



Digital Creators Coalition
United States-United Kingdom Trade Agreement Negotiations
Priorities of the Copyright-Intensive Community

April 28, 2020

The Digital Creators Coalition (DCC) is a group of associations, companies and organizations that represent individual creators, independent producers, small-and-medium-size enterprises (SMEs) and large businesses from a broad and diverse array of American copyright-intensive communities, including movies, music, television, authors, publishers, news media and sports. We contribute significantly to U.S. and UK GDP, exports and employment – collectively employing or representing millions of American and British creators.

Creativity is an engine for economic growth in the United States and the United Kingdom, and copyright protection is its fuel, particularly in the digital age. The copyright-intensive sector powers the competitive advantage of both economies – leading by virtually every metric, whether economic input, job creation, salary, trade surplus, or cultural influence. We are united in our resolve that strong copyright protection for creative industries should be a top priority for the United States and the United Kingdom in their trade agreement negotiations.

A U.S.-UK trade agreement offers tremendous potential to catalyze the economic and cultural contributions from the creative communities of the United States and United Kingdom by ensuring strong protections for creators and providing market access to copyright-intensive goods and services. A trade agreement that advances the interests of creators is vital to the economic livelihoods of both the United States and the United Kingdom, and these trade negotiations present a critical opportunity for both countries to leverage their respective leadership on copyright protection and enforcement to advance the shared interests of the creative community in both markets. Moreover, both countries are global cultural leaders, and the agreement reached between them on copyright protections will set a critical precedent that will have a profound impact on future standards in other bilateral and multilateral agreements.

Powering the Contributions of Creators to the U.S. and UK Economies Through Trade

The U.S. and UK creative sectors are engines for economic growth. Copyright protection is critical to fueling the contributions of these sectors to the respective economies. As illustrated in the table below, the creative sector is powering vital contributions to the U.S. and UK economies through trade.

Contributions of the Creative Sector	United States	United Kingdom
<i>Employment</i>	In 2017, the American creative sector supported 5.7 million jobs in the United States. ¹	In 2018, the UK creative sector supported 2 million jobs in the United Kingdom. ²
<i>GDP</i>	In 2017, the creative sector contributed \$1.3 trillion to U.S. GDP. ³	In 2018 the creative, digital and cultural sectors were worth £224.1 billion (\$261.28 billion) to the UK, 11 percent of UK GVA. ⁴
<i>Trade in IPR Goods</i>	In 2017, the sale of U.S. copyright products globally amounted to more than \$191 billion in 2017. ⁵	In 2016, the creative sector exported £13.2 billion (\$15.9 billion) worth of goods, which accounted for 4.3 percent of total UK goods exports. ⁶
<i>Trade in IPR Services</i>	In 2017, IPR licensing (including copyright) was the second-largest U.S. services export category globally. Valued at \$128 billion , IPR accounted	In 2016, the creative sector exported £27.1 billion (\$32.7 billion) worth of

¹ Siwek, Stephen; *Copyright Industries in the U.S. Economy: The 2018 Report*; Economists Incorporated; Prepared for the International Intellectual Property Alliance; p. 3; available at:

<https://www.iipa.org/files/uploads/2018/12/2018CpyrtRptFull.pdf>. Significantly, these are high-quality jobs; the compensation paid in the creative sector far exceeds that of U.S. workers overall, amounting to a compensation premium of 39 percent over the average U.S. annual wage.

² UK Department for Digital, Culture, Media & Sport; “DCMS Sectors Economic Estimates 2018: Employment”; 2018; available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/811903/DCMS_Sectors_Economic_Estimates_2018_Employment_report.pdf. Notably, in 2018 the UK creative sector saw the largest increase in the number of jobs compared to other key sectors, including tourism, digital, sport, telecommunications, and civil society. Employment growth in the UK creative sector was 30.6 percent from 2011 to 2018.

³ Siwek, Stephen; *Copyright Industries in the U.S. Economy: The 2018 Report*. In 2017, the foreign sales of copyright products exceeded those of other major U.S. sectors, including electronic equipment, appliances and components, agricultural products, chemicals (excluding pharmaceuticals & medicines), aerospace products and parts, and pharmaceuticals and medicines.

⁴ UK Department for Digital, Culture, Media & Sport; Current Estimates Report; available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/863632/DCMS_Sectors_Economic_Estimates_GVA_2018.pdf.

⁵ Siwek, Stephen; *Copyright Industries in the U.S. Economy: The 2018 Report*.

