



## BREXIT

# What Does It Mean for the Media & Entertainment Industry?

Britain's Referendum decision to exit from the European Union ("EU") is likely to have wide ranging implications for the media and entertainment industry, impacting key industry players from the UK, the EU and the United States. Questions abound, including: the future of content funding arrangements; programme portability; tariffs; movement of people and services; copyright law; privacy; data portability and regulation.



*This is a key moment for the creative industries to create concrete proposals that can bring benefits to the UK's creative industries and ensure that one of the UK's most successful sectors remains at the top table.*

**John McVay, Creative Industries Council and PACT**



Industry leaders in the UK are coalescing to address many of the questions. Within two weeks of the historic vote, the Creative Industries Council (the "CIC"), a joint forum between the British Government and the UK creative community established a new working group to assess the business-critical priorities for each of the industry's sectors as well as identify the material issues and opportunities that may arise. The CIC appointed John McVay, the CEO of the UK Producers Alliance for Cinema and Television ("PACT") to chair the group, which will provide feedback to the CIC and the newly appointed Minister for the Department of Culture, Media and Sport, Karen Bradley. While this effort will seek to support the industry as a whole, industry participants are assessing what Brexit portends in the shorter and longer term.

In this summary, FTI Consulting highlights the issues and potential impact on the media and entertainment industry as a result of the Referendum and the UK's potential departure from the EU.

We touch on the following topics:

- |                                      |   |   |
|--------------------------------------|---|---|
| 1) <b>Macro-Economic conditions,</b> | 3) <b>The free movement of labour,</b>      | 5) <b>Content distribution in the EU, and</b> |
| 2) <b>Co-Production financing,</b>   | 4) <b>International channel operations,</b> | 6) <b>The ability to influence EU policy.</b> |

We also provide an overview of how media and entertainment companies may want to consider navigating the post-Referendum waters and a summary of how FTI Consulting's services might be applicable. Regardless, during this period of transition, FTI Consulting believes businesses will need to increase their engagement with all commercial and political stakeholders in both the UK and EU.

## Macro-Economic Conditions

The 'Leave EU' decision from the Referendum is likely to impact the British economy in the near term:

- Loss of business momentum, market uncertainty and the possibility of economic downturn are probable
- A lack of clarity as to the eventual shape of the trading relationship between UK and the EU
- The British Pound is experiencing 31 year lows against the US dollar
- Downward revisions to GDP forecasts and revised advertising forecasts have already been put forth. As with previous recessions, corporate marketing budgets could be cut and advertising spending reduced.



*Turmoil favours the brave. Opportunity knocks. However, Brexit will make things more difficult.*

Sir Martin Sorrell, CEO, WPP



## Potential Impact

While the markets have been volatile, FTI Consulting believes that this is not a 'Lehman moment' and the impact on the UK will not be as severe as 2008/2009. All the same, we believe that various participants could face the following:

- **UK Broadcasters – Free to Air, DTT and Pay TV:**
  - Negative impact on the UK's annual £12 billion in advertising sales
  - Increased content acquisition costs due to the pound devaluation
  - On the positive side, potential increased demand from the USA and non-UK territories due to the lower pound rate.
- **Film Industry:**
  - Independent cinemas may face challenges given increased costs of procuring EU films.
- **Advertising Industry:**
  - While some analysts have reduced 2016 advertising estimates, Magna Global's annual forecast of 3.7 % growth may be sustained by advertising buys for signature sporting events, including Euro 2016 and the Olympics in Rio de Janeiro, forestalling real declines to 2017
- The Internet Advertising Bureau UK ("IAB UK") CEO Tim Elkington remains upbeat for digital citing the UK advertising industry is 'currently in good health and grew by 7.5% in 2015'
- The recession in 2008 is a comparable situation, as digital advertising still grew 5.7% year on year, 'so while conditions may be tough in the short to medium term, there is a history of growth in challenging times' (IAB UK CEO).
- **International Strategic and Financial Investors:**
  - Potential investment opportunities due to decreased asset values and lower exchange rates
  - International Media and Entertainment companies with significant operating interests and or distribution revenues in the UK will likely experience exchange losses due to the pound devaluation.

## Co-Production Funding

Over the last decade, the UK has become a thriving hub for film and television production due to access to talent and favourable co-production financing arrangements, as well as other subsidies, including:

- Availability of EU-sponsored funding programs, such as the European Regional Development Fund and the Creative Media Fund, which between 2007 and 2015 invested approximately \$ 180 million in UK co-productions
- Britain's 25% tax credits have also been a draw for production companies to film in the UK.

### Potential Impact

In a post-Brexit environment, UK-based production companies as well as US producers seeking to leverage co-production financing may likely experience challenges, including:

- Potential loss of EU subsidies, which may have the greatest impact on smaller production companies
- Creative partnerships between UK talent and EU talent may become more limited due to challenges in securing financing and subsidies
- Devaluation of pound could lead to production financing shortfalls on current productions
- Less exposure and financial support from the EU for young emerging UK talent.

