

BCC response to the Trade with Israel: call for input

Which areas of the current UK-Israel trading relationship do you think the UK government should aim to keep the same and why?

As the UK's 39th largest trading partner, Israel accounts for 0.4% of total UK trade.¹ Intellectual property was one of the top 5 UK service exports to Israel over the course of 2020, intellectual property (IP) representing £98 million in value.² Furthermore, Israel's ongoing focus on fostering its creative industries and international partnerships has resulted in flourishing cultural sectors domestically and helped position Israel as a growing market for the UK creative industry.³

Similarly, to the UK, copyright protection in Israel is generally from the date of creation until 70 years after the death of the creator; while copyright in records, tapes, and other means for recording voices lasts 50 years from the creation of the master copy; and copyright in photographs and lithographs last 50 years from the creation of the first negative. These terms should at the very least match our copyright duration and be preserved and protected to prevent any erosion of IP rights for rightsholders. There are also notable gaps in protection for creators when it comes to performers on sound recordings – such as the many bands, solo artists and session musicians on the musical recordings that the UK so successfully exports worldwide- which need to be urgently addressed.

Since amendments to the copyright law which were implemented in 1999 to comply with TRIPS, Israel's copyright regime has been consistent with many international standards and norms. Furthermore, Israel is a signatory to many key international copyright treaties including but not limited to:

- The Berne Convention for the Protection of Literary and Artistic Works.
- The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS).
- Convention Establishing the World Intellectual Property Organization (1967).
- The WIPO Copyright Treaty (WCT).

¹ EU members are treated as individual trading partners with the UK

² ONS, (2021). UK trade in services: service type by partner country, non-seasonally adjusted (Accessed: 25th November 2021)

³ See for example, Tel Aviv joins UNESCO 'Creative Cities' list available from: <https://www.timesofisrael.com/tel-aviv-joins-unesco-creative-cities-list/>

- The WIPO Performances and Phonograms Treaty (WPPT).

However, it should be noted that international agreements are not self-executing in Israel and additional legislation is required for the implementation of international obligations. As such, the full protection that would in theory be afforded under the provisions of some of these treaties is not yet in place.

Defending current international standards, such as the Berne Convention's Three Step Test, and ensuring that new FTAs do not undermine, or dilute existing IP rights is of paramount importance as the UK embarks on these new conversations. Care should also be taken to discuss provisions that could be made to support the effective enforcement of existing rights – for example by promoting good practice or increasing awareness of copyright related matters.

Which areas of the current trading relationship between the UK and Israel do you think the UK government should consider changing or improving during future trade negotiations with Israel and why? What are your organisation's main concerns about an enhanced trade agreement (or related talks) with Israel? please provide information on the importance of these issues to your organisation's.

On a general note, the British Copyright Council is unequivocal in its belief that IP Chapters in all FTAs should include provisions which promote transparency, good governance and support the effective operational status of collective management organisations within different national jurisdictions. Israel is known to be a technology hub, a “start-up nation,” where many international companies invest and operate in. A robust and functioning IP system is crucial to support this innovation sustainably and must be comprised of several building blocks including legislation, a transparent registration system, a clear and consistent judicial system, and widespread education and public awareness. Promoting and encouraging innovation cannot take place through the erosion of rights of creators and copyright holders. We cover this matter in greater detail in our recent response to the IPO's call for evidence on AI which can be accessed here:

<https://www.britishcopyright.org/wp-content/uploads/January-2022-BCC-IPO-AI-Consultation-response-form.pdf>

Another key matter of concern to UK-based rightsholders are upcoming announced changes to Israeli Copyright law which aim to remove the freedom of rightsholders to choose a Collective Management Organisation (CMO) for the administration of their rights. We do not believe that there is any evidence of a market failure which would justify such interventions. It is incredibly important that the UK use the opportunity offered by these talks to advocate for the principles of national treatment and non-discrimination to be expressly included in

the IP chapter of any new trade agreement to ensure the protection of non-Israeli rights holders through local CMOs.

Proposal 12 of the Memorandum to amend Section 13 of existing Copyright Law (regarding public performances) is also especially concerning since it would create an unjust limitation to the definition of public. Under this new definition of “public”, a group of less than six customers at any given time would be excluded. It is also proposed that this exception be applied on a non-cumulative basis which is contrary to standard international law and practice. Given that public performance revenue accounts for approximately 50m NIS (Israeli New Shekel) or more than 30% of domestic music industry revenues, if adopted Proposal 12 will negatively impact an essential income stream for creators and would undermine the financial stability of the wider industry.

Should these proposed changes go ahead, this would lead to unnecessary market interventions and restrictions in the marketplace, posing barriers to rightsholders and especially non-Israel based rightsholders, in their ability to manage their IP rights. In addition to running counter to international copyright law and treaties, these barriers also disincentivise commercial investment. Our concerns therefore include but are not limited to:

- Upholding the right of creators, copyright owners or exclusive licensees to file a claim for copyright infringement.
- Ensuring rightsholders’ freedom to select their CMO.
- Eliminating the risk of falling out of step with international copyright treaties.

As noted above, we are also concerned that notwithstanding the overall copyright framework in Israel there is a notable gap in respect of the protection of performances on sound recordings. Such performances are only protected if they are recorded in Israel (and Israel has made reservations under for example the Rome Convention to this effect, rather than extend protection to performers more widely). This means that UK performers on sound recordings recorded in the UK – or indeed anywhere in the world except Israel – are denied any remuneration in respect of the subsequent exploitation within Israel of their recorded performances. This unfair imbalance should be corrected.

Is there anything else that you would want to say about the UK’s future trade and investment relationship with Israel?

Beyond taking the opportunity to encourage the enforcement of existing copyright laws by pursuing physical and digital infringements of users, where possible, the UK should also support discussions to develop enforcement recognition provisions within trade agreements that support international cooperation and recognition of the importance of Technical Protection Measures and Rights Information Systems in the legitimate application of copyright works.

As the British Copyright Council has outlined in past responses, the creation and consumption of online works continues to increase and is an important creative and economic driver of copyrighted works. However, there is a need to ensure that both domestic and international

user-upload platforms and digital services are clear on their requirement to acquire and procure licences for the use of copyrighted works (such as illustrations, images, music or poems for example) offered by their platforms and services.

Furthermore, piracy and unauthorised uses of copyright works are rife and increasing in many countries. This is due inter alia to the scale of criminal activities, the various territories they operate within, the fragmentation of the digital landscape, and the reality that many legal systems do not have enough resources to effectively enforce IP rights, and current penalties are too low to act as a meaningful deterrent.

All these elements pose an ongoing danger to the creative sector, and it is critical that they be discussed as the UK continues to develop its ongoing trading relationship with Israel.