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SENIOR MEDIA APPOINTMENTS

Brexit: Latest Updates for the Media Sector

Last month 52% of those who voted in the EU membership referendum (an estimated 37% of the population) voted in favour of leaving the European Union, and however turbulently, the fog has started to clear in terms of what the Media industries can expect in the next few years of negotiations.

Former Culture Secretary John Whittingdale was adamant that there will be no immediate changes, and that Brexit will create new opportunities for the UK: "our sectors are amongst some of the strongest and fastest growing, contributing 16% of total gross value added to the UK economy. We will support our sectors in seeking new arrangements which will maintain our trade relations and encourage them to look for new opportunities across the world".

Here is an outline of the possible changes to the media and telecoms sectors according to the experts.

Broadcasters

There were immediate financial repercussions to the referendum result, with ITV's share price dropping by 19% to £1.81 overnight while Sky's dropped 8% to £8.20 in the same time frame, STV by 8.2%, advertising giant WPP by 5.8%, and Pinewood Studios by 3%.

At Channel 4, David Abraham has assured staff that the company is in "sound health" to deal with the challenges that may arise on leaving the EU. Meanwhile at ITV, Adam Crozier noted there would be some "short term uncertainty" in political and economic terms but assured staff that "the important thing is for all of us to focus on the ongoing strength and success of our business and to get on with doing a great job". ITV owns Dutch production group Talpa Media, and its production division and international distribution unit operates across Europe.

Zodiak Media UK Chief Rod Henwood said the aforementioned share price drops could hit programming budgets hard: "Every ad reliant broadcaster in the UK will face a shock in the short term and that may play through to programming budgets in the short term. That's a potential problem." However, James Burstall, Chief of Argonon, spoke of our "resilient industry and a resilient nation", saying a positive outcome is not out of reach.

Richard Broughton, an analyst at Ampere, said that "many international media businesses base their European operations in the UK to take advantage of the EU's freedom of trade rules, as well as some of the UK's more relaxed broadcasting regulations – broadcasting out of the UK to other EU markets. The future for these companies' ability to base themselves in the UK is now likely to depend on the trade agreements the UK is able to put in place with the European Union upon exit."

Production

Pact, the UK production body, admitted disappointment in the decision to leave the UK, but has also reassured producers that there's no immediate cause for concern.

Prospero Strategy published a report detailing potential impacts for the media sector. There are various uncertainties in terms of regulation and markets which will affect investment in production and content. UK producers are likely to lose entitlement to EU subsidies such as EU Media Funds with ERDF funding, which are key for many independent films and high-end drama productions such as Game of Thrones, as well as niche factual producers. However, in theory these losses could be offset by extension of media tax credits and production quotas that qualify for tax benefits on UK citizens, and coproduction treaties that bi-laterally extend beyond EU member states. In the short term, the sterling's deflation, and the lack of clarity regarding licensing, tariffs and funding will make coproductions and securing TV and film funding a challenge.

The EU is the largest export market for the UK's creative industries, totalling 56% of all overseas trade in the sector, according to the Creative Industries Federation, and Pact figures show that Europe accounts for 31% of UK television exports. Jane Hyndman, Group General Counsel at Compact Media Group said losing out on these funds will lead to "significant inward investment for the UK regions… Loss of access to these funds means that either the UK becomes less attractive, or requires new funding mechanisms to plug the gap".

Distribution

Distributors selling UK content to networks on the continent are also likely to be affected by the fluctuating pound. Meanwhile, back in May, the European Commission announced plans to create a Digital Single Market, which would mean that international distributors are not able to sell their content to distinct territories in Europe. While international distributors such as Hollywood studios would not have to abide by the DSM rules in the event of sales to UK broadcasters after Brexit, British distributors will have to obey the rules to sell into Europe, which will affect the UK's stronghold in negotiations surrounding EU copyright law and therefore the ease of financing film and television.

The Chair of Pact, Laura Mansfield, said "Pact will be working closely with both the UK government to feed into negotiations to make sure that necessary trade deals with Europe are secured as quickly as possible, and will continue to influence the Commission's proposals around the Digital Single Market before they are finally agreed and impact on the UK TV and film sector".

