cultural industries;
- creation of a database of institutions with economic potential;
- development of a study on the cultural market in the country;
- promotion of cultural goods and services for export;
- facilitating private business in the cultural field by developing partnerships with the Ministry of the Economy;
- creation of conditions for the development of the film industry;
- identification of potential products to become country brands by creating partnerships with authorities, artists and design companies;
- identification of support mechanisms to promote excellence in crafts.

Benefitting from the Creative Europe programme

In 2015 Moldova joined the **Creative Europe** programme 2014-2020. The programme focuses on 4 columns:

Training Production Distribution Marketing

The programme supports projects aiming at:
Developing skills, competences and know-how, including how to adapt to digital technologies.

Moldova's agreement on participation in the Creative Europe programme provides for the eligibility of Moldova to annually access until 2020 the funding for projects from cultural and creative sectors of the "Culture" sub-programme and certain activities from the "Media" sub-programme of the EU Programme "Creative Europe".

Through this programme all organizations in cultural sectors of the Republic of Moldova: nongovernmental organizations, public institutions or private companies, artists, will benefit from funding for their projects and develop partnerships with cultural organizations in the European Union.

The Creative Europe programme provides support for the capacity of European cultural and creative sectors to operate transnationally and internationally, and strengthen the financial capacity of small and medium organizations in the cultural and creative sectors in a sustainable way. The Programme also enables the promotion of transnational circulation of cultural and creative works and transnational mobility of actors in the cultural and creative field.

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Priority Actions in Moldova

A set of priority actions for culture and the cultural industries is to help creating better conditions for entrepreneurial development, in order to raise the share of culture to 3% of GDP in 2020. The advertising market in the Republic of Moldova is developing at a dynamic pace, increasing each year by 25-40%.

In November 2014 the first proposal of public policy was drafted on "Increasing the economic capacity of the cultural sector", with the objective to foster the economic growth capacity of the sector through the development of cultural industries.

The beneficiaries of this policy document will be service providers and creators of cultural products, the business sector in the Republic of Moldova, local public authorities, local communities and foreign investors. The document is at the stage of public debate and promotion. Adopting this policy document would guarantee creation of a platform for sustainable development of cultural industries.

A specific objective of the "*National Strategy for the Development of Culture of the Republic of Moldova / Culture 2020*" is: creating conditions for entrepreneurial development of culture and cultural industries, so that the share of culture will constitute 3% of GDP in 2020.

The priority actions in the Strategy relating to the cultural industries are:

development of a legislative and regulatory framework in the field of creative and cultural industries;

creation of a database of institutions with economic potential; development of a study on the cultural market in the country;

promotion of cultural goods and services for export;

facilitating private business in the cultural field by developing partnerships with the Ministry of the Economy;

creation of conditions for the development of the film industry;

identification of potential products to become country brands by creating partnerships with authorities, artists and design companies; and

identification of support mechanisms to promote excellence in crafts.

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The cultural components of the Association Agreement with the EU cover a number of areas where closer relations are expected to develop, such as a continuation of the work started with the Eastern Partnership on culture: cultural policies and internal institutional and human capacities; development of cultural and creative industries; mobility of artists and museum collections and development of the media and audio-visual sector, including cinema. Moldova is also planning to contribute with a 80,000 euros fee (charged by the EU) to get access to funding and cooperation opportunities in the framework of the Creative Europe programme.

The first national centre of creative industries, Creative Hub, is to be opened in late 2018. The centre will be constructed in the yard of the education block of the Music, Theatre and Fine Arts Academy in Chisinau and will provide room of activity to professional people, organizations and enterprises in the field.

EU Commission Work Programme for 2018, published on 24/10/2017, provides on A Connected Digital Single Market

Completing the Digital Single Market

Proposal on fairness in platform-to-business relations; an initiative addressing online platform challenges as regards the spreading of fake information; and a revision of the Commission guidelines on market analysis and assessment of significant market power in the electronic communications sector.

