



October 2019

Call for input on a prospective free trade agreement between the UK and Japan

1. UK Music is the umbrella body representing the collective interests of the UK's commercial music industry, from songwriters and composers to artists and musicians, studio producers, music managers, music publishers, major and independent record labels, music licensing companies and the live music sector.
2. UK Music exists to drive economic growth and promote the benefits of music to British society. A full list of UK Music members can be found in annex.
3. The music industry contributes £4.5 billion Gross Value Added of which £2.6 billion are revenues derived from export (UK Music Measuring Music 2018 report). Japan is a significant market for British music; both as regards sales of physical (CDs) and digital (streaming) copies. It is key that there are no tariff or non-tariff barriers after the UK's withdrawal from the European Union. No tariffs should be introduced on physical goods or copyright licensing; touring should be simple for UK musicians e.g. by providing a streamlined visa process.
4. We welcome the European Union and Japan Economic Partnership Agreement which has been in force since February 2019. We hope that the United Kingdom is able to either sign a continuity agreement to the European Union and Japan Economic Partnership Agreement or conclude a United Kingdom and Japan free-trade agreement with the same terms.

International Copyright Treaties.

5. In the European Union/Japan Economic Partnership Agreement the parties agreed to adhere to international standards of copyright protection; in particular the TRIPS Agreement, the WIPO Internet Treaties, the Berne and Rome Convention, Art 14.3. These agreements provide for national treatment as well as setting minimum standards of protection such as the term of protection.
6. The United Kingdom is already part of these international copyright treaties, and consequentially we recommend that any free trade agreement between the United Kingdom and Japan expressly refers to these agreements.

UK Music
4th floor
49 Whitehall
London, SW1A 2BX

T. 020 3713 8444
info@ukmusic.org
www.ukmusic.org

Copyright Substance.

7. Substantially, the European Union and Japan Economic Partnership Agreement (Chapter 14 subsection 1) outlines the key provisions of European Union copyright law, (e.g. beneficiaries, term, and limitations). These provisions already correspond with existing UK copyright law (CDPA 1988 as amended) based on European Union copyright law, providing a high level of protection for authors, performers and those who invest in creativity. We expect that this will not change following the withdrawal from the European Union particularly given the immense economic and societal value of the creative industries including the music industry for the United Kingdom.

Specific aspects.

8. In addition to these copyright provisions, the European Union and Japan Economic Partnership Agreement contains specific provisions which benefit the music industry. We hope these provisions - as referred to below - will become part of any free trade agreement the United Kingdom concludes.

Collective management

9. We welcome the provision in the European Union and Japan Economic Partnership Agreement stressing the importance of high standards of accountability, good governance and transparency as is the case under European Union copyright law (Collective Rights Management Directive). Moreover, we encourage the United Kingdom Government to add more substance as provided in Article 16 in its trade deal with Japan. For example by expressly referring to the requirement of accurate and regular payments by collective management organisations to right holders, or by expounding the transparency requirement by specifically referring to transparency of collective management organisations for both the collection of monies for right holders and the detailed listing of the costs occurred.

Article 16 Collective Management

The Parties:

- a. recognise the importance of promoting cooperation between their respective collective management organisations*
- b. agree to promote the transparency of collective management organisations; and*
- c. endeavour to facilitate non-discriminating treatment by collective management organisations of right-holders they represent either directly or via another collective management organisation.*

Public Awareness

10. We specifically welcome the general provision to promote the public awareness concerning protection of intellectual property, Art 14.7. Such promotion of intellectual property is already occurring at UK level via various promotional and educational campaigns carried out by the UK Intellectual Property Office.

ARTICLE 14.7 - Promotion of public awareness concerning protection of intellectual property

Each Party shall take necessary measures to continue promoting public awareness of protection of intellectual property including educational and dissemination projects on the use of intellectual property as well as on the enforcement of intellectual property rights.

11. Additionally, the free trade agreement between UK and Japan should address the following issues which are not part of the European Union/ Japan Economic Partnership Agreement.

Website Blocking

12. In order to maintain a healthy and fair online music market, music right holders and governments have an interest in protecting legitimate, licensed market players from unfair competition from unlicensed music services. An efficient and cost-effective way for internet access service providers to lawfully prevent their customers from accessing copyright infringing services exists in the UK in the form of website blocking orders (Section 97A of the CPDA 1988; based on Article 8 (3) Directive Copyright in the Information Society).
13. Such orders are routinely issued in the UK pursuant to Section 97A of the CPDA 1988 and they contribute to the health of the UK online music market and the lower prevalence of piracy, and such orders should be made available in other countries in line with UK and international best practice. Use of unauthorized content remains a significant issue for music. IFPI estimates that, in 2017 alone, 17.1 billion tracks were illegally downloaded via BitTorrent, 3.3 billion tracks via cyberlockers and 2.6 billion via what is known as “stream ripping.” In fact, earlier this month IFPI issued its Music Consumer Insight report, which found that 38% of consumers globally obtain music through infringing methods – with stream ripping the largest form (32% of consumers). In Japan, more than 10% of music listeners (and 23% of the important 16-24-year-old segment) engage in stream ripping (figures provided by our member BPI).
14. Both real-world experience and research demonstrate that website blocking is an effective strategy in controlling these challenges. It has already been tested in 30 countries. Globally, more than 2600 URLs have been blocked with low implementation costs.

