

BCC response to the 'Trade with India: Call for input' (31 August 2021)

1. The British Copyright Council (BCC) is a not-for-profit organisation that provides a forum for discussion on copyright law and related issues within the creative industries. We have 31 member organisations that span the creative industries from creators of literature, music, tv and film, photography, illustrations and other visual art - to publishers and producers. Our members represent over 500,000 individual creators and those who manage their rights.
2. In 2019, the value of goods exported by sector was: £20.1bn for the Creative Industries (49.9% higher than 2018; 33.0% higher than 2015) and £17.4bn for the Cultural Sector (63.2% higher than 2018; 41.4% higher than 2015).¹ These numbers are driven by music, performing and visual arts, publishing, film, tv, radio, museums, galleries and libraries. Therefore, the initial provisions and principles must emphasise the importance of promoting creativity and innovation, not just advances in technology.

Q. Which of these areas of a free trade agreement best describe your priorities?

3. Intellectual Property

Q. Based on the priority areas you have outlined above, please provide information on the importance of these issues to your organisation/ members.**Q. Please explain why these are your top priorities.**

4. The UK's creative industries contributed £115.9billion to the economy in 2019, according to the Department of Digital, Culture, Media & Sport.² This is a 43.6% increase since 2010 and means the sector makes up just under 6% of the economy - more than the automotive, aerospace, life sciences and oil and gas industries combined. Intellectual Property (IP) is in the top five UK service exports, valued at £17.5bn in 2020, 6.5% of UK exports, therefore the IP Chapters in any trade agreements will be of paramount importance to the UK's future as an exporter, but also its reputation as a hub for innovation and culture that draws many people to the UK to do business.³ Therefore initial provisions and principles must emphasise the importance of promoting creativity and innovation, not just advances in technology.
5. There has been sustained growth in exports to India making it an increasingly important market. However, the development of a legitimate and competitive market has been mired in piracy, lack of licensing and erroneous application of limitations of liability. Therefore, a strong copyright and enforcement regime is of utmost importance. Our members have concerns about investing in the Indian market in view of the shortcomings in copyright protection and enforcement.
6. India is a member of relevant international copyright treaties - the Berne Convention, the TRIPS agreement and the 1996 WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty. These provide minimum standards of protection as well as national treatment. However, we note specific areas in Indian copyright law which should be

¹ <https://www.gov.uk/government/statistics/dcms-economic-estimates-2019-trade-report/dcms-sectors-economic-estimates-2019-trade>

² <https://www.gov.uk/government/statistics/dcms-economic-estimates-2019-gross-value-added/dcms-economic-estimates-2019-provisional-gross-value-added>

³ Department for International Trade (2021) *Trade and Investment Core Statistics Book, April 2021* [Core Statistics Book for trade, investment and the economy \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/94444/core-statistics-book-for-trade-investment-and-the-economy)

addressed in bilateral trade negotiations between the UK and India. Some of these will need to be addressed in the wording of the FTA and others will need to be addressed through alternative means such as Memorandums of Understanding (MOUs). Irrespective of approach these issues should be addressed throughout the discussions leveraging the FTA for maximum benefit the UK's creative industries and rightsholders:

