Select Committee on the European Union

Internal Market Sub-Committee

Corrected oral evidence: Brexit: Future Trade between the UK and the EU

Thursday 3 November 2016

10.10 am

Watch the meeting

Members present: Lord Whitty (The Chairman); Lord Aberdare; Baroness Donaghy; Lord German; Lord Lansley; Lord Liddle; Lord Mawson; Baroness Noakes; Baroness Randerson; Lord Rees of Ludlow; Lord Wei.

Evidence Session No. 5 Heard in Public Questions 47 - 55

Witnesses

I: Ms Alice Enders, Enders Analysis; Mr John McVay, PACT; Mr Adam Minns, COBA.

Examination of witnesses

Mr John McVay, Mr Adam Minns, and Ms Alice Enders.

Q47 **The Chairman:** Good morning. You are very welcome here. As you are aware, we are doing an inquiry into trade in services, and we are trying to cover as much of the services area and specific subsectors of that as possible. We are focusing on the creative sector in this session, particularly on broadcasting, cinema and television.

Can I direct my first question to you, Ms Enders, and ask if you could give us an overview of the creative sectors and the way in which they trade both with the EU and the rest of the world, the various types of trade, WTO categories or any other form of categorisation? What are the main options available to us as we leave the EU and how will they impact on the creative sectors? You can say what you like—I will ask the other two witnesses to follow up—but could you give an overview to start with?

Ms Alice Enders: Thank you very much. I apologise in advance that I have a really bad cold.

The Chairman: Me too, so we will infect each other. I am sorry.

Ms Alice Enders: As I am sure you are aware, the creative industries is a sector that is very successful, very future oriented, digitally enabled and of immense public value, well beyond its economic significance. The Department for Culture, Media and Sport has defined this cluster, and what it has in common is the use of creative talent. This is a cluster that looks heterogeneous in the sense that you have conventional cultural industries such as the AV sector—the audio-visual sector—crafts, design, architecture and museums; then you have IT, software and computer services; publishing, galleries, libraries; and, of course, the performing and visual arts.

What they all have in common is that they use creative talent. They are very people-focused businesses, which means they are very reliant on creative talent and access to a pool of skilled workers. These are now digitally enabled sectors. Publishing is both in print and digital. To keep it simple, this is a sector that has a very substantial interest in the development of the digital economy in the UK, the EU and all around the world.

In terms of its value, again, it is 5.2% of GVA. However, the sector includes a very important not-for-profit component. The cultural sector is unique in having these linkages, which other sectors might not have; for example, research and development is very important to industry, but it is also very true of culture.

The Cis (Creative Industries) represent 9% of exports of services from the UK, which is £20 billion a year. What do these exports represent? In the audio-visual sector, for example, they represent sales of programming abroad. They represent British films that are distributed on the continent, in the US or elsewhere. Also, very importantly, they represent transactions between UK companies and the subsidiaries of UK companies in the EU and US. That is very important, and it has not been brought out. That is one of the reasons why the regime for people is very important. We want to be able to facilitate the free movement of people between subsidiaries of companies that currently exist.

The EU is the top destination for our creative industries' exports with 39%[1], and the Americans are second. The US is also a very big market for the creative industries, but the EU is currently more important. The biggest single sector is IT, computer software services. My understanding is that many of those exports are linked to government procurement on the continent. That is an important aspect that we need to bring out as well. The second most important sector is the audio-visual sector. As you

[1] Of the share of the UK's exports.

are aware, audio-visual is a regulated service sector in the digital single market. Therefore, it is extremely reliant on the market access that is provided for by the digital single market today.

Of course, there are unregulated service sectors such as advertising and marketing. Travel, albeit not in the creative industries, is a great example of an unregulated sector, at least on its surface. So, there are unregulated sectors. Advertising, marketing, IT and computer services are all without any restriction. That would also be the case if the UK were to fall back on the WTO as such.

The creative industries have been the fastest growing of the blue book categories and the fastest growing sector of the UK economy since the recovery began. Obviously, the economic recovery has helped the advertising component of the creative industries. It is a very cyclical industry with a hyper-cyclical profile, which means that in a recession advertising drops like a stone. TV advertising dropped 12% in 2009. There is a lot of anxiety in the creative industries about the transition ahead of 2017, and even 2016.

Those are the important elements for the creative sector. Did you want me to go on a little about leaving the EU, or shall I stop there?

The Chairman: Would you give us the top lines of the effect of not being in the single market or not being in the EU?

Ms Alice Enders: Okay. We are all aware of the World Trade Organization (WTO) and that the UK is an original member of the World Trade Organization. However, it does not currently have the attributes of membership in so far as it lacks a tariff schedule and a services schedule. If we assume that those two things are solved in the next little while, presumably we would be able to fall back on the WTO, which has been a very successful organisation in the area of goods.

I worked at the WTO during the time of the Uruguay round, and you have to understand the way in which services came up in the WTO. First, it was a completely new sector. Secondly, there were not tariff and non-tariff barriers as in the goods area. Thirdly, the ambitions of the existing GATT (General Agreement on Trade and Tariffs) members were much reduced. For example, in the goods area, they evolved important disciplines on subsidies over a long period of time.

The reason why the EU got cold feet about AV was because the GATS (General Agreement on Trade in Services) agenda included an important additional layer of disciplines on subsidies. The "exception culturelle", which is debated, because cultural services are included in the GATS so the issue of their exception is problematic, is an issue here. By putting cultural services into the GATS, it made the sector open to an attack on what were relatively new policies, such as the 1989 European convention on trans-frontier television and the 'Television without Frontiers Directive, which then led into the Audiovisual Media Services Directive and so on. At the time the EU wanted—this was a collective desire—to boost the production of AV (Audiovisual), and it has been a fantastically successful effort, if you do not mind my saying so. So we have the WTO.

