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## UK South Korea Free trade agreement

### Introduction.

UK Music is the collective voice of the UK's world-leading music industry. UK Music represents all sectors of the music industry – bringing them together to collaborate, campaign and champion music. UK Music promotes the music industry as a key national asset to all levels of Government.

Intellectual property is one of the key areas that the UK exports to South Korea; with the music industry being a part of the £195 million [identified](#) by the UK government as UK services exports to South Korea in 2021.

South Korea is the fourth largest economy in Asia; it will become an even more significant trading partner for the UK's creative industries in the future, providing new market opportunities for our creative talent and music business. In particular given the young music loving and tech savvy audience (similar to other emerging markets such as India). Given the success of Korean popular music (K-POP) for over a decade, South Korea is now the 7<sup>th</sup> [largest](#) market for music globally. The UK music industry is ready to take advantage of the new opportunities to export UK music as well as invest in South Korean music without trade barriers. The UK is the second largest net exporter of music globally behind the United States .

We welcome the existing continuity agreement which already established minimum standards of protection for the creative sector. As the UK Parliament report expressly acknowledged : “...*the existing obligations on intellectual property (“IP”) found in international and trade agreements remain in place.*” The United Kingdom is a full member of the World Intellectual Property Organization in her own rights (not limited to its membership of the European Union) and remains compliant with the minimum standards of protection agreed in the WIPO Internet treaties providing for the benefit of composers, publishers, musical artists and record companies alike. The UK also continues to be fully compliant with the World Trade Organization's agreement on the trade related aspects of intellectual property rights (“TRIPS”). Similarly, South Korea is a member of the WIPO Internet Treaties as well as the World Trade Organisation.

However, we suggest that the implementation of the existing agreement could be further progressed.

In addition to the general alignment of the minimum standards provided under International Copyright Treaties we recommend addressing some outstanding challenges and constraints we recognise when attempting to trade or invest in South Korea within the context of the trade negotiations. The United Kingdom provides a high level of protection for copyright and enforcement in practice which is fundamental to the success of its creative industries.

## **1. Public performance right.**

The public performance right is limited in South Korea, many venues are still exempted from having to pay for the public playing of music despite some recent changes adding new categories to the list of venues where the public performance right is recognised in August 2017. These exemptions are contrary to South Korea's obligations and are not justified under the Three-Step Test in Article 10 WCT, Article 16 WPPT and Article 13 TRIPS Agreement (see, for example, the decision of the WTO Dispute Panel rejecting the US exception on bars and grills).

To the extent that South Korea relies upon its reservation to Article 15 of the WPPT in support of such exemptions as they apply to sound recordings and performances, that reservation should be withdrawn.

- Remove the exception to the public performance right (Article 29)
- Remove the reservation to Article 15 WPPT.

## **2. Collective management organisations (called copyright trust service providers under the South Korean copyright law).**

Cooperation between Collective Management Organisations. Under South Korean [copyright](#) law (Article 46) any transfer of rights for instance to a music publisher requires the consent of the South Korean collective management organisation, KOMCA. KOMCA has been granted a wide mandate in South Korea unduly restricting the fundamental principle of collective management, right holders choice. In practice this means that a South Korean composer cannot sign with a UK publisher without the consent of KOMCA.

This evidently constitutes a barrier to market access (both interfering with contractual freedom and infringing internationally recognised principles of collective management).

Whilst the continuity [agreement](#) already refers to endeavours "*to facilitate the establishment of arrangements between their respective collecting societies for the purposes of mutually ensuring easier access and delivery of content between the Parties*" Article 10.8 - Cooperation on collective management of rights) but this has not been implemented.

Such provisions on collective management organisations are significant in trade agreements in the absence of references in international treaties. We welcome in particular [Article](#) 14.16 of the UK /Japan Comprehensive Economic Partnership Agreement or [Article](#) 15.65 of the UK/ Australia free trade agreement which requires collective management organisations to operate in a manner that is fair, efficient, transparent and accountable. Obviously, these high-level obligations are only of practical value if implemented.

