

Trade with South Korea: Call for input

Please indicate how actual or potential Intellectual Property issues affect your organisation, business or members (for example, it is difficult to export or invest abroad if a potential partner does not enforce trademark protections).

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, television 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.
3. Intellectual Property (IP) is also 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 are 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.²

Please provide, to the extent that you are able, an overview of your organisation's Intellectual Property interests in South Korea.

1. As the UK's 20th largest trade partner with bilateral trade estimated to be worth £14.3 billion (2021), South Korea accounts for 1.2% of total UK trade.³ ⁴ The Republic of Korea is also a signatory to many international copyright treaties including the Berne Convention, the TRIPS agreement, 1996 WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. The terms of protection for copyright works is also in line with the international standard of 70 years after the death of the author or after publication. The importance of preserving this international standard is vital.

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

² 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)

³ <https://hansard.parliament.uk/commons/2022-12-09/debates/22120910000018/UK-SouthKoreaTradeAgreementUpdate#:~:text=The%20UK%20is%20committed%20to,%C2%A314.3%20billion%20in%202021.>

⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1129451/south-korea-trade-and-investment-factsheet-2023-01-20.pdf

2. In addition, due to the absence of a Artist's Resale Right in South Korea, many UK artists have experienced resales of their work in South Korea, but have not received any royalties for these sales. Whereas these artists would have received fair remuneration had these works instead had sold in the UK. As the Artist's Resale Right allows for fair remuneration of artists, its adoption would result in reciprocity with the UK, thereby both adhering to the Berne Convention and fully redressing the issue.
3. Another matter of interest is that, under South Korean copyright law (Article 46) transfers of rights to a music publisher requires the consent of the collection society for performing rights, which in South Korea is KOMCA.⁵ This situation has resulted in the creation of a monopoly which undermines the choice of rightsholders to exercise their rights fully since they are, for example, unable to sign with a UK publisher should KOMCA refuse to give permission for them to enter into the agreement thereby leading to a barrier to market access. Given that there is no current international treaty that can be relied upon in this type of situation, it is critical that efforts are made to uphold the founding principles of CMOs and their operating practices in trade agreements. Indeed, the UK has done so successfully in other trade agreements such as Japan and Australia. In the case of South Korea repudiating Article 46 would help support rightsholders access broader consumer markets.
4. Lastly, it is worth reemphasising the rapid growth of the creative industries as an economic sector. Given that the UK is in the process of introducing new regulatory regimes for the tech sector, which in itself often interacts with matters relating to IP, there currently is an opportunity for countries including South Korea to align their regulatory regimes.

Please provide a description of any problems you have had entering, operating in, or protecting your Intellectual Property these markets.

We refer to the responses from individual members of the BCC.

Please note any concerns and/or suggested solutions would you like to see raised with South Korea in upcoming meetings. Please include those issues that are a priority to your organisation and that you believe are best addressed through our Free Trade Agreements

South Korea is presently a signatory to several international copyright treaties which provide minimum standards of protection as well as national treatment. However, we note there are a few specific areas which could be reviewed to achieve the maximum benefit the UK's creative industries and rightsholders:

- a) Include specific recognition for the term of protection for authors of all literary or artistic works within the meaning of Article 2 of Berne running for the life of the author and for 70 years after the author's death, irrespective of the date when the work is lawfully made available to the public. If the term of protection for those rights is counted on a basis other

⁵ A full list of South Korean CMOs can be found here: <https://www.copyright.or.kr/eng/links/collective-management-organizations.do>

than the life of a natural person, the term should be no less than 70 years after the work is lawfully made available to the public. The term of protection for producers of phonograms should also be recognised as no less than 70 years after a phonogram is published. Equivalent rights for performers should be recognised in the Trade Agreement and a term of protection for rights in broadcasts should be recognised in the Trade Agreement terms as no less than 50 years after the first transmission of the broadcast.

- b) It is important that any IP Chapter does not prescribe under what conditions exhaustion of intellectual property rights are applied under the legal systems of the parties (without prejudice to any provisions addressing the exhaustion of intellectual property rights in international agreements to which the parties to the Trade Agreement are also party). Similarly, when not already in action, international recognition, and adoption of the Artist Resale Right should be recognised within FTA provisions.
- c) 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.
- d) The creation and consumption of online content continues to increase and is an important driver of creative and copyrighted content. However, there is a need to ensure that both domestic and international user upload platforms and digital services are clear on the requirement that they procure licenses for their use of music and many other copyrighted materials within services offered within the platforms.
- e) Piracy and unauthorised use of copyright works is rife and increasing globally. This is due to both the scale of criminal activities, the fragmentation of the digital landscape and the reality that many do not have enough resources to effectively enforce IP rights and current penalties are too low to act as a meaningful deterrent. There is an opportunity to find meaningful common ground given that the creative sector has been a driver of South Korea's economy for many years and produced some of the country's key products and exports which also suffer from the negative effects of piracy. For example, K-Pop has been estimated to have reached a total export value of KRW 230 billion in 2021.⁶
- f) 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 between both countries that support international cooperation and recognition of the importance of Technical Protection Measures and Rights Information Systems in the legitimate application of copyright works. For example, in the case of internet piracy, efforts to criminalise unlawful camcording of movies in theaters by strengthening enforcement actions and encouraging the seizure, forfeiture, website blocking, and if warranted destruction of counterfeit and pirated goods as well as the equipment used to produce them without waiting for a formal complaint from a rightsholder would be welcome.

⁶ Korea Customs Service. Korea Customs Service Trade Statistics; Ministry of Trade, Industry and Energy: Sejong, Korea, 2022.