In the GATS agreement, Article 5 allows you to conclude a free trade agreement, so you can go further. Unfortunately, in those FTAs (free trade agreements), so far there has not been a huge amount of progress on audio-visual. In the single market there is a presumption of access that is lacking in a free trade agreement or in the WTO. It is an integrated project. The digital single market is an incredibly important aspect of it. One of the key notions in the digital single market is the convergence of media networks, which is of enormous importance to the media sectors here and obviously the creative industries. The ability to replicate the single market outside the single market is therefore limited. You have to recognise that neither the FTAs nor the WTO provide for the free movement of creative talent. Thank you.

The Chairman: Thank you very much; that is very helpful. We may come back to some of those points. In general terms, in relation to broadcasting and the audio-visual side, Mr McVay, would you like to give us the picture from your members' point of view?

Mr John McVay: Yes. Thank you. The EU remains a very important part of UK exports for our programmes. It is about a third of UK exports. We remain a net exporter to Europe for audio-visual works. Indeed, one of Angela Merkel's favourite shows is "Midsomer Murders". Maybe we can put something in the scripts to help. The EU has a range of other benefits to us, not just by being a place where we can sell our products and formats. Clearly, we have been very good—and this has been touched on—at nicking other people's highly skilled creative talent across marketing, channel management, lawyers and accountants and bringing them to the UK. The effect of that, during the past decade, has made us far more competitive and world class because we are creating a cohort of very senior executives who are world class, and our own citizens are working within that environment and getting better. So we have become more competitive by bringing more highly skilled people to the UK.

I have just finished a piece of work for the Government for the Creative Industries Council, which is our report across all the creative industries. I am very happy to share it with the Committee. There was not a lot of data on this; it was a bit of a "back of a fag packet" but a little more. When we started looking at highly skilled areas or employment areas for EU and non-EU employees into our creative industries, we found that it was roughly 5% EU and 6% non-EU.

You have to remember that jobs in our industries are not like fruit pickers. They are always very highly skilled creative jobs or executive jobs. Clearly, that is a major problem for our sector where we have relocated and brought in a number of people from across Europe and elsewhere relatively easily. The point made earlier on about our ability to move Brits into our business interests in Sweden or vice versa has made us more competitive and led to increased sales and opportunities. Many of my independent production companies have bought companies across

Europe. We pipeline our IP through those local companies into their markets, and we retain all rights and revenues as a consequence of that. That has generally been managed through a combination of UK citizens and our EU colleagues maximising those opportunities. That is our major issue across the creative industries.

If you look at fashion, we have been very good at attracting fantastic designers from Italy to come and study in London. Then they have set up businesses in London and created new fashion brands, enterprises and businesses. The creative industries, as has been touched on, has been a runaway success story during the past years, not just in audio-visual. Certainly, the work I have done for government demonstrates that we are strong across all the creative industries.

In terms of how we go forward, we take some comfort from British programming. We come under the Trans-frontier Television Convention, which qualifies our programming as European. Unless the EU Commission seeks, under the current review of the Audiovisual Media Services (AVMS) Directive, to change that, we would be protected for at least another five to 10 years, depending on when the Commission may want to seek to review that. That is currently not in scope. We would be very concerned if it suddenly became in scope in the AVMS, but, according to my consultations with the current UK Government, there is no ability for the EU to put it into scope as it has not been included in the review. That would be a worry, because that would then mean that my programming, if I am selling "Sherlock", which is a very successful British drama made by Hartswood Films, distributed by BBC Worldwide, currently qualifies as European. When I sell it to France, Germany, Spain or Italy, it is a European work. If we are not covered under the trans-frontier television convention, it becomes foreign acquired.

Of course, the debate here is that the Americans have been selling their films into Europe for decades under no definitions. They have been able to do that because there is a demand. Audiences want that. Even if we did go down the worst path and we became foreign acquired, the foreign broadcasters such as the French would have a dilemma, because if they chose not to buy our works they would be letting down their audiences, their advertisers and their subscribers. It is not necessarily all doom and gloom. However, we want to seek the most optimal position so that we can give our investors guarantees.

The UK is very different from our continental colleagues. When I look at producers in France and Germany—I think this was touched on in terms of the WTO and cultural exceptions—those countries super-subsidise their audio-visual sectors for good cultural reasons. The UK does not. The single biggest subsidy into our audio-visual sector is the BBC, which is clearly an intervention in the market, but it is not driven as a cultural subsidy; it is driven as a market-oriented provider. So it is quite different. That has been one of our advantages. We are very market focused and we are not subject to huge subsidies, unlike our colleagues.

The Chairman: Mr Minns, do you want to add something?

Mr Adam Minns: Thank you very much for organising today and for the inquiry in general. There is a concern among some in the creative industries that we will get drowned out by concerns raised by other sectors. Looking at the creative industries and broadcasting is very welcome.

The broadcasting sector is part of the success story that Alice referred to earlier on. The UK is home to more international broadcasters than any other market in Europe. We have, by very conservative estimates, 1,100 channels that are licensed by the UK regulator Ofcom. In comparison, the next biggest country in Europe is France, which has 400. After that, Germany has 380, and all the other leading markets are around 200. We are something in the region of double or maybe triple our nearest competitor in the number of channels that are established and based here in the UK.