- Implement the existing provision in the FTA by removing Article 46 of the South Korean Copyright Act

### **3. Enforcement.**

Website blocking orders. In the UK, one of the most important and effective measures to stop users from accessing illegal websites (thereby stopping them from unlawfully downloading or streaming music or other content) is to require access providers (ISPs) to block their subscribers' access to these websites. Section 97A of the UK Copyright, Designs and Patents Act provides an explicit legal basis for right holders to seek an injunction against ISPs requiring them to block access to sites where there is evidence those sites are infringing. This provision has been relied on many times by music, film, sports and broadcast right owners to successfully seek injunctions. Such website blocking orders are a success story in the United Kingdom. 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. South Korea already provides a website blocking procedure but its broad scope needs to be clarified in law so it is clear that it applies to all online infringements, including against cyber-lockers and stream ripping applications.

- Website blocking orders should be part of every trade agreement; furthermore, if both parties already provide such procedures it should be easily agreeable. (C.f. Article 15.89 of the UK Australia free trade [agreement](#)).

Registration. As required under International Copyright Treaties there are no formalities for copyright to subsist (Article 5.2. Berne Convention). However, under South Korean Copyright law, registration of copyright is required in order to claim statutory damages in infringement actions (similar to the situation in the US). This limits the effectiveness of remedies guaranteed by IP treaties; without registration no statutory damages.

- Remove this de requirement which in practice constitutes a formality prohibited under the Berne Convention and limits the enforcement options provided under the TRIPS Agreement.

#### **4. Practical cooperation**

On a practical level, we stress the importance of further cooperation across the creative industries between the United Kingdom and the Republic of South Korea. We hope that do this end the UK-ROK Creative Industries Forums can be revived with the grated providing practical outcomes benefiting creative industries.

- Support the (re-) establishment of creative industries forums providing mechanisms for the creative industries in both the United Kingdom and South Korea to exchange best practice but mainly to ensure mutual market access.

#### **5. Negotiate new deal so UK musicians and support staff can apply for and purchase visas to tour in South Korea with ease**

As is the case with all free trade agreements we urge government to proactively address the situation of touring musicians; globally, artists need simple and clear procedures to obtain visas and work permits including their equipment. We note that the UK already constitutes a big market for South Korean artists given the universal popularity of K-pop. There was a whole [festival](#) dedicated to this in 2022 and Black Pink are playing Hyde Park in 2023. It is in the interest of both countries to facilitate touring.

- We encourage the UK government to negotiate a reciprocal agreement with South Korea on visa costs. There is a big cost disparity which discriminates against UK artists performing in Korea vs Korean artists in the UK. There is also a practical issue e.g. concerning the time it takes for the granting of a work permit, this should be referenced in the context of the trade negotiations. Touring offers great potential for UK musicians to increase their presence and therefore their export value.

## Annex

UK Music's membership comprises: -

- The Association of Independent Music – the trade body for the independent music sector and community which make up more than a quarter of the UK's recorded music market. Representing 1000+ independent record labels and associated businesses, AIM's members range from globally recognised brands to the next generation of British music entrepreneurs.
- BPI - The British Phonographic Industry - The representative voice of the UK's recorded music sector. Their membership consists of approximately 500 music companies, ranging from hundreds of SME independent labels to the major global record companies Universal, Sony and Warner. They also organise the BRIT Awards, the Mercury Prize and administer the Music Exports Growth Scheme (MEGS).
- FAC – The Featured Artists Coalition - UK trade body representing the specific rights and interests of music artists. A not-for-profit organisation, they represent a diverse, global membership of creators at all stages of their careers and provide a strong, collective voice for artists.
- The Ivors Academy - An independent association representing professional songwriters and composers. As champions of music creators for over 70 years, the organisation works to support, protect and celebrate music creators including its internationally respected Ivors Awards.
- MMF – Music Managers Forum - representing over 1000 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 music studios, producers, engineers, mixers, remixers, 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 over 32,000 musicians from all genres, both featured and non-featured.
- PPL licenses recorded music in the UK when it is played in public or broadcast and ensures that revenue flows back to our members. These include independent and major record companies, together with performers ranging from emerging musicians to globally renowned artists. In 2021 we collected £252.8 million while also distributing money to 147,000 performers and recording rightsholders.

- PRS for Music is responsible for the collective licensing of rights in the musical works of 150,000 composers, songwriters and publishers and an international repertoire of 28 million songs.
- UK Music also has an informal association with LIVE (Live music Industry Venues & Entertainment), the voice of the UK's live music and entertainment business. LIVE members are a federation of 13 live music industry associations representing 3,150 businesses, over 4,000 artists and 2,000 backstage workers