

Post-Brexit 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. UK Music exists to represent the UK's commercial music sector, to drive economic growth and promote the benefits of music to British society.
2. 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 was derived from exports. Japan is the second largest music market in the world behind the United States. The Free Trade Agreement is therefore of utmost importance to the future of the UK music industry. Additionally, given the trade imbalance between Japan and the UK, music is a sector which can help change that imbalance as there is globally a one-way traffic of music with Japan. We welcome the ongoing discussions between officials to achieve a timely FTA.
3. We have set out below some key considerations for the UK Government in order to support this economically and culturally valuable sector in the course of its negotiations with the Japan for a post-Brexit free trade agreement (referred to below as the "UK/Japan FTA").

Summary.

Both the United Kingdom and Japan have ratified the relevant international copyright treaties providing minimum standards of protection and national treatment for each citizen. However, Japan has declared a reservation to the WIPO Performances and Phonograms Treaty which restricts the protection for sound recordings; this unduly limits the remuneration for UK right holders and should be removed. We trust that the UK will retain the high level of protection currently provided under the UK Copyright framework.

A Free Trade Agreement will also ensure the continued absence of tariffs on physical goods or copyright licensing. The UK currently benefits from the European Union Japan partnership agreement which contains detailed provisions on copyright such as the extension of the term of protection to 70 years after the death of the author.

We, however, hope that the UK/Japan FTA can exceed the basic approach of the European Union Japan partnership agreement. Specifically, we suggest:

- **Comprehensive public performance rights benefiting performers and phonogram producers**
- **Individual approach to ensure clear and direct liability of user-upload platforms**
- **Introduction of website blocking measures**
- **Meaningful radio broadcast rates for sound recordings**

In detail

Public Performance Rights

4. 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.

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.”?*

The UK/Japan FTA should amend the public performance right for recording producers and performers to address the existing disparity of protection.

Transfer of Value

5. 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.

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.

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. We urge the UK Government not to introduce detailed provisions in the UK/Japan FTA. This will ensure that the UK can act in a sovereign and flexible way to any technological developments. The UK/Japan FTA should be limited to providing minimum standards to incentivise licensing.

Website Blocking

6. 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).

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.” 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).

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.

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.

Meaningful radio broadcast rates for sound recordings

7. Whilst Japanese copyright law provides for protection of sound recordings and compositions in radio broadcast, the rates on which the royalties to UK right holders are based are low. This undervaluation of our rights is due to the lack of a fair and robust rate setting process reflecting the real economic value of music to the broadcast industry. Additionally, rightholders face difficulties challenging these rate because of defects of the arbitration system. We urgently need the establishment of an independent arbitration process to consider the rates that radio broadcasters should be charged; this process needs to be easily accessible for right holders.

The Free Trade Agreement should ensure easy access to arbitration/ supervision for UK right holders in Japan.