- a. Increase term of protection to the international standard of 70 years after the death of the composer (for literary and musical works) or after publication (for sound recordings, with equivalent provisions for performers' rights). The term of protection for copyright works is 10 years shorter in India than the international standard of 70 years after the death of the author or after publication. The UK adheres to the international standard of 70 years, and this is an opportunity to encourage India to adopt best practice.
- b. Clarify that user upload platforms such as YouTube require licences for the use of music; they are outside the scope of the provisions limiting the liability of intermediaries in the Information Technology Act 2000. User upload platforms and in particular YouTube represent by far the largest on-demand music source in India. This is facilitated by the misapplication of limitations of liability for intermediaries which enables user-upload platforms to avoid licensing music on fair terms. In reality this hinders the establishment of the legitimate market for online music services, as evidenced in the IMI Digital Music Study India 2018. The study asked those who do not pay for streaming what prevents them from converting to paying users and more than half of the respondents (52%) cited the availability of music on YouTube.
- c. Clarify that digital services require direct licences, in particular streaming services. They are not covered by the statutory licensing regime for radio and TV broadcasts in Section 31D of the Indian Copyright Act. India's Department of Industrial Policy and Promotion has already drafted legislative amendments that would extend compulsory licensing in a manner that would be consistent with the Berne Convention's three-step-test and the TRIPS agreement.
- d. Put pressure on radio and TV broadcasters to fully license their programs in accordance with Indian copyright law via all relevant collective management organisations (CMOs) such as Indian Performing Right Society - IPRS and Phonographic Performance Limited India – PPL. In addition to the high level of unlicensed activity in India, radio and TV broadcasters often refuse to obtain all necessary licences. Within the bilateral trade negotiations, the government should raise the issue of rate setting and the supervision of the process by authorities.
- e. UK CMOs currently face barriers in terms of securing fair and appropriate licences and remuneration for the use of their members works in India. This is partly a function of the law, such as the impact of an overly broad interpretation of 'fair dealing' in the context of educational use, but also a result of the dilatory processes by which new CMOs are established and certified by the relevant Government agencies. These can be addressed by including provisions that require accountability, transparency and good governance in relation to CMOs. For education specifically, there is an additional issue in that [judgement](#) in the Delhi University photocopy case, and the application of S52 (1) the [Indian Copyright Act](#), contravene the Berne three-step test. This means that the Indian Reprographic Rights Organisation (IRRO), which represents publishers and authors in India, is unable to effectively licence educational institutions resulting in a significant loss of revenue to publishers and authors. The UK Government should encourage swift implementation of recommendations in the

recently published [report](#) by the Parliamentary Standing Committee on Commerce in India to resolve this matter. There are over 1.4 million schools and over 50,000 universities in India. If IRRO was to licence just 10% of these institutions, it would generate at least £28 million for both Indian and foreign rightsholders.

- f. Remove India's reservation to the WIPO Performances and Phonograms Treaty and ensure that its protection for sound recording rightsholders and performers is fully and clearly compliant with this Treaty. This would remove the current ambiguity surrounding performer rights in India as withdrawing the reservation to WIPO Performances and Phonograms Treaty would assist in ensuring that British performers are properly protected in India for the public performance or broadcast of commercially published sound recordings featuring their recorded performances.
- g. Enforce existing copyright laws by pursuing physical and digital infringements of users. The low level of enforcement of copyright renders investing in the Indian music market and the publishing industry economically challenging. In addition, faster and more cost-efficient access to the courts to tackle physical and online infringement is required. However, it is worth noting and congratulating India on its approach to website blocking. This is proving somewhat successful in the fight against high levels of piracy. The UK should use these negotiations and subsequent agreement to support India in enforcing copyright laws. Piracy is the main obstacle to success for UK exports to India and it is damaging both the Indian and international creative industries.
- h. Historically, practical barriers to establishment of an Artist Resale Right (ARR) system in India has linked to difficulties in showing provenance for artist works when sold. It is therefore important that legislation sets out clearly who is to be liable for payments under any ARR scheme and how the payments should be distributed. In practice, operators in India now also operate in other countries of the world where ARR is applied. Therefore, the concerns should be reducing.

Q. What, if any, recommendations would you make to the Government to do about the issues you have outlined above?

- i. Initial provisions and principles must emphasise the importance of promoting creativity and innovation, not just advances in technology.
- ii. Increase term of protection to the international standard of 70 years after the death of the composer (for literary and musical works) or after publication (for sound recordings, with equivalent provisions for performers' rights).
- iii. Clarify that user upload platforms such as YouTube require licences for the use of music.
- iv. Put pressure on radio and TV broadcasters to fully license their programs in accordance with Indian copyright law via all relevant collective management organisations (CMOs).
- v. The copyright section of the IP chapter of any future UK trade agreement with India should include provisions that require accountability, transparency and good governance in relation to CMOs.
- vi. Encourage swift implementation of recommendations in the recently published [report](#) by the Parliamentary Standing Committee on Commerce in relation to educational use of copyright materials.
- vii. Urge India to remove reservation to the WIPO Performances and Phonograms Treaty and ensure that its protection for sound recording rightsholders and performers is fully and clearly compliant with this Treaty.

- viii. As part of the UK's forthcoming Enforcement Strategy discuss how we can support India to enforce existing copyright laws by pursuing physical and digital infringements of users.
- ix. The UK should encourage positive commitments for reciprocal recognition and application of the ARR within both India and the UK.

If you would like to discuss this response further contact director@copyright.org.uk.