Department for Business & Trade

Lord Johnson of Lainston CBE
Minister for Investment
Department for Business and Trade
Old Admiralty Building
London
SW1A 2BL

T +44 (0) 20 4551 0011
E minister.investment@businessandtrade.gov.uk
W www.gov.uk/dit

Lord Lansley
House of Lords
London
SW1A 0PW

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Dear Lord Lansley,

You asked during Committee Stage whether the government would undertake to always consult before exercising the powers in Sections 206 and 208 of the Copyright, Designs and Patents Act. I promised at the time to set out the government's position on this. Before I do so, I would like to set out briefly the purpose of the powers and how they are used.

The existing powers in sections 206 and 208 of the Act can be used to make legislation that extends or restricts rights in performances for certain countries. These powers are longstanding and are used regularly. Typically, this is done to implement new UK trade agreements, or to ensure that, when another country accedes to a relevant treaty on performers' rights, UK law extends protection to that country.

These powers were used in 2023 to implement the Australia and New Zealand FTAs, twice in 2021 to implement the EU and EEA-EFTA FTAs, and in 2016 to restate and simplify existing law.

In these cases, the powers were used only to make changes that were necessary to comply with those agreements, and which had only minor practical impacts.

This is the approach the government will be taking when using these powers to complete our implementation of CPTPP. We intend to lay secondary legislation under these powers in Parliament in February 2024. This will make technical changes that are necessary, along with the Bill, to comply with CPTPP and other treaty obligations. The secondary legislation will include changes to the rights that are extended to CPTPP Parties and the performers who have a qualifying connection to those Parties.

In circumstances such as these – where the UK has little or no flexibility in how it must implement its international obligations – it would be inappropriate to consult. Doing so would be inconsistent with the principle that consultations must have a purpose; they should be entered into where there is scope for meaningful engagement and where multiple options are genuinely on the table.

In other cases, of course, the powers may be used to make more substantive changes – changes that could have real impacts on UK creators, copyright owners, and consumers.
I can confirm that it would always be the government's intention to consult with relevant stakeholders before making such changes.

The most pertinent example of this concerns the right to equitable remuneration for performers, which ensures that musicians receive a share of royalties when their music is broadcast or played in public.

UK law currently does not provide this right to some foreign nationals. The measures in the Bill will indirectly result in more foreign performers becoming eligible for the right. The government is considering whether to make further secondary legislation under the powers in sections 206 and 208 to modify how these rights are provided to foreign performers, consistent with our multilateral treaty obligations.

This is a complex and significant policy issue. The government intends to consult publicly to inform its approach and ensure that it continues to support the UK creative industries and UK users of recorded music.

We expect that consultation to be published very early next year, and we aim to implement the outcome of it in parallel with the coming into effect of the Bill.

I hope that this provides reassurance on this matter and I am placing copies of this letter in the library of the House.

With very best wishes,

Lord Johnson of Lainston CBE
Minister for Investment
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