

Trade with the Gulf Cooperation Council: Call for input

What would you/your members or stakeholders want the UK Government to achieve through a free trade agreement (or related trade talks) with the GCC, and why?

The UK has a world-leading intellectual property and copyright regime which has provided a strong foundation for the ongoing cultural and economic contributions of the creative sector. This value has not only had an impact on our national landscape but also on the global one. 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). These numbers are driven by music, performing and visual arts, publishing, film, tv, radio, museums, galleries and libraries. Intellectual Property (IP) is also in the top five UK service exports, valued at £17.5bn in 2020, 6.5% of UK exports.¹

To ensure that the UK reaches its full economic potential, the protection and promotion of intellectual property must be a strategic cornerstone of UK trade policy. 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.

As the BCC has previously outlined, the following objectives should be pursued wherever possible as free trade agreements are formulated.

- a) Where it is not already the case, encourage recognition of a term of protection moving towards an international standard of 70 years after the death of the author (for literary, dramatic, artistic, musical works and films) or after publication (for sound recordings, with equivalent provisions for performers' rights). For example, both Saudi Arabia and the UAE only have a copyright term of life plus 50 years. Ideally this issue would be revisited and brought in line with international norms.
- b) Similarly, when not already in place, international recognition, and adoption of the Artist Resale Right should be recognised within FTA provisions. While currently IP law in many GCC countries, including Saudi Arabia and UAE, do grant copyright protections for visual artists, there is no recognition of the Artist's Resale Right at present.
- c) There are steps that could be taken to encourage the GCC to sign up and ratify international treaties relating to copyright. For example, Saudi Arabia has not signed on to the WIPO Copyright Treaty while the UAE has, in 2004, but is still far off from implementing its provisions.
- d) To date, of the GCC countries, only Qatar and the UAE have acceded to or ratified the Beijing Treaty on Audiovisual Performances. Remaining GCC member states should be encouraged to accede to the Treaty. While work will be required to encourage all states to enact the legislation which gives effect to the Beijing's Treaty stated aim to "develop and maintain the protection of rights of performers in their audiovisual performances in a manner as effective and uniform as possible."

¹ Official Statistics DCMS Sectors Economic Estimates 2019: Trade. Available from: <https://www.gov.uk/government/statistics/dcms-economic-estimates-2019-trade-report/dcms-sectors-economic-estimates-2019-trade>

- e) 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.
- f) 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.
- g) Piracy and unauthorised use of copyright works is rife and increasing in many countries. 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. 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 a counterpoint, defending current standards, such as the Berne Convention's Three Step Test, and ensuring that new FTAs do not undermine, or dilute existing IP rights is also of paramount importance. 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.

Members of the Gulf Cooperation Council comprise an important global market- especially as they expand their efforts to transition their economies away from their dependence on natural resources and towards a 'competitive knowledge based' sectors. Furthermore, beyond representing a substantial consumer market, the GCC also acts as a geographic pivot for international trade. While the protection of IP rights has historically not been seen as a priority in many Gulf states, the recent appointment of an IP Attaché in the Gulf region has been a welcome development. In addition, apart from Saudi Arabia, all GCC countries are now signatories of the Berne Convention and/or TRIPS members which provides a useful starting point for further conversations.

It is worth however noting that the piracy of copyrighted materials is an entrenched practice. This seems to be in part due to the sheer prevalence content sharing platforms which are primarily advertised or even physically hosted in the GCC. These are often commercial operators who perpetrate wide-scale copyright infringement. Enforcing IP rights in countries within membership of the GCC is often very expensive for rights holders. Tackling this issue will require a clear relief framework to help rights holders identify and subsequently pursue these infringements. It would also necessitate the targeted engagement from suitable resourced law enforcement authorities.