On the positive side, the UK can explore ramping-up state aid, through increased tax credits and incentives, enabling it to remain an attractive destination for international TV and film production units.

## Free Movement of Labour

The Single Market has provided the UK media industry with a frictionless environment and no barriers to trade, mutual recognition and standardisation, promoting convergence and free movement of people and trade and services. As a result, the UK has been a magnet for creative talent and business professionals:

- The UK accounts for 21% of creative industry jobs in the EU and has been growing faster than anywhere else
- Creative industries added 2 million jobs over the last 5 years
- The UK's ability to attract and retain the best writers, producers and artists from within the EU, has been a major positive attribute and allure for international media businesses when considering their location plans
- Many of the international channel groups, such as Discovery, Fox, NBC/Universal, Turner, etc., have their European and sometimes global headquarters based in the UK. It is estimated that they collectively employ 10,000 people.

### Potential Impact

Out of the EU, the UK potentially will no longer benefit from its policies regarding the free movement of labour. Many of these companies, from large scale media entertainment businesses to small production entities, may need to evaluate alternative options, for example:

- **Production Companies**
  - Potentially there will be new visa and work permit requirements, which could result in additional bureaucracy and costs for both UK production companies producing in the EU as well as EU production companies shooting in the UK
  - Possibility of additional tariffs and taxes on the movement of cast, crew and production equipment.
- **International Media and Entertainment Companies based in the UK:**
  - Additional requirements could ensure the ongoing employment of professional staff from the EU working in London
  - Many of these companies may need to evaluate options for relocating some or all of their staff to EU locations, such as Ireland or the Netherlands.

To mitigate the above challenges, the UK Government will possibly consider appealing to businesses through lower corporation taxes.

## International Channel Operations

Key features of the EU's Audio Visual Media Services Directive ("AVMSD") include the Country-of-Origin ("COO") principle and quotas for the audiovisual market, which have enabled a healthy broadcast market and a robust independent TV production industry in the UK. As a result:

- The UK has been the EU's leading licensor of multi-channel broadcasting services
- Ofcom licenses over half of the EU TV licenses, of which over 50 % are not UK services
- Channels have been free to transmit across the EU un-burdened with restrictive local content quotas.

The COO coupled with free movement of labour, have been leading reasons for so many international channel groups having substantive operations in London.

The AVMSD is under review by the EU, with the Council and European Parliament considering possible changes to the legislation; a final draft is expected early 2017, with adoption of a final text expected by late 2018.

### Potential Impact

The COO is expected to be retained after the AVMSD review. Further rules regarding: which country has jurisdiction over a provider; the establishment of an obligation on Member States to inform about which providers fall under their jurisdiction; and maintaining an up-to-date database to ensure transparency and clarifying cooperation procedures between Member States regarding permissible limitations to COO are expected to be simplified.

As this is being sorted out, international channel groups, based in the UK, are likely to be assessing potential operating challenges going forward, including:

- Needing to apply for and obtain broadcasting licenses across the EU
- Having to adhere to local content quotas in a number of territories
- Upping the amount of content produced locally, increasing costs
- Incurring incremental programming costs for non-UK content due to the devaluation of the pound.

## Content, Rights, Distribution in the EU

The UK's relationship with EU is worth £440 billion in bilateral trade of trades and services (Source: Enders Analysis). This represents four times the value of trade from the UK's second most important trade partner, the USA. The UK's creative industries contributed £84 billion in Gross Value Added ("GVA")<sup>1</sup>. The creative industries' GVA has benefitted from the following:

- UK content is classified as EU content for purposes of quota systems established within various countries with the EU
- The Single Market has enabled the distribution of UK content in an environment of no barriers
- The Creative Media Fund provided UK's audio visual sector with €40 million (Source: [www.creativeeuropeuk.eu/](http://www.creativeeuropeuk.eu/)) in total across 2014/15 to promote UK films to rest of Europe. Benefitting 82 companies and 53 UK cinemas with grants totalling €16 million. 84 British films had their distribution supported in other European countries worth €13 million.

### Potential Impact

Overall, the split of UK exports and trade is one third (£380 billion) to the EU and two-thirds with the rest of the world. In addition, UK cinema has enjoyed promotion and revenue benefits in the EU with similar benefits to EU films in the UK. There is the potential for many of these benefits being eliminated, which could lead to:

- The possibility of diminished demand in certain countries for UK content as it will not qualify as EU content for local quota purposes. However, this may be mitigated as a result of the "European Convention on Transfrontier Television"
- Potential imposition of tariffs on UK-distributed content, which could be offset by a weaker British pound
- Likely decrease in support of UK film distribution in the EU which could lead to decreased sales.