Copyright-Based Industries in Moldova

In 2013, the GVA of the copyright industries was approximately 3.33 billion lei (264.32 million US dollars). This represents 3.98 per cent of the total national GVA – a slight drop on the 2008 share of 4.07 per cent. The contribution of the copyright industries' GVA to GDP4 also declined slightly from 3.35 per cent in 2008 to 3.31 per cent in 2013. These levels are relatively low compared to other countries in the region, with Moldova outpaced by Romania, Russia and Hungary. The structure of the copyright industries in Moldova is also slightly different from comparable countries given the relatively high concentration of core activities (making up 66.86 per cent of total estimated GVA in 2013). At the same time, the contributions of interdependent, non-dedicated support and, especially, partial copyright activities are relatively low.

The copyright industries employ more than 40,000 people.. The industry therefore made up 4% of the employed labor force. Comparing this with other countries in the region, the figures appear relatively modest; indeed, Moldova is outsized by most countries in the region (e.g. Romania, Bulgaria and Russia). Of the four types of copyright industries, the main employers are is the core copyright industries (69.29 per cent in 2013) followed by the non-dedicated support industries (15.07 per cent), the interdependent industries (9.26 per cent) and the partial industries (6.38 per cent). Despite their relatively small size, the Moldovan copyright industries have achieved gains in efficiency. Labor productivity is significantly higher than the national average and is rising strongly, especially since 2011. Moreover, again taking its relatively small size into account, labor productivity in the copyright industries is close to the regional mean.

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Key Policy Recommendations

Policy measures in the copyright sector should primarily focus on raising efficiency and boosting value added. This focus is especially relevant for copyright goods, which are significantly less competitive than copyright services.

Efficiency improvements are most needed in the core copyright industries and could be introduced either by increasing value added or by optimizing employment in industries with largely state-owned capital (especially press and literature and radio and television).

As a large share of copyright activities are already concentrated in the core copyright industries compared to other countries in the region, policy measures aimed at the other three types of copyright industries (interdependent, partial and non-dedicated support) should focus on increasing their size (e.g., added value, employment and exports).

In addressing software and database copyright activity (the largest copyright industry in Moldova in terms of GVA and the second largest in terms of employment), adjustments need to be made to the existing tax structure, with a greater focusing on incentives to invest and to improve efficiency. In addressing press and literature (the second largest copyright activity in terms of GVA and the largest in terms of employment), bold policy measures should aim to reform the structure of the industry (i.e., improving investment attractiveness, boosting productivity and competitiveness, with a focus on increased value added in the library and archives sector).

Advertising services (the third largest copyright industry in terms of GVA and the fourth largest in terms of employment), as with other copyright industries, could benefit greatly from horizontal policy measures related to the enforcement of copyright regulations and a more effective protection of intellectual property rights.

Other more specific recommendations include improving copyright statistics, conducting annual assessments of the economic contribution of the copyright industries, intensifying research in the field of copyright factors, strengthening the institutional setting for copyright protection, developing the National Strategy on Creative Industries Development, providing support to small and medium enterprises that deal with copyright, strengthening tax legislation and the Law on Copyright and Related Rights and developing the collective management of copyright.

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Problems for Cultural and Creative Industries in Europe

Cultural and creative industries undergo considerable change as a result of increased digital technologies, the economic crisis of the past several years, and considerable changes in the regulatory framework.

Public support has, likewise, evolved rapidly, witnessing core changes in intellectual property law, increased support through state aid, and a greater recognition of their potential contribution to the economy.

Despite the considerable potential of the industry, estimated to be responsible for over 3% of the EU's gross domestic product and jobs, they remain undervalued and unrecognised, especially in terms of their ability to access start-up capital and financing.

The challenges facing this industry are compounded by a lack of clear evidence and information in the sector, which further limits the ability of financial backers to recognise their potential, as well as other legislative hurdles, such as intellectual property rights, varying tax regimes, and mobility issues.

In line with the Europe 2020 strategy for growth and jobs, the European Commission's role is, in general, to ensure that the culture sector is able to increasingly contribute to employment and growth across Europe.

Specifically, this involves the provision of direct financial and technical support, whether in the form of grants or the establishment of networks and platforms to support the sector.

