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Post-Brexit Free Trade Agreement between the UK and the European Union

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. UK Music exists to represent the UK's commercial music sector, to drive economic growth and promote the benefits of music to British society.

According to our latest research (published in our Music by Numbers 2019 report, available via www.ukmusic.org) the music industry added £5.2 billion value (income for UK music business) to the UK economy in 2018; £2.7 billion of this GVA were derived from exports. Additionally, the UK's thriving live music sector leads to people spending money in the context of concerts such as the big UK festivals. Such music tourism contributed £4.5 billion spend to the UK economy in 2018 - up 12% from £4 billion in 2017.

We have set out below some key considerations for the UK Government in order to support this economically and culturally valuable sector during their negotiations with the EU for a new free trade agreement (referred to below as the "UK/EU FTA").

Summary

Given the economic value of music to the UK economy, and more specifically its contribution as a significant exporter of music globally, we trust that the UK will retain the high level of protection currently provided by United Kingdom and European Union copyright and related rights laws and their enforcement.

The withdrawal from the European Union must not lead to the introduction of new tariff or non-tariff barriers to trade and investment. It must not become an obstacle to any recovery of the music sector following the devastating COVID 19 lock down.

We are submitting three categories of requests for consideration:

- **Situation of touring for UK and EU musicians/ composers**
- **Non-discrimination in rights**
- **Minimum standards in the management and protection of rights**

I. Situation of touring UK and EU musicians/ composers.

European musicians need to be able to tour without restrictions; this includes the transportation of their equipment. This not only applies to performing musicians but also to songwriters, composers, performers and producers who often travel for work related purposes (e.g. co-writing opportunities or song writing camps). This affects UK musicians touring Europe as well as European Union musicians touring the UK. The inclusion of a reciprocal system in the UK/EU FTA that supports temporary short-term permissions and exemptions for musicians and crews is in the interest of both parties. We stress the financial importance of the live sector to the UK directly contributing £1.1 billion to the UK GVA and indirectly to the wider industry.

At present, musicians can play a concert in Amsterdam one night and then simply travel to Paris the next with no associated costs or red tape as a result of freedom of movement of people. Following the end of the transition period this freedom will end for UK musicians; countries such as France have traditionally required work permits for performances by artists from non-EU countries. Costly bureaucracy will make touring simply unviable for many artists putting the development of future globally-leading UK talent at risk.

The United Kingdom is also a prime destination for the production of music offering globally recognised music studios, composers and performers; our music producers are used by European and other international musicians. Not only does this ensure that there is a continued influx of talent into the United Kingdom, it also creates employment opportunities within the United Kingdom for UK based music producers, performers, engineers and music technicians, amongst others. Similarly, the UK's live sector benefits enormously from an influx of talent from overseas, contributing to the £4.5 billion gross value added to the UK economy through music tourism. It provides home-grown talent with irreplaceable opportunities to develop their careers and gain exposure alongside foreign talent.

Recommendations

- **There needs to be a one system approach for multiple visits to the EU. This can be achieved by mutually agreeing waivers for visas and permits, including for equipment/ “tools of the trade” to avoid unnecessary bureaucracy such as the re-introduction of carnets for musical instruments.**

Alternatively, a “touring passport” can be developed based on the UK’s Permitted Paid Engagement (PPE) system. Changes to the UK’s immigration system provide an opportunity to simplify PPE and offer the EU a reciprocal basis for a one-stop approach for a pan-European “passport” that does not trigger prohibitive cost and formalities. An enhanced PPE system would provide certainty for European and UK musicians/ composers alike without interfering with the respective immigration systems. Both the UK and EU negotiation position papers published at the end of February 2020 acknowledge the importance of enabling temporary entry and stay for business purposes including for self-employed people (most musicians/ composers are self-employed).

II. **Non-discrimination in rights**

A strong copyright framework. The UK has been at the forefront of developing and influencing an EU copyright regime which provides robust protections for right holders and incentivises creativity. While this framework is based upon the fundamental principles set out in the international agreements, including the Berne Convention and the TRIPS Agreement, it goes further in some areas to reflect the importance and value of the cultural sectors in Europe. The EU is the largest single market for the UK's music industry, therefore, securing a strong framework for rights is essential to the sector's future success. We urge the UK government to agree with the EU minimum standards of protections, based upon commonality where appropriate, which ensure the fair flow of royalties from users to right holders and support the UK's creative community.

No tariffs or duties on digital or physical recordings. The withdrawal of the UK from the European Union must not lead to the introduction of new tariff barriers to trade and investment, neither inbound into the United Kingdom nor outbound into the European Union.

The UK music industry is a success story exporting £2.7 billion globally. Our music is played all over the world; two of our top five music markets are in the European Union, France and Germany (the other three being United States, Japan and the United Kingdom). The UK must continue to be a prime exporter of music as well as a prime destination for the production of music. We note that even WTO rules provide no such tariffs or duties for sheet music or optical discs.

No quotas for broadcast of local music. Some European member states apply national or regional quotas for their national music to be played on TV and Radio broadcasts. UK music is global in its appeal and reach, and thus disadvantaged by any quotas, particularly online. Should European quotas be considered, Europe should be defined geographically, including the UK. This corresponds with the existing legal definition of "European works" under the 1989 European Convention on Transfrontier Television.