<sup>1</sup> In national accounts, GVA is output minus intermediate consumption; it is a balancing item of the national accounts' production account.

## Ability to Influence EU Policy

The UK has been actively involved in framing policy directives related to the advertising, media and audiovisual industry within the EU, including:

- Recently, the UK led a lobby to loosen product placement restrictions
- To the benefit of UK rights holders as well as large international media companies, the UK has been very active in conversations regarding the Digital Single Market (“DSM”) initiative. The DSM is an attempt to simplify the EU’s diverse market, with the goal of removing barriers to trade in online goods and services
- Geoblocking – The UK has been a strong advocate for restrictive barriers to be scrapped, enabling consumers to access goods and services across the EU regardless of residence
- Free Flow of Data – the UK’s position could not be clearer; their DSM paper stated “data is beautiful” and envisaged an economy built on the ability to transfer anonymised data cross-border without restriction
- Marketing teams have begun preparing for the implementation of the General Data Protection Regulations (“GDPR”) recently passed by the European Parliament.

### Potential Impact

The Brexit process is likely to be lengthy and complex.

- **Transition Period:** Currently, the UK Government’s position is that the UK still remains a full member of the EU with all the rights and obligations this entails; in Brussels, the mantra is very much one of business as usual. There are no empty UK seats in Brussels negotiating rooms and in the immediate term FTI Consulting expects the UK will continue to play an active role on various fronts related to the media and entertainment industry
- **Digital Single Market:** Vicky Ford, the UK’s effective and respected Member of the European Parliament, who chairs the Internal Market and Consumer Protection (IMCO) Committee, responsible for reviewing the DSM will maintain this influential role. However, she may come under political pressure to relinquish it
- **Free Flow of Data:** The UK has been a progressive voice here. With the UK bowing out of the EU, there is potential to embolden those Member States who are more inclined to build barriers
- **Data Protection:** If the UK is not part of the EU, then upcoming EU reforms to data protection law would not directly apply to the UK. According to the Information Commission Office, if the UK wants to trade with the Single Market on equal terms it would have to prove ‘adequacy’ – in other words, UK data protection standards would have to be equivalent to the EU’s General Data Protection Regulation framework starting in 2018
- **Political Environment:** The political landscape remains fluid and volatile. Prime Minister Theresa May’s position on the internal market and how this will be played out against the free movement of people is as yet unclear. Furthermore, with elections in France, Germany and other EU member states on the horizon, the EU-27’s collective position has still to be formulated.

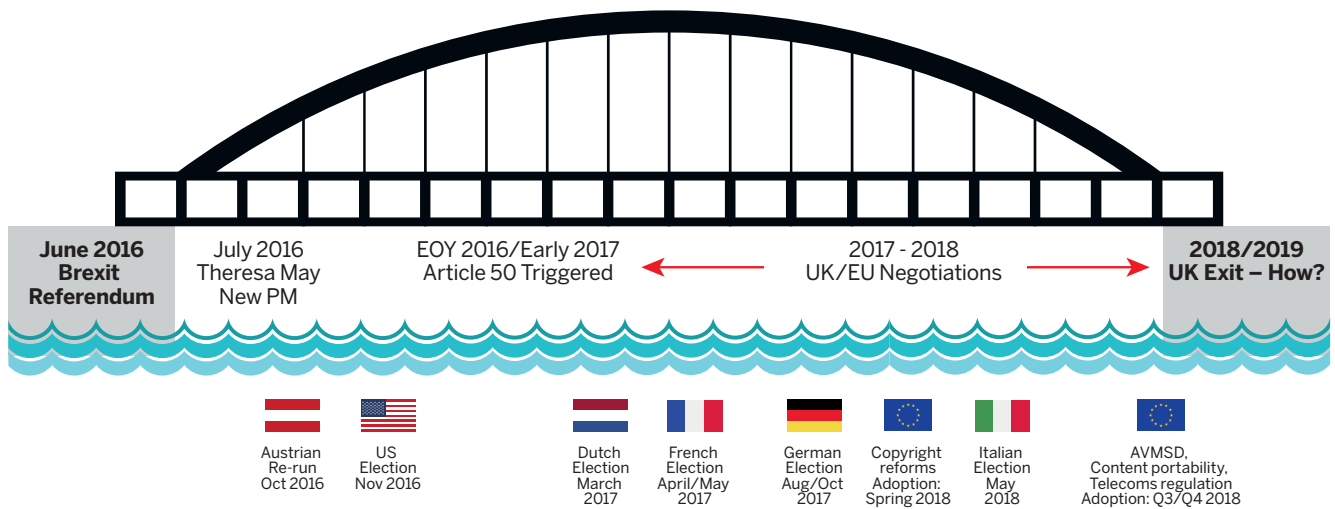


## How to Navigate the Post-Brexit Waters

In summary, the post-Referendum period raises many questions for media and entertainment companies, including:

- What is your potential operational and financial exposure on a go-forward basis?
- How do you mitigate likely revenue shortfalls and cost increases as a result of currency devaluation?
- How do you manage co-production financing in light of the many anticipated changes?
- Who do you need to be talking to within the UK government and the EU to ensure that your business interests are being represented?
- Do you need to move or relocate your offices from London to within the EU?
- Can you start to identify new trading partners outside of EU?
- Are there opportunities for acquiring assets within the UK?