15. The free trade agreement with Japan should expressly refer to website blocking orders as a means to protect legitimate business from unfair competition through unlicensed music services.

Public Performance Rights

16. Public Performance Rights remain an industry priority globally and we believe that when effectively implemented, they could substantially enhance the Japanese music ecosystem as they do elsewhere. Globally, performance income (including both broadcast and public performance) provides about 14% of global music revenue. In fact, in Europe public performance provides more revenue than radio, TV and cable retransmission. Moreover, there are good international precedents of effective collections and marketing of public performance licences.
17. Public performance rights already exist for composers and publishers but not for performers and phonogram producers; these rights were not included in the European Union and Japan Economic Partnership Agreement. We hope the UK Government could use the political momentum in Japan to ensure the introduction of public performance rights for performers and phonogram producers in Japan. We specifically draw attention to Article 14.12 European Union and Japan Economic Partnership Agreement: *“The Parties agree to continue discussion on adequate protection for the use of phonograms for all communication to the public, giving due consideration to the importance of international standards regarding protection for the use of phonograms.”*

This will ensure that public performance rights apply to all creative works involved in a song, including those of performers and phonogram producers. Most importantly, it provides a mechanism for performers on those phonograms to be remunerated for their creativity.

Transfer of value

18. The transfer of value or “value gap”, is the term used to describe the gulf between the value of the music exploited by so-called user upload platforms and the royalties returned to creators. This is a significant problem because the user upload platforms represent the largest on-demand music audience in the world. As a matter of public policy, this is facilitated by the misapplication of limitations of liability for service providers (called “safe harbours” in the US) by user-upload platforms to avoid licensing music on fair terms in the way that other digital services do. This issue has been addressed in the European Directive Copyright in the Digital Single Market 790/ 19. And notwithstanding the developments concerning the UK withdrawal from the European Union we recommend addressing the underlying issues by confirming:
 - These user-upload platforms perform an act of communication to the public; and
 - These user-upload platforms are not eligible for the limitations of liability provided under international, regional and national laws.

19. This clarifies the liability of user-upload platforms, requiring that they either negotiate licenses on fair terms or they must take effective measures to prevent the availability of unauthorised content.

Annex

UK Music's membership comprises of: -

- AIM – The Association of Independent Music – the trade body for the independent music community, representing over 850 small and medium sized independent record labels and associated music businesses.
- BPI - the trade body of the recorded music industry representing 3 major record labels and over 300 independent record labels.
- FAC – The Featured Artists Coalition represents and promotes the interests of featured recording artists in the music industry.
- The Ivors Academy - The Ivors Academy exists to support, protect and celebrate music creators in the UK. We are the independent professional association representing songwriters and composers in all genres, whether they create song, symphony or sync. Previously known as BASCA, we can trace our history back over 70 years. As champions of music creators, we have three main activities: campaigning, cultivating and celebrating.
- MMF – Music Managers Forum - representing over 650 UK managers of artists, songwriters and producers across the music industry with global businesses.
- MPG - Music Producers Guild - representing and promoting the interests of all those involved in the production of recorded music – including producers, engineers, mixers, re-mixers, programmers and mastering engineers.
- MPA - Music Publishers Association - with 260 major and independent music publishers in membership, representing close to 4,000 catalogues across all genres of music.
- Musicians' Union representing 30,000 musicians.
- PPL is the music licensing company which works on behalf of over 100,000 record companies and performers to license recorded music played in public (at pubs, nightclubs, restaurants, shops, offices and many other business types) and broadcast (TV and radio) in the UK.
- *PRS for Music* is responsible for the collective licensing of rights in the musical works of 114,000 composers, songwriters and publishers and an international repertoire of 10 million songs.
- UK Live Music Group, representing of the live music sector with a membership consisting of: Agents' Association (AA), Association for Electronic Music (AFEM), Association of Festival Organisers (AFO), Association of Independent Festivals (AIF), Concert Promoters Association (CPA), International Live Music Conference (ILMC), National Arenas Association (NAA), Production Services Association (PSA), Music Venue Trust (MVT).

For more information please contact Sam Murray, Policy & Research Officer, UK Music on sam.murray@ukmusic.org or 02037 138456