The interesting and relevant point for today is that, of those channels, more than half—650—are licensed not for the UK at all but for non-domestic markets. They are based here, employing people here and investing here, but broadcasting into other European markets. If we move outside the EU, the legal framework that recognises those licences changes. Effectively, they will not be valid any more. Once that happens or if that were to happen, just to go a little further, in the absence of any alternative trade arrangements that recognise these licences, companies would have to look at relocating at least part of their workforce to an EU Member State in order to get a licence there.

Ms Alice Enders: I would like to add a small point. John mentioned the European convention on transfrontier television. One thing that is clear is that not all EU Member States are members of that convention. The EU, in particular, is not; nor are Belgium, the Netherlands and Ireland. This is an important matter. I did not check this before I put it in my report but I saw it recently. I think that is where the issue of European works will be difficult in the sense that the basis of the definition of European works is being a member of that convention. It may be that Belgium, Ireland and so on will not recognise us as being European, but that is a risk in the current situation. It just emphasises the extent to which there may not be a full fall-back in that particular convention in relation to the quotas and certainly not for transmissions as well.

Mr John McVay: I recognise that, but those markets are so hungry for high-quality UK products that it would not necessarily be that material to our overall net position. They are not countries that we pre-sell to. The way we work in the UK is that we pre-sell our product into Europe to take their money to make our work. That is what I call "OPM": other people's money. We have become very good at using other people's money to make our industries more competitive and of a higher quality, and then we deliver back to them a very high-quality product. Their audiences then love it. They cannot get enough of "Midsomer Murders". We then go back, we ask them for more money, we make the next series and so on. Even if Ireland, Belgium or the Netherlands did not recognise us as

European, they are so dependent on our trade and the quality of our works that I do not think not being members of the convention is material to the overall economics of the industry that I work in.

The Chairman: Lord Mawson has a follow-up question.

Lord Mawson: I want to pick you up on that point about quality, because my sense is that television and its quality at the moment are getting ever shallower. I note that my 15 year-old and his friends do not watch it. They are online. I wondered about the quality question. If countries such as Britain can produce the quality of music of the Beatles, regardless of what you put in place, they are going to buy it in Europe, are they not? Is not the future dependent on the quality question?

Mr John McVay: Absolutely. I am sorry to hear that your children, like mine, do not watch as much television as I would like, because it pays my wages. That is often a lifestyle thing as well.

We travel the world. I have a delegation in China working with all the major Chinese broadcasters right now with 20-plus British companies. Particularly during the past six or seven years, wherever we go around the world, we are seeing emerging middle classes, often more highly educated. They have desires for lifestyle programming and better quality programming. Two weeks ago I came back from MIPCOM, the world's biggest TV market; 12,000 buyers turn up there twice a year. The move is towards, "We want better stuff".

We had a delegation in Colombia last year. We met with all the commercial broadcasters there. They do a lot of BBC per se. They are all commercial. They are either CABSAT or three-tier commercially funded. When you sit down with the buyers and they say, "We love Britain", we say, "That is very nice. We love you, too". They say, "Great, because we want high-quality lifestyle programming and factual entertainment programming, and the UK delivers that". That tells you, when you go into any territory where you meet commercial enterprises like that, that they have a middle-class audience. They choose their lifestyle. They choose what they want to eat. They choose how they want to live. It is no longer, "Well, we have to work 12 hours a day and we can, maybe, afford a telly and whatever is on it is good enough". We are seeing that globally.

This is a huge opportunity for the UK, because we are the world's second largest exporter. We have the fastest-growing creative industry across Europe. Provided we maintain our quality and our creativity, unlike many of the doom-and-gloom merchants I hear, we are in a very strong position, because 52% of our global creative industries' exports are to the rest of the world. So we have a huge way to go to increase our exports. Provided we get our overall infrastructure and our ability to get to market, our trade agreements and access to markets, we have a very good opportunity particularly for the creative industries. I cannot talk for other ones. The report we delivered to the Government highlights some of the things that we think the Government could be doing now to prepare for those opportunities.

Mr Adam Minns: May I answer that as well? John is right. We surveyed CEOs of member companies a couple of years ago about why they would base themselves in the UK and why they wanted to invest in the UK. To answer your question, one of the top strengths of the UK was its creative sector. Whatever its flaws, it is a phenomenal success story. The skills and talents involved are exceptional. What came back from that survey that was interesting was that the UK is very strong in creative skills, and the English language is a good advantage. In every other category, the UK is not as strong as I was expecting it to be. It was 6 or 7. Infrastructure, corporation tax and the regulatory regime—all the different factors you would look at as to where you base yourself—were considered, but the key thing was that it did not have any weaknesses. There were no 2s or 3s, whereas other markets that you might want to invest in—for example, the Czech Republic—could be stronger in terms of labour costs in that they are cheaper but the infrastructure might not be very good; it might be 2 or 3. That was very important.

The problem with moving out of the EU, for us, is not about tariffs or 10% or 15%; it is about that licence being valid or not. Once you remove the validity of that licence, suddenly the UK has a 2 or a 3 for its access to EU markets and we have lost our unique selling point of not having any weaknesses. I hope that is rectifiable. As John said, there are a lot of positives that we can look at in growing the UK as a base, not just for Europe but for other markets, but we must keep one eye on the bedrock that is access to EU markets.

Q48 **Lord Aberdare:** My question has been largely addressed by Ms Enders, which was about the specific benefits of the single market for the creative industries sector. I wonder if any of our witnesses would like to say anything more about whether those benefits could be replicated outside the single market—for example, through membership of the EEA. Again, you have spoken about the WTO. Are there other routes to replicating the advantages that we had through membership of the single market?