The Commission's priorities in the field of creative industries include:

Responding to changing skills needs by promoting innovation in education

Coordinating with Member States to reform regulatory environments;

These are complemented through a variety of actions and initiatives, as well as the Creative Europe Programme, and funding from other Commission sources . Specific activities undertaken recently include: a pilot project on the economy of cultural diversity, the publication of a green paper on the potential of cultural and creative industries, a new study (and executive summary) mapping the different creative value chains in the digital age (in particular for visual arts, performing arts, cultural heritage, artistic crafts, book publishing, music, film, TV, broadcasting and multimedia)

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The 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions is the main legislation in this area and the EU is a party to it. **On 8 June 2016, the Commission adopted a new strategy to put culture at the heart of EU international relations.** Europe is increasingly a multi-cultural space. Since the adoption of the European Agenda for Culture in 2007, various actors have called for a more strategic approach, to culture in the EU's external relations.

In order to devise an effective strategy for cultural relations, the Commission has: set up a group of experts to develop a strategic approach to cultural relations with non-EU countries, carried out a large-scale mapping and consultation process across 54 countries, with support from cultural institutes and organisations, in the context of the 'Culture in EU External Relations' Preparatory Action.

Building on the outcomes of the consultation of key stakeholders the Commission and the High Representative of the Union for Foreign Affairs and Security Policy adopted a Joint Communication "Towards an EU strategy for international cultural relations" in 2016. The Commission also ensures that cultural aspects are taken into account in association agreements with non-EU countries, and supports cultural and audiovisual projects with non-EU countries through its 2014-20 Creative Europe Programme.

Communication of the Commission Promoting Cultural and Creative Sectors for Growth and Jobs in the EU

1) Improving access to finance

The small size of cultural and creative businesses, the uncertainty about the demand for their products, the complexity of their business plans and their lack of tangible assets are obstacles for obtaining external financing. Equity finance, venture capital and guarantees are alternative financing possibilities, they remain widely under-used. Therefore, financial institutions need to increase their awareness of the economic potential of these sectors and develop their capacity to assess business relying on intangible assets. In parallel, entrepreneurs in these sectors should be helped in better understanding the requirements of business planning and allocation of funds to finance their activities and growth.

2) Expanding the international reach

Internationalisation and export promotion policies should permit SMEs cooperation in a global environment reaching new audiences and markets. Most effective support services should be identified, assessing possible risk sharing facilities. Pooling of resources and increased cooperation between various actors in the EU could be further explored to promote a stronger cultural and creative presence of Europe on the world scene.

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Creative Europe has 2 sub-programmes:

(1) Media Programme

The MEDIA Sub-programme of Creative Europe is designed to support European film and other audiovisual industries. It provides funding for the development, promotion and distribution of European works within Europe and beyond.

The MEDIA sub-programme aims at supporting the audiovisual and multimedia sector. It offers:

- Initiatives to promote the distribution of works and the access to markets;
- Initiatives for the development of projects or a set of projects (slate funding);
- Support for the production of television programmes or video games;
- Activities to increase interest in and improve access to audiovisual works;
- Activities that promote interests in films, such as cinema networks or film festivals;
- Measures that facilitate international co-production and strengthen the circulation and distribution of works;
- Activities to build skills and capacities of audiovisual sector professionals.

(2) Culture Programme

Examples of the Commission's activities in the sector include: Actions and initiatives such as the Capitals of Culture or Heritage Days, Framework programmes, such as Creative Europe, international policy cooperation, stakeholder consultations and dialogue.

The EU Commission represents the interests of the EU in international initiatives, such as those headed by the United Nations Educational, Scientific and Cultural Organization (UNESCO).

The main milestone has been the implementation of the Culture programme from 2007-2013.

The European Commission has also established a network of culture experts and has published reports, studies, and policies on support to the culture sector.

In addition to this, the European Commission intends to carry out an extensive mapping of the culture sector. focus on new and innovative ways to prevent the trafficking of cultural goods, identify and implement new measures to promote and protect cultural heritage.

Thank you.