⁶ UK Department for Digital, Culture, Media & Sport; *DCMS Sectors Economic Estimates 2016: Trade*; 2016; pp.5-6, 8; available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/774511/DCMS_Sectors_Economic_Estimates_2016_Trade_final.pdf

Contributions of the Creative Sector	United States	United Kingdom
	for 16 percent of total U.S. services exports and amounted to a \$77 billion trade surplus. ⁷	services from the UK, which accounted for 11 percent of total UK services exports. ⁸
<i>U.S.-UK IPR Licensing Trade</i>	In 2014, U.S. exports of IPR licensing services to the United Kingdom were valued at \$9.7 billion . ⁹	In 2014, UK exports of IPR licensing services to the United States were valued at £3.4 billion (\$4.0 billion) . ¹⁰

This illustrative data, while compelling, tells only part of the story regarding the critical importance of the creative sector in powering not only the U.S. and UK economies respectively, but also the significant and reciprocal trade relationship they share. While this data is the latest of which we are aware, it does not fully reflect the current strength of the creative sectors’ contributions, which have continued to grow and deepen. For example, in the United States the core copyright industries grew at an aggregate rate of 5.23 percent annually between 2014 and 2017, and grew at a rate more than 137 percent greater than the remainder of the U.S. economy.¹¹ Likewise, the UK creative industries continue to grow at more than five times the rate of the UK economy, with a greater GVA than the automotive, aerospace, life sciences and oil and gas industries, combined.¹¹

Beyond the large number of quality high-paying jobs, GDP contributions or significant trade volumes, the U.S.-UK creative markets are among the most highly integrated and successful in the world. Built on a strong foundation of a common language and traditions, creators in each country thrive in the other. The respective creative communities have developed deep and rich creative ecosystems that transcend national borders. The global prevalence of Anglo-American cultural “soft power” was not inevitable, but instead is the result of the tremendous hard work and incomparable collaboration by the U.S. and UK creative sectors.

⁷ Allen, Shari; Grimm, Alexis; and Steiner, Christopher; “U.S. International Services: Trade in Services in 2017 and Services Supplied Through Affiliates in 2016”; *Survey of Current Business, The Journal of the U.S. Bureau of Economic Analysis*; Volume 98, Number 10; October 2018; available at: <https://apps.bea.gov/scb/2018/10-october/1018-international-services.htm>

⁸ UK Department for Digital, Culture, Media & Sport; *DCMS Sectors Economic Estimates 2016: Trade*; 2016; pp.5-6, 8; available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/774511/DCMS_Sectors_Economic_Estimates_2016_Trade_final.pdf

⁹ Grimm, Alexis; “Trends in U.S. Trade in Information and Communications Technology (ICT) Services and in ICT-Enabled Services”; Bureau of Economic Analysis, Economics and Statistics Administration, U.S. Department of Commerce; May 24, 2016; p.11, available at <http://www.esa.doc.gov/economic-briefings/new-bea-estimates-international-trade-digitally-enabled-services>.

¹⁰ Grimm, Alexis; “Trends in U.S. Trade in Information and Communications Technology (ICT) Services and in ICT-Enabled Services”; Bureau of Economic Analysis, Economics and Statistics Administration, U.S. Department of Commerce; May 24, 2016; p.11, available at <http://www.esa.doc.gov/economic-briefings/new-bea-estimates-international-trade-digitally-enabled-services>.

¹¹ Creative Industries Federation; *Statistics*; available at: <https://www.creativeindustriesfederation.com/statistics>.

¹¹ Siwek, Stephen; *Copyright Industries in the U.S. Economy: The 2018 Report*.

A U.S.-UK trade agreement, if done right, offers tremendous potential to not only support and grow these vibrant creative sectors, but also to significantly expand their contributions to the U.S. and UK economies. With this robust trade relationship and the strong copyright foundation that already exists in each country's national laws, U.S.-UK negotiations provide a unique opportunity to reach a high-standard agreement on issues pertaining to copyright, while ensuring that strong protections in each market are preserved.

Creative Community Priorities for U.S.-UK Trade Negotiations

We look forward to working with both the U.S. and UK delegations throughout the negotiating process on advancing the following priorities.