Mr Adam Minns: This is going to occupy a lot of lawyers for the next few years. In theory, yes. Certainly, the EEA would give us access to EU markets, but obviously that comes with freedom of movement. In a practical political sense, that may not be an option. We have to be able to tick two boxes. Any arrangement has to include services and cultural services or audio-visual services. Most of the current off-the-shelf models will fall foul of one or the other. The Canadian deal does not include cultural services. That does not mean that you cannot negotiate something new. That is probably what we are looking at. We have a slightly different view on the merits of it.

South Korea and the EU negotiated an FTA in 2011, which does not go anywhere near giving South Korea access to the single market. We would need something that goes much further, but it does include cultural services or some cultural services. At the time it was hailed by the Commission as unprecedented in scope. It is an interesting option and may point to a direction of travel.

Mr John McVay: Following up on Adam's point, I was giving evidence to the All-Party Parliamentary Group on Intellectual Property yesterday. We were having a debate. One of our colleagues, Stan McCoy, is the president of the MPA in Brussels and is very close to a lot of the European politicians. It is an American organisation representing the interests of the US film studios. The issue of what model we end up with is very hard sensibly to comment on because we are in a very difficult political position. I gave a speech at MIPCOM, at the TV market, where one of my key points, which was echoed by Stan last night, was that we have a moral problem in that there is a sort of vindictiveness, an unhappiness and a risk for EU politicians from other Member StateMember States where the deal they carve for us is an incentive or a disincentive for other political issues they may be facing both across Europe or in their own respective countries. It is quite hard to say, "Is it that model or that model?", because those models were all conceived when we had a very different political climate, not just in the UK but in Europe.

One of the points I have made on several occasions to my European counterparts is that they need to talk to their politicians or MEPs to turn the notch down, because it makes it harder here to have sensible conversations. Given the timescales, less heat and more light would be a sensible thing. Certainly, we are working with our European colleagues to try to get that message through the various trade associations and routes to their politicians, because they need to work with us. The whole of Europe wants to have English-language partners for their audio-visual services. We are the route to the global market; they are not. They need to make sure that they understand that, if there are discriminations, prohibitions, non-tariff or tariff barriers, it will only damage their own industries, which would probably mean that they would have to become more and more reliant on yet more public subsidy, so they become less competitive.

Indeed, that is an example that Canada has found during the past 20 years, where its audio-visual sector is suboptimal in terms of the judgment by its own regulator, because it has been driven towards less market-oriented approaches and more subsidy, which has led to underperforming overall, while the UK, with its relatively small subsidy, has become the second largest exporter.

Ms Alice Enders: I wanted to emphasise an incredibly important point that comes up in some of the other questions, which is that the AV sector, in general, benefits from scale. The bigger the scale of the industry, the more it benefits. The reason is because small studios cannot be seen in the world today. As you know, we live in a world where content is king, but there is an awful lot of content out there. An example is the work that PACT has done to aggregate independent producers so that they have a voice. Any time that we take away from the scale that we have, which means markets, co-productions, collaborations, pre-sales and every aspect of funding across the EU, we are taking something away from the audio-visual industry. It is an unusual industry from that perspective because, if you look at where it is today in relation to where it was three decades ago, it was very small scale then. Now it is very large scale, and we really need to protect that scale.

There is a timing issue here, which is that any benefits or future trade arrangements are in the future, after the fact. Businesses plan on what they know. It is extremely difficult to ask businesses in the creative industries to invest for a future trade agreement that does not exist yet and whose provisions with respect to the audio-visual industry would seem at first glance anyway to be difficult to obtain. One has to understand, unlike other industries, that we have a success story, but unfortunately things can unravel unless we are very careful to ensure that the market access is there.

Lord Wei: Can I follow up on that? To pinpoint the precise challenge—let us say for other non-EU countries exporting into the EU—what, in practice, can EU countries do to limit the access currently of, say, non-EU content providers into the EU? Can I have an example of a quota being enforced or something that is very concretely kept, be it imported or exported from coming in?

Ms Alice Enders: There are many examples.

Lord Wei: It would be good to crystallise that, because I am struggling to understand what that looks like.

Ms Alice Enders: As you know, as John mentioned, the US is the No. 1 exporter of AV products by a very long mile. They have worked on this for years. They have fought to gain access to the EU. They enumerate many barriers. For example, Spain has a requirement that films in cinemas must be in the Spanish language to some degree. If you look at China, for example—I know we are not talking about China—there is an import quota of 34 foreign films. You see that it is very easy to have these sorts of restrictions in place, but more importantly the channels that we are talking about here are UK channels that are currently being exported to the EU. There are no US channels that are being exported to the EU today. There are some very material restrictions.

Furthermore, US productions do not gain the benefit of the European works quota, for example. That is very important in terms of co-productions, pre-sales funding and so on. Yes, the US is very successful in exporting to the EU, just like it is very successful in its own market and all over the world. We have been more successful in the TV programming area, relatively speaking, than in the film area. All these aspects go together in terms of creating scale and a pool of creative activity.

Mr John McVay: It is quite hard to know what does not get into the market because no one will tell you that, because that means they have not sold something. They may do that at a higher level, but on the day-to-day business no one tells you that. They just did not get a sale. There are probably many things that have tried to get into the market and have failed because of various non-tariff prohibitions, but no one is going to shout about that.

Lord Mawson: Will EU audiences move online? Is that going to bypass—

Mr John McVay: You bring me to digital single market issues now, which we can touch on, if you want. The problem is that currently the best way to access all content across Europe is to sell our product to Netflix or Amazon, where we will get a higher premium than if we license it through multiple or low-level European networks that are not able to get the scale that we need in order to raise the money that we would normally get from selling individually to broadcasters. Yes, there is a truth that you will go online, but it is going to be a big American platform that you are going online to.

