

Free Trade Agreements (FTAs)



The Society of Authors is the UK trade union for more than 10,500 writers, illustrators and literary translators, at all stages of their careers. We've been advising individuals and speaking out for the profession since 1884.

The Department for International Trade is consulting on prospective trade agreements ahead of post-Brexit trade negotiations. There are four separate consultations, covering potential agreements with the US, Australia, New Zealand, and seeking accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). We have responded individually to each of these consultations, and combined them into a single response below.

- 1. What would you want the UK government to achieve through a free trade agreement (or related trade talks) with the [United States/New Zealand/Australia/ CPTPP] and why?**

Britain's creative industries generate £92bn a year for the UK economy, and the creative economy employs one in every 11 working people. As one of five "world-leading sectors" identified by the Government in its Industrial Strategy, the creative industries must form a key plank of all future trade deals.

The UK publishing industry makes a significant contribution to the creative industries as a whole, with a turnover of £5.7bn in 2017. Exports play a major part in this success, accounting for £3.4bn, or 60% of total revenues. The UK is the largest exporter of physical books in the world, with a 17% share of world exports, and new FTAs may provide an opportunity to boost our exports further still.

The UK publishing industry is also a major source of soft power, with books written by British authors purchased and read all over the world. It is vital that this continues after we leave the EU. We welcome moves to remove or reduce barriers to trade, and to open up new markets for our world-famous publishing and wider creative industries.

The success of our creative industries is underpinned by our gold-standard copyright framework. It is essential that this is not watered down as part of any future trade deals, and we outline some of our concerns about this possibility below. But striking new FTAs also provides opportunities for our trading partners to bring their copyright rules and their application up to the UK standard. FTAs need to include mutual commitments to Intellectual Property protection and enforcement. High copyright standards must not be seen as a barrier to trade, but rather an opportunity to grow and strengthen our creative industries.

2. What concerns, if any, does your organisation have about a free trade agreement (or related trade talks) with the [United States/New Zealand/Australia/ CPTPP], and why?

There are many countries across the world that do not have the same high copyright standards as the UK. We therefore have concerns that our current standards could be watered down as part of future trade negotiations. Such a move would be highly detrimental to the success of our creative industries.

It is vital that any agreements expressly refer to the international copyright treaties, in particular the Berne Convention, the Rome Convention, TRIPS and the WIPO Internet treaties. FTAs should include provisions to ensure that these treaties are rigorously applied in practice, which is not currently the case in all countries. This should encourage trading partners to bring their copyright rules and their application up to the UK standard. Weaknesses in copyright regimes, including lack of enforcement, will damage our creative industries and result in missed revenue opportunities.

Copyright must not be used as a bargaining chip in future trade agreements. We are particularly opposed to the introduction of a US-style fair use exception, or the abandonment of measures that seek to address the “value gap” in the context of safe harbours for internet intermediaries. It is also critical that the current term of protection for copyright works and performances - not less than the life of the author plus 70 years after death - is retained.

Both the introduction of a US-style fair use exception and a private copying exception without fair remuneration have been previously considered in the UK following numerous copyright reviews and both propositions have ultimately failed. Such exceptions conflict with the internationally recognised Berne Three-Step Test. Moreover, fair use is uncertain in scope, costly and complex, to the detriment of all business in the creative value chain, from the original creator to the publisher or record company to the platform provider and ultimately to the end user. These concerns may also extend to any agreement involving Australia, as the Australian Government has been consulting on introducing fair use and additional fair dealing exceptions.

It is also essential that a free trade agreement does not result in the sort of copyright exceptions for educational use that have been introduced in Canada. This would be disastrous for educational writers in the UK, as they would be unable to adequately protect their copyright and derive revenue from the use of their work. There is now widespread recognition in Canada that such exceptions can disastrously upset the function of the cultural economy, and Canada’s Parliament is now seeking to address the problems caused by the recent changes.

We have similar concerns about the US safe harbour provisions for platforms, which again prevent effective protection of copyright and prevent authors from obtaining payment for use.

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It is vital that our capacity to enforce copyright protection is not weakened as part of a free trade agreement. In the UK the Small Claims Track in the Intellectual Property Enterprise Court enables authors and other rights-holders to pursue cases regarding copyright infringement at low cost. Such a system does not exist in the US, New Zealand or Australia, and therefore UK authors would not be able to pursue a case in those other jurisdictions. The UK Government should press for similar effective systems to be introduced to protect copyright as part of a free trade agreement.

New Free Trade Agreements could also have implications for Public Lending Right (PLR). The UK currently has no reciprocal PLR arrangement with Canada, New Zealand or Australia, and the US does not have a PLR scheme. This means that UK authors are not reimbursed if their work is lent out in libraries in these countries. Given that an FTA could increase the number of book exports to these countries, it is important that PLR arrangements are considered as part of the agreement.

It is also essential that the UK does not consider adopting an ‘international exhaustion’ framework as it seeks to negotiate new FTAs. We note that the recent technical notice on IP rights from the Government stated that it is “currently considering all options for how the exhaustion regime should operate after this temporary period.”

If ‘international exhaustion’ is adopted, UK publishers would be unable to price books appropriately for each territory they are selling to, and books not intended for sale in the UK could enter the country at discounted rates, therefore undermining the success of the UK publishing industry. Our view is that the Government should instead adopt a ‘national exhaustion’ of rights framework after we leave the EU.

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