- **Accommodate Distinct Copyright “Safe Harbor” Frameworks.** The United States and the United Kingdom both have copyright safe harbor frameworks in their respective domestic legal systems, which are distinct and in flux. Any copyright safe harbor provision should be short and high-level and broadly reflect the goals of the different systems. Such a provision should not contain detailed obligations. Overly prescriptive text not only risks creating obligations that would alter distinct features of each system, but would also run counter to ongoing domestic legislative reviews of copyright safe harbors in each country. Similarly, the copyright safe harbor provisions should not be affected by immunity for non-IPR civil liability for third party content, an issue that is also under active review in both countries.
- **Secondary Liability.** Include explicit provisions on secondary liability. Secondary liability, or joint tortfeasorship under the UK system, is central to the ability of U.S. and UK creators to enforce their rights, particularly online. Many piracy websites may not directly infringe copyright; instead those sites facilitate or induce infringement. Secondary liability allows creators to pursue civil claims against websites and operators that engage in infringing activity, even where such services are not primarily liable for such infringement.
- **Copyright Protections.** Include strong protections for making available, communications to the public, broadcasting, and reproduction rights, and robust protections for technological protection measures and rights management information.
- **Copyright Exceptions.** Confine exceptions and limitations to copyright to the internationally-recognized and time-tested three-step test, and do not include language regarding “balance” or fair use.

- **Copyright Term.** Confirm the term of copyright protection in the United States and the United Kingdom of life of the author plus 70 years (on the basis of the life of a natural person), and extend the term of copyright protection in the United Kingdom to 95 years from the date of publication (on the basis other than the life of a natural person), including for typographical arrangements, consistent with the U.S. term of protection.
- **Copyright Enforcement.** Provide comprehensive commitments on civil, administrative, provisional, border, and criminal measures, including criminalization of unauthorized recording of movies in theaters; civil remedies, including pre-established statutory damages; criminal penalties; and commitments regarding online infringement, including deterrent civil and criminal remedies. The agreement should reflect the strong copyright enforcement provisions contained in the UK Digital Economy Act 2017 and the UK Proceeds of the Crime Act of 2002, as amended.
- **Injunctive Relief.** Section 97A of the UK’s Copyright Design and Patents Act allows rightsholders to secure court orders requiring internet intermediaries to withdraw services from structurally infringing sites. The agreement should accommodate this important UK enforcement mechanism.
- **Market Access.** The services and investment chapters of the agreement should be structured along the lines of the negative list or “NCM” approach in order to secure market access for creative industries, including in the digital marketplace. This modality better reflects how business is actually done and permits both sides to address particular sensitivities without having recourse to blanket sectoral exclusions that would be counterproductive to shared UK and U.S. export interests. We understand that the United Kingdom and the United States will both need to schedule NCMs for certain sensitive aspects of creative industry services and investment regulation, consistent with their existing policies.
- **National Treatment.** Obligations that the parties provide full national treatment for all categories of intellectual property covered in the agreement, including copyrights and related rights.
- **Small and Medium-Sized Enterprises.** The agreement should include strong and specific provisions in the chapter on intellectual property rights (IPR) that enable SMEs to protect and enforce their copyrights, ensure the effective use of the agreement’s copyright provisions by SMEs, and promote copyright protection and enforcement for SMEs globally, including through U.S.-UK cooperation.

- **Coordination.** Provide for coordination between the United States and the United Kingdom on copyright protection, including with respect to third countries, multilateral institutions, enforcement, and data on the economic and trade contributions of the copyright sector. Establish a U.S.-UK IPR Working Group for such coordination that meets regularly, engages with stakeholders, and advances U.S.-UK IPR leadership globally, that builds on the model of the Transatlantic Intellectual Property Rights Working Group (TIPRWG).

Conclusion

The U.S. creative sector reiterates its support for the U.S.-UK trade negotiations and looks forward to continuing to work with the U.S. and UK governments as the negotiations proceed. We stand ready to provide any additional information with respect to our priorities for the negotiations.

Sincerely,

Alliance for Recorded Music
American Association of Independent Music
American Federation of Musicians
AFM SAG-AFTRA Intellectual Property Rights Distribution Fund
American Society of Composers, Authors, and Publishers
Artist Rights Alliance
Association of American Publishers
Authors Guild
CreativeFuture
The Entertainment Small Business Alliance
Independent Film & Television Alliance
International Alliance of Theatrical Stage Employees
International AntiCounterfeiting Coalition
International Intellectual Property Alliance
Motion Picture Association
Music Artists Coalition
National Music Publishers Association
News Media Alliance
Recording Academy
Recording Industry Association of America
Screen Actors Guild-American Federation of Television and Radio Artists
Songwriters Guild of America
SoundExchange