Ms Alice Enders: Do not forget that geo-blocking is going on.

Mr John McVay: I am a fan of that.

Ms Alice Enders: Technically speaking, it is not a solution just to go online in the sense that people cannot access the BBC iPlayer from the continent unless they pay for it. They have stopped that, anyway. The point is that geo-blocking means that there are very significant territorial restrictions. Furthermore, there are some markets where it is simply not permitted to trade digital files across borders, be it books, films or whatever. Those are very hard restrictions. They are not imagined.

The Chairman: You are talking of outside the EU now.

Ms Alice Enders: Yes, that is right, but even in the EU.

The Chairman: Can we generalise this question?

Q49 **Baroness Noakes:** I think we have covered quite a lot of this. Although we have been focusing on access to the EU and the implications of our leaving for the creative sectors, I want to focus, in a relatively short period of time, on trade outside the EU and what would be the problems of falling back on to WTO terms, the significance of the cultural exception in that type of restriction that would be allowed within any arrangements, and whether free trade arrangements provide satisfactory mechanisms for trade outside the EU in the sectors you represent.

Ms Alice Enders: As we mentioned, we have to look at existing agreements. As Adam and John have both said, and we all agree, we would certainly hope that the arrangement with the EU would be more flexible than existing arrangements around the question of culture and so on.

You have to understand that many countries have adopted very similar policies as we and the EU have. Over time, if you look at China, for example, it has understood the importance of culture in its own economic development and cultural development. Unfortunately, if you look at China, for example, that is, obviously, a highly restricted market. However, there have been ways not to get around those barriers but to produce inside China, through co-productions, which they very much welcome, because they see that as skill, technology transfer and so on.

We can certainly rely on a continuing funnel into China, but in terms of market access per se it is going to have to be more in co-production with a Chinese company than the sort of product that would be 100% UK-made, for example.

If you look at the US, it is a very open market. There are no quotas. The only restrictions that I have been able to determine are very similar to the ones we have here with respect to film tax credits. In the US, they tend to believe, like we do, that tax credits should be provided to UK companies as such. It is a very open market. As you know, the BBC has a very substantial studio, and its exports to the US are very important. So there is nothing stopping us from exporting more to the US. There are no market access barriers as such.

If you look in other countries, again there is a mix. In some countries, even though they may not have market access barriers, our content does not really suit them. I might think, perhaps, of Japan because they have linguistic and cultural barriers, and so on, which are not market barriers, but they simply do not like our content as much as, perhaps, some other countries.

The real issue for us, because the US is barrier-free, in this Brexit situation, is to attempt to obtain something very similar from the EU because those are the two big markets for audio-visual. We have already spoken about China.

Mr John McVay: Just to follow on, we have a number of co-production treaties. The UK has been very good at signing co-production treaties with major territories. We have one with China, which is going to be further progressed during the next few months. As I said, I have a delegation in China now. We do sell British programming. "Sherlock" is watched by 500 million Chinese on an online service. The thing we are really good at is taking what are called "formats", the architecture of a programme, and if you take factual entertainment such as "Masterchef", we make it in Chinese, Japanese or Korean. We are one of the world's leaders in that business. Provided we have a treaty so that we can get into markets to meet the buyers, and SARFT, the Chinese regulator, which is very powerful, is very happy with the amount of programming and the nature of the programming, we do not see any real barriers. The UK can sign any co-production treaty with anyone it wants. In fact, I have spent the past five years trying to get it through the Brazilian Parliament, which has been a little difficult during the past few years.

Mr Adam Minns: It was a nice trip.

Mr John McVay: It was a nice trip, yes. For audio-visual, the world wants treaties with us because we are not necessarily one of the world's leading sellers of audio-visual product but creative centres.

Baroness Noakes: Do free trade agreements help creative companies? For example, does CETA assist creative companies in either direction?

Mr Adam Minns: As I mentioned before, we have looked at all the different existing models of free trade agreements. The short answer is no. The EEA arrangement would allow us access for our channels to EU markets.

Baroness Noakes: I am talking about non-EU markets.

Mr Adam Minns: Okay. For non-EU markets, there is an opportunity. At the moment, the vast majority of the channels that are based in the UK are going into EU markets. There is a real opportunity to build up the UK from a European hub into a global hub, broadly serving as a base for channels going right across the world.

Could I quickly mention the point about whether EU audiences will move online? The problem for us there is that the EU regulations cover our on-demand services as well. In fact, we are in an even worse situation there because on-demand is not covered by the convention, which would be the fallback option for the linear channels.

Ms Alice Enders: To go on about Canada, it was the first country that raised the cultural exception in the Uruguay round. Because it had the US on its border, it introduced in the 1970s a very advanced legislative framework around language, culture and so on because it was determined that it needed to develop an identity. If you look at Australia and the role of the public service broadcaster there, it is very similar. It is designed to develop a domestic production sector with a domestic outlet—production and distribution—and that is the way it has always worked. In the case of Canada, in particular, it has proved to be very punctilious about the exclusion for cultural services, bearing in mind, as John says, that there are many types of agreements that are not in FTAs, such as cultural co-operation and co-production. These are very substantial instruments that do not find themselves in FTAs.

The Chairman: Can we go to Baroness Donaghy's question, please?

Q50 **Baroness Donaghy:** Can you explain the ways in which different parts of the broadcasting supply chain, including broadcasters themselves, content producers and the various other ancillary services would be affected by the UK's non-participation in the Audiovisual Media Services Directive in the absence of an equivalent arrangement? I understand, because of the particular skills and investment in the UK, that we have created this cluster effect. Would that be in some ways a protective barrier to any disadvantages of not being able to participate in the Directive?