Media and entertainment companies will be addressing these questions against a dynamic political and regulatory environment.



FTI Consulting recommends the following framework for navigating the waters between now and the ultimate form of “Brexit”:

Risk Assessment	Scenario Planning	Options Assessment	Implementation
<ul style="list-style-type: none"> <li>• Assessing operational and financial exposure related to Brexit impact on:                             <ul style="list-style-type: none"> <li>– Audiovisual Media Services Directive (“AVMSD”)</li> <li>– Country of Origin Provisions (“COO”)</li> <li>– Digital Single Market (“DSM”) initiatives</li> <li>– Free movement of people</li> <li>– Access to co-production financing</li> <li>– Tariffs and Tax Impacts</li> <li>– Exchange Rate Exposure</li> <li>– Equity Valuations</li> <li>– Merger &amp; Acquisition Activity</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Identify potential scenarios that could play out in relation to key exposure areas</li> <li>• Determine key external drivers</li> <li>• Define major internal variables</li> <li>• Collect quantitative, qualitative, regulatory, third party polls and expert opinion data</li> <li>• Assess probabilities related to various data points</li> <li>• Apply data and probabilities to various scenarios</li> <li>• Identify potential acquisition and divestiture opportunities as appropriate</li> <li>• Build and develop options as well as contingency plans</li> </ul>	<ul style="list-style-type: none"> <li>• Evaluate the various options based on the following:                             <ul style="list-style-type: none"> <li>– Financial benefits and costs</li> <li>– Short and long term strategic value</li> <li>– Organizational needs</li> <li>– Regulatory framework</li> <li>– Competitive viability</li> <li>– Enterprise value</li> <li>– Risk exposure</li> <li>– SWOT analysis</li> </ul> </li> <li>• Rank options and determine optimal path’s forward</li> </ul>	<ul style="list-style-type: none"> <li>• Develop detailed budgets and business plans for implementation</li> <li>• Establish KPI’s for monitoring progress and benchmarking purposes</li> <li>• Determine roles and responsibilities for implementation management</li> <li>• Establish specific timelines</li> <li>• Develop monitoring processes</li> <li>• Develop communications plan for key stakeholders internally and externally</li> <li>• Conduct commercial and financial due diligence on potential acquisitions and/or divestitures</li> </ul>
<b>Communications Strategy</b> EU/Brussels • UK/Whitehall • Financial Markets • Trading Partners • Consumers			
<ul style="list-style-type: none"> <li>• Enlist on the ground teams in London and Brussels with critical knowledge of and relationships with the governing institutions</li> <li>• Build and enlist advocacy campaigns to support key business interests</li> <li>• Develop proactive communications messaging targeted at key stakeholders, including government, financial markets and investors, trading partners and consumers</li> </ul>			

## How FTI Consulting Can Help

With dedicated teams in London, Brussels, across the EU and the US, FTI Consulting is well placed to support you. Of particular note, FTI Consulting already works closely with the UK government, EU institutions and policy influencers and has its ear close to the ground on political developments as they unfold.

In addition, our Media & Entertainment team in London and the US includes professionals who previously had leadership roles in the international television and film business and can relate to the unique challenges decision makers are facing in the post-Referendum era.

On a cross-practice basis, we are ideally placed to advise companies seeking to contribute to the policy debate affecting companies in the media and entertainment sector.

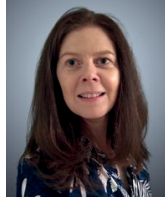


## FTI Consulting's Brexit Leadership Team

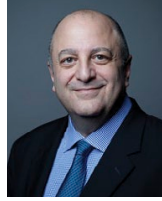
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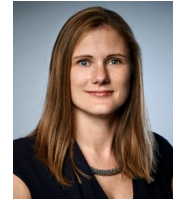


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### About FTI Consulting

FTI Consulting, Inc. is a global business advisory firm dedicated to helping organisations protect and enhance enterprise value in an increasingly complex legal, regulatory and economic environment. FTI Consulting professionals, who are located in all major business centres throughout the world, work closely with clients to anticipate, illuminate and overcome complex business challenges in areas such as investigations, litigation, mergers and acquisitions, regulatory issues, reputation management and restructuring.

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