Private copying. UK songwriters, composers, performers and right holders receive a considerable amount of revenue from European Union member states operating private copying schemes. Private copying levies compensate songwriters, composers, performers, publishing and recording right holders for not being able to license the reproduction of music in certain, private circumstances. The reproduction right is granted under international copyright treaties (e.g. Article 9 (2) Trade Related aspects of Intellectual Property Rights Agreement - TRIPS). The revenues UK composers, performers and right holders receive from such use of their music is independent of European Union membership and based on the international system of national treatment (Article 3 TRIPS Agreement: "Each Member shall accord to the nationals of other Members treatment no less favourable than that it accords to its own nationals with regard to the protection-of intellectual property....").

GDPR. Straightforward and direct data flows and exchanges are fundamental for the operation of the music industry (e.g. data relating to individual songwriters, composers and performers) which needs to be transferred as part of the effective functioning of cross-border licensing and distribution between rightholders and CMOs. It needs to be ensured that the free trade agreement facilitates data flows between the UK and the European Union.

Recommendations

- **Mutual commitment to high level of protections for rights and ensuring that remuneration flows freely to right holders.**
- **No tariffs or duties. Music exports should not be obstructed by the imposition of tariffs or duties.**
- **No European Union quota. The UK/EU FTA needs to acknowledge that any possible geographical reference to European quota includes the UK**
- **Continued participation in private copying income for UK composers and performers. We welcome express reaffirmation of the application of the concept of national treatment between the UK and the EU under established international copyright treaties in the UK/EU FTA.**
- **Data protection regimes need to be mutually recognised. This has been acknowledged in the respective negotiating position papers.**

III. Minimum standards.

Website Blocking Orders. 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. One key element to achieving this was the introduction of website blocking orders in European Union legislation in 2001 to enable internet access providers to lawfully prevent access to copyright infringing services based anywhere. The UK implemented the Directive Copyright in the Information Society in 2003; such orders are routinely issued in the UK pursuant to Section 97A of the CPDA 1988. They contribute to the health of the UK online music market and the lower prevalence of piracy. The International Federation of the Phonographic Industry (IFPI) representing the recording industry worldwide 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.” Both real-world experience and research demonstrate that website blocking is an effective strategy in controlling these challenges.

Collective management organisations. The European Union Copyright Acquis contains important legislation regulating collective management organisations (CMOs) based on the principles of transparency, accountability, and good governance. As part of those principles, CMOs have (for example) obligations around royalty distribution efficiency, and setting tariffs that reflect the economic value of the use of the rights in trade. These rules are mirrored in the UK, and as such common standards will exist in both markets. While there are such common standards, we believe there is no justification for barriers to the operation of CMOs from the UK into the EU and vice versa. Therefore, we urge the UK government to agree with the EU mutual recognition of CMOs operating into each other’s territories, permitting regulation at point of establishment not where individual licensing occurs.

Exhaustion. The exhaustion principle (US: first sales doctrine) provides that the right of distribution is “exhausted” by the transfer of ownership of a copy of the work made by the rightholder or with their consent; it can be national, European or international. The preferred choice for the UK is national exhaustion; we need to resist international exhaustion. International exhaustion will seriously undermine our business models which are based on differentiated and market led pricing. Following the withdrawal of the UK from the European Union the current regime of regional exhaustion within the European Union ceases to apply and it is up to the parties of the UK/EU FTA to agree an exhaustion regime. Article 61 of the New Withdrawal Agreement only concerns exhaustion before the end of the transition period; and it requires addressing in the UK/ EU FTA.

Limitation of liability for online content providers. The UK/EU FTA presents a good opportunity to further incentivise online content providers to seek licenses from right holders to ensure a level playing field for services as well as to guarantee fair remuneration for musicians and composers in the United Kingdom and the European Union.

Digital technologies and the online market have dramatically changed the way in which music is used and consumed over the last two decades. And the change continues. Limitations of liability for online content services under the e-Commerce Directive were devised in the late 1990s to help the development of the then nascent digital communications market. The digital world has developed since then.

In 2020, the digital communications market is well established. In fact online content providers, established a considerable time after the coming into force of the e-Commerce Directive in 2000, are the main source of music consumption. They benefit from enormous increases in broadband availability and speed. Such services often rely on limitations of liability to reduce the licensing fee for the use of music in negotiations with rightholders, or even to avoid obtaining a licence altogether. The relevant provisions are being updated to take into account technical developments in the last 20 years. The extent of such changes will only become apparent once these initiatives are adopted (e.g. in the EU – Article 17 Directive Copyright in the DSM and the expected Digital Services Act later in 2020; in the UK – e.g. Online Harms White Paper). All parties to the UK/ EU FTA should provide minimum standards of liability.

Recommendations

- **Website blocking. We suggest agreeing minimum standards on enforcement of copyright including express reference to website blocking orders in the UK/EU FTA.**
- **Market access. UK collective management organisations should continue to be able to provide services for all composers, performers and right holders without any red tape being imposed at national level. UK CMOs should remain in a position to compete with their European counterparts for the administration of rights based on services.**

- **International exhaustion needs to be resisted. Following the withdrawal from the European Union the UK can apply national exhaustion**
- **We suggest providing minimum standards for the liability of online content providers, also allowing the UK to diverge. The UK can become the place to attract right holders' business by establishing commitments in the UK/EU FTA to incentivise all online content providers to obtain adequate licenses for the use of music.**