Mr Adam Minns: While there are direct and indirect impacts—I will be quick—looking at the commercial sector broadcasters, in the absence of any alternative arrangements, under EU rules you have to have a significant part of your workforce in the country where you are licensed. There is an obvious direct risk to jobs in the UK. On top of that, there is investment in related areas such as production and technical areas such as satellite up-linking and re-editing as well; there is the re-versioning that goes on to subtitling and things like that. There are several related areas to broadcasting. On top of that, there is an opportunity cost. I know of at least one international company that is looking at moving people from the EU to the UK. There is a question mark over whether that would happen going forward.

There is the indirect impact, which you referred to, of clustering. As Alice was saying earlier, the critical mass for the UK broadcasting sector is really important. We are supposed to be an innovative sector, but if one company invests, the next one follows herd-like. If you invest in the skills base, that increases the skills. Suddenly the UK then becomes more attractive for the next investor. You invest in the infrastructure, that increases the infrastructure and the UK becomes more attractive, and so on. As I said, to go back to the survey we did, the problem is that, if you suddenly remove access to the EU market, you are pulling the rug out from under our feet.

Mr John McVay: On production, one of our benefits is that we are qualified as European works. If that was tested in the market, because we were no longer European works, I do not think it would be the end of the world because there is demand, a market, an audience and buyers for content. I would not want it. I would rather we did not have to go through that. If there was a way to ensure that we did not have to go through that, that would be our optimal outcome.

The Americans do not qualify as European works. They have been successfully selling their films into Europe for many decades. It is one of the most important markets. It is driven by supply and demand as much as it is by regulation. The regulation was brought in by the EU, as Alice has said, to change what was an underperforming audio-visual sector and push it up. By and large, it is asymmetrical across Europe. There are still some Member States where their audio-visual markets are highly undeveloped or highly consolidated through political ownership. I would not say that, necessarily, the single market is a symmetrical, good market. We have experiences of different parts of that market being good to trade with. Others you would not want to touch with a bargepole because you will never get paid or you will find that your IP has been exploited without your consent.

Ms Alice Enders: If I could add to that and reinforce what both Adam and John said, one of the key things that the UK has benefited from a great deal is domestic and foreign investment in the sector. It has been attracted to the sector because it has been high-performing. If you think that this is the highest performing sector of a group of categories, that gives you a reason to invest. That investment, in itself, drives further investment. It is one of those things about the creative industries; it is not like car plants. The scale that we have attained is very helpful for us in perhaps insulating us to some degree, but at the same time it is the product of the very regime that we are moving away from, and that is our big concern.

Mr Adam Minns: Let me make one final point. I do not think that anyone is saying that suddenly the UK's creative industries are going to collapse as a result. That is not what it is about. It will damage them in different ways. It will damage different parts of the industries to different extents and different companies to different extents—that is the issue—whereas we should be growing them as much as we can.

The Chairman: Lord German, has your question been covered or do you want to take it further?

Lord German: Everyone has talked about European works. I wanted to tackle the issue, if I have read it right from what you have said, of the slow-burn impact if that were at all threatened. It is a convention that does not include everyone but has excluded from it, as you have just said, the impact of on-demand services. The convention runs out, as you say, in a few years' time. As always, an impact is not immediate. It is slow burn. What would you describe was the slow-burn impact if European production services of this sort were put under threat?

Mr John McVay: I can give you a very practical real-world example. I was talking to one of our British distributors when I was at MIPCOM. They were talking to a broadcaster in another EU Member State, and that broadcaster wanted to see in their agreement a Brexit clause, which was, "If such-and-such things happen, we will renegotiate the contract". They were putting a break clause in. I advised them to get rid of it. It is one of the worst clauses you could ever think of, because it is an open-ended excuse to do anything. It is roguish behaviour. I do not think it is sensible business behaviour. It is not so much the slow burn, but it is people trying to anticipate where we are going and then protecting themselves. If that chills investment or sales opportunities, or just makes it more difficult, that is not good news. That sale went ahead, but having that conversation with a buyer is not what you would want, where you have to go back and say, "We are striking that clause. This is unreasonable". That is not the sort of relationship you want to have with regular buyers.

There is already a real-world effect post the referendum. Maybe some people were trying it on, but it is a reality that people are experiencing. The sooner we can get to clarity, the better for everyone, including the broadcaster in another Member State that probably does not want to put in a Brexit clause but feels its lawyers and bosses require it.

Ms Alice Enders: Not only has there been foreign direct investment here, but a lot of the investment has focused on serving not just the EU but what is referred to as EMEA. In the UK, for example, the WPP, which is an advertising and marketing company, has its European headquarters but EMEA headquarters here too. Google and Facebook also have important presences here that they use to serve not just the EU but the Middle East, Africa and often Asia.

The UK has become something of a global hub for these companies. Of course, we are very anxious to preserve the position of the UK as a global hub. Many will say, "If we are in the EU we have to be in the EU, and if the UK is not in the EU, we have to be outside the UK and on the continent”. That is, of course, our big fear. It is the same sort of fear that you hear in financial services. To some degree, these are ‘passporting’ rights, but it is more than that. It has to do with the fact that it is not just about having a brass plate on the continent. It is about having people, resources, the regulatory people, the whole nine yards.

Q51 **Baroness Randerson:** Early on, John McVay referred to the need to tone down the rhetoric. In the light of what has just been said, is there a danger that there will be a desire to cease to promote our work after Brexit? There might still be the quality and a desire to buy it, but the political desire might help squeeze it out of visibility.