Telecoms

Post exit, the UK is likely to lose its key influence of EU policy in telecoms as well as media. The UK recently lobbied to loosen product placement restrictions, and argued against Country of

Destination licensing in the AVMS draft directive. The industry is also concerned about the Digital Single Market bill, which would prevent selling territory by territory, and the UK's position to prevent it has been undermined.

The UK will have little other choice but to harmonise with EU laws. For example, regarding data protection rules, the UK has no other option than to apply data protection principles and safeguards which comply with EU regulation, because any trading relationship with EU countries will involve transfers of personal data to and from the UK.

However, UK telecoms may benefit from the freedom to determine its own infrastructure provisions such as the development of fibre broadband networks.

Employment and Employment Legislation

In terms of employment law, EU laws include the Agency Workers Regulations 2010, Working Time Regulations 1998, some Discrimination legislations in the Equality Act 2010, TUPE, ECJ decisions such as holiday pay rules, and others. Rights to parental and family leave in the UK are a mixture of rights deriving from the EU and rights originating in the UK. Disentangling the EU law from UK law will be a very gradual process so it is likely that European law will still continue to apply in one way or another even after Brexit, and it is extremely improbable that businesses and politicians will argue to repeal laws concerning discrimination.

Before the vote, Britain was consistently the first or second choice destination for EU job seekers, receiving nearly 3 times more interest than Germany or France, the next two most popular destinations. Also, immigrants from the EU15 are 30% more likely to be employed in a high-skill occupation than the average British-born employee, such as hard-to-fill technology roles. Loss of free labour movement is likely to have a significant impact on the production and IT sectors, cutting off access to talent and worsening the skills shortage, and increasing costs and logistics for locations and facilities in the EU.

Though politically unlikely, the UK and the EU could negotiate to maintain freedom of movement, either with the EU as a whole or with particular EU countries. Only EU nationals whose countries the UK negotiates freedom of movement rights with would be able to work in the UK without a visa.

Otherwise, EU workers may be required to apply for visas under UK Immigration Rules, and vice versa for UK workers living in the EU under their immigration laws. As of yet, the status of EU citizens resident in the UK isn't confirmed. Low-skilled workers aren't likely to be eligible for UK work visas, therefore we may encounter a low-skilled workers shortage after Brexit, resulting in higher costs for employers to attract the employees they need. Changes to UK migration policy may incentivise EU nationals to leave the UK, leaving labour market gaps (skilled and unskilled labour) and affecting the economy. If the regularisation of an employee's immigration status includes costly visa fees, this will affect the individual as well as the employer's costs in supporting immigration application processes.

How will the new legislation affect Media Companies?

Our associates Lewis Silkin LLP have very kindly published their insights into what media companies can expect in terms of employment and immigration laws if Brexit is finalised. The key points they highlight are that negotiations will take months or years to be finalised, so don't panic! Much of the regulatory framework is likely to stay as it is, though there are some areas which companies are advised to be aware of.

Here are some practical tips on what you should be thinking about now.

- It would be wise to review how many of your workforce are EU migrants, and how many UK nationals are posted elsewhere in the EU, in order to assist them in applying for citizenship, permanent residency, or an EU workers' permit (if required) to maintain the stability of the workforce. In any case, it will be important to keep up to date with any freedom of movement changes. Also, consider reiterating non-discrimination and harassment policies, and ensuring employees feel secure, in the face of the increase in incidents of hatred directed at foreign nationals.
- Does your organisation need an HQ or a larger workforce in the EU? If the UK stays as an EEA member this is something to consider. Companies could also consider changing the work council agreements to be based in Ireland under Irish law. Also given the currency fluctuations, assess arrangements of employees posted abroad and paid in other currencies.
- The current position of EU statutory leave may change or even ultimately be reversed, so it makes sense to review considerations concerning making offers on holiday pay beyond basic salary.
- Carry on with existing measures to comply with the General Data Protection Regulation, as the UK will not have exited by May 2018 when the Regulation comes into force, and domestic law is also unlikely to change.

While the economic and political processes of the next few years are likely to be lengthy and tumultuous, we hope this report has shed some light into what to expect and what we can achieve with the right forward-thinking preparation. Thank you very much to Lewis Silkin.