Mr John McVay: That is a very good question. I would hope not. That is politics that seems to be anti its own citizens’ interests. I could not imagine that that would be very popular. I would hope that more mature politicians understand that there is a reciprocal benefit to audio-visual. As I said earlier, French, German and Italian producers want to work with the UK. They want access to the quality and the English language that we bring. Our access to America is far better than any other European country. We are, in that sense, a cultural and business hub. You would hope that that would be the case.

During the morning after the referendum I was called by several of my European counterparts—Ireland, France and others—who were phoning me up to say, “Oh, my God! This is a tragedy; it is a disaster. We are going to miss you”. I said, “Well, I have not gone yet”. The next line was, “You are not going to get more competitive, are you, if you are outside the EU?” I said, “Do you know what? We might, because we are not going to sit on our hands”—this is going to your point—“and say, ‘We are not going to change what we do. We are not going to think about this. We are not going to try to create things that advantage us’”, because, depending on the sort of deal, clearly we will not be part of what we were part of. That is an incentive; it is in the Creative Industries Council report and, indeed, in other conversations with the Government.

There is an opportunity. The money that we currently pay into creative Europe is going to come with strings attached for cross-border access. I do not like that. We might be better to get all the creative European money back that we pay in and us deciding how we want to spend it, to promote our interests and not necessarily the interests of the European Commission. We may come up with a better solution that might advantage our creative industries better. Everyone likes the money, of course. Who says no to money? But it is our money distributed through a European body. If we got that money back—it is critical that we understand how much of our money goes through Europe and comes back, and how much of that goes into the creative industries—and we do not lose it, if we end up with a settlement where those funds are effectively retained, we can then come up with ways in which we decide how to spend it.

A great example of that is our tax credits for the creative industries. Everyone else uses the cultural subsidy, where bureaucrats decide editorially what does or does not get made. In the UK, the Exchequer has decided that, if you qualify on the fiscal structure, you get the money. There is no editorial approval other than the fact that you have to qualify as a British work because of the European cultural exception under state aid. That is a system that we can look at going forward. We can make that more competitive. It has been very attractive to US production. We have the highest levels of runaway US production anywhere in the world in the UK. There are opportunities as well. The way we deal with some of those potential non-tariff, political barriers is to become more competitive. That is the right response, I think.

The Chairman: Colleagues, we are approaching the end of our time. There are two quick questions that I definitely would wish to get in, one on intellectual property from Lord Wei and one on freedom of movement from Lord Mawson. Can we ask those in sequence and get your response?

Q52 **Lord Wei:** Intellectual property has been mentioned before. From responses to our inquiry, it seems to be quite important, particularly to the fashion and design industries, and the fear that the lack of it could stifle future trade. To what extent are different sectors within the creative industries dependent on these EU IP protections, and how could these be addressed through different types of trade arrangements?

The Chairman: Can we also have the question on freedom of movement?

Q53 **Lord Mawson:** The principle of the free movement of persons is central to most of the evidence we have received. You have said some things about that. Can you explain how it benefits your sector, and whether a version of a points-based visa regime for EU nationals after Brexit could adequately meet the needs of your sector?

Ms Alice Enders: Can I answer on IP? As you know, IP protection dates back from the 19th century in the Berne convention. The WIPO (World Intellectual Property Organisation) is the umbrella organisation for every significant treaty in this area. If you look at the WTO, for example, the TRIPS agreement—the Trade-Related Aspects of Intellectual Property Rights agreement—has globalised the WIPO treaties.

Free trade agreements such as the Canadian or Korean one deal with specific issues—for example, geographical indications, which pertain to agricultural products, wines and spirits. So FTAs have never done more for intellectual property protection as such in relation to the importance of these WIPO conventions. However, enforcement is very important. It is not just enough to have the law in place. We need to have enforcement. From that perspective, the EU, on our behalf, in relation to industries such as design, fashion and the AV industries as well, has fought a very long and persistent battle to reduce the levels of piracy. Of course, we have high levels of piracy in the EU itself, and that is one of the targets of its action. We also know that there is a very substantial amount of commercial piracy going on around the world. It is very important for the EU to be on our side in this enforcement effort.

Mr John McVay: To add to that, enforcement should be part of all future free trade agreements. It is very important. We are a society that will be increasingly trading on IP-based products that are licensed. Whether that is through science, manufacturing, patents, design, audio-visual or copyright, we are very good at this. We are a very creative country, and it is important that the Government recognise us. Unfortunately, through some of the recent proposals regarding the digital single market, I do not think that the British Government have been as strong on these issues as we would have liked. It is something that needs to be put front and centre because it is going to be part of our future economy and a very important part of it. We may not be making more cars but we will be licensing intellectual property rights to developing markets, which, unfortunately, do not often respect those rights.

Coming back to another point, the key issue, not just for my sector but across the creative industries, is this. I had a conversation with the Government, and they wanted to know how many highly skilled individuals we have from the EU and not from the EU. I said, "That is great, but what is a highly skilled individual—one who is an artist, a musician, a writer or a director?" We are not banking. Our highly skilled people are the creative people, and they do not necessarily always have a qualification or a career path. One of you might write a book that will get adapted into a screenplay. Obviously, you are already highly skilled individuals, but in the creative industries that would make you a very highly skilled, creative and valuable individual as well.

One of our challenges, and it is work that we are doing to try to answer that question, is that we have to meet with the Government to work out the key questions they want to know in looking at future migration, and then establish a common methodology across the creative industries so that we can get an answer. We have many Italians who come and study fashion here, and they are setting up businesses here. They may have a qualification. JK Rowling was not qualified, yet she is one of the world's most successful writers.

Lord Mawson: But is not the point that government would miss Paul McCartney? The music industry would not recognise a guy who does not read music. That is the whole problem.

Mr John McVay: Yes. This is the problem. If we transpose what is classic methodology from law, business and finance into the creative industries, clearly we have a major problem.

Ms Alice Enders: One of the things about the visa system is that it is really not set up to attract people from outside the EU, for sure, if you look at tier 1 and tier 2. A much better approach would be to look at the situation and devise a visa system that is not directed at repelling people but at appealing to them and attracting them. If you look at the Canadian visa system, that is a very interesting and important example to me, because it creates a pipeline. People come in to study, they can then qualify to work and then qualify to immigrate. That pipeline, that understanding, is vital to the creative industries, because a lot of the talent is made right here in the UK thanks to our superior educational establishments.

Mr Adam Minns: It is important to say that the majority of people we employ are UK nationals. We are committed to training in the UK. You can see things that Sky Academy is doing in trying to bring through a million young people by 2020. However, it is difficult to have an international hub without international expertise. You need languages and market knowledge. There is an issue there and it is important. I am not sure if we have a specific solution yet. Through the Creative Industries Council that John mentioned, we have been looking at how you would create an easy-to-use system, and "easy-to-use" is the key part of that.

The Chairman: I am going to get to the wind-up now. I am going to ask Lord Rees and Lord Lansley to ask what are essentially wind-up questions.

Q54 **Lord Rees of Ludlow:** I have a particular question about copyright issues. The copyright regime, which is part of the digital single market strategy, might be undermining the principle of territorial exclusivity of copyrights, so it might be bad for you economically. Would you like to comment on that, briefly?

Mr John McVay: I totally agree with your analysis. It is very bad for us. The Commission has in effect slipped in through the back door a right for broadcasters in Europe that provide the new on-demand services, which is generally a catch-up service, which is a good thing, to allow them to extend it cross-border. It is the cross-border access that they promised would not occur. It is one of the regulations that has been proposed. That is deeply detrimental to our property rights, which are that we will license exclusively by territory. Of course, the problem is, as they say, that they are not going to force anyone to do that, but if I am negotiating with a big French broadcaster, and they say, "Oh, by the way, we are going to make it available to Belgium", it is hard for me to say no, because I am going to need the money to finance the product in the first place, or, secondly, it will diminish my sale in Belgium, which means that my net revenues will decline. It is a bit of a rogues' charter that they have included.

In spite of all evidence to the contrary, this is detrimental to the interests of EU citizens; it is going to cost them an additional £12 billion a year; and it is detrimental to UK citizens because potentially we will not be able to raise the money we need to maintain the quality of our product for our domestic use as well as to maintain our competitiveness internationally. This clause is a Trojan horse, to try to achieve what they have always wanted, which is a digital single market for audio-visual works.

The Chairman: Lord Lansley, this is your last chance to register with us any of your concerns.

Q55 **Lord Lansley:** You have explained very well a whole range of different issues, so we are now in the language of priorities. You may well have said to government, "When you sit down and notify under Article 50, what is it we want?" What are the top priorities? In the language of one, two, three, what fits? Ancillary to that, having said those things, are you getting engagement with government? Are they listening? Are they responding?

Mr Adam Minns: The top priority for us is access to EU markets for audio-visual services—audio-visual services being the key bit there. Alongside that, there are issues around access to skilled talent. The third priority is safeguarding the European works regime.

In terms of engagement with government, so far so good. I have been on many campaigns where the Government have not been interested, and this is certainly not one of them. They are engaged.

In answer to an earlier question, part of the work that we have to do on the continent is to talk to other Member States to explain that having a good relationship with us is in their interests as well. That is key.

The Chairman: Is your government engagement with the DCMS or with the Brexit department?

Mr Adam Minns: The Brexit department, the trade department and DCMS, but primarily DCMS.

The Chairman: So all of them.

Ms Alice Enders: I would like to mention the digital single market again, if you do not mind. It may not be a negotiating priority, but it is incredibly important that we maintain the legislative basis of the digital single market here, and that means data protection. We have not spoken about the data protection regime. This is absolutely central. The General Data Protection Regulation has already been agreed. UK companies have adapted to it. It is a single, harmonised regime, which is, as you know, the currency of the digital age. Many companies, way beyond the broadcasting sector, will benefit from having the single regime in place. I hope it is not a casualty of the Government's focus.

Mr John McVay: I agree with Adam. To address Alice's point, the intention of this Government is to introduce the next data protection legislation. I have certainly been told by the Secretary of State that it will be introduced and we are advising our members to plan for it. So I think that is going to happen.

As to the other things I would add to the list, which are not often EU-related but go back to my other point, we should be working out now what we want to do to increase exports globally. We should not be waiting to see the whites of Brexit's eyes. There are things that we could be doing now, as a society and as a Government, to start looking at what are the key territories, what do we want to do and start working to help our exports. That would be a key one.

Another matter that Alice touched on is that the UK has become the investment capital for audio-visual outside the US. We want to make sure that European and non-European companies can still invest in British businesses easily. That has been generating huge wealth for our economy. It has been increasing our competitiveness. That is a key issue. We want to be able to invest into European companies. We want French companies to invest into British companies, if that is the right thing to do. We do not want any non-tariff barriers to that sort of activity.

The Chairman: Thank you very much. I am sure we could get more out of you. If you think you have not covered anything, please write to us or contact us. It has been a very interesting session, particularly for those of us who are not that familiar with your sector. Thank you very much for your time, your written evidence and what you have said today. It has been most instructive.