



August 6, 2020

The Honorable Robert E. Lighthizer
 United States Trade Representative
 600 17th Street, NW
 Washington, DC 20508

Dear Ambassador Lighthizer:

Thank you for your work to strengthen America’s economic partnerships and fight for U.S. companies and workers abroad. As you continue your negotiations on a United States-United Kingdom Trade Agreement, we want to emphasize how much the establishment of strong copyright protections, free of overbroad “copyright safe harbor” provisions, is vitally important to the American economy and culture.

The Digital Creators Coalition (DCC) represents a broad and diverse array of American copyright-intensive communities, including movies, music, television, authors, publishers, news media and sports. The creative industries, fueled by copyright, are economic engines. Collectively, we support 5.7 million American jobs and contributed \$1.3 trillion to U.S. GDP.¹ In turn for the United Kingdom, we support 2 million jobs and, along with the digital and cultural sectors, contributed more than \$261 billion to that economy.²

These are not marginal contributions and the success and sustainability of the U.S. creative sectors is primarily founded on the continual support of policymakers for strong copyright protections that ensure a level playing field in the digital age. Further, our creators are cultural

¹ Siwek, Stephen, “Copyright Industries in the U.S. Economy: The 2018 Report” prepared for the International Intellectual Property Alliance (IIPA); December 6, 2018.

² UK Department for Digital, Culture, Media & Sport; “DCMS Sectors Economic Estimates 2018: Employment”; 2018; available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/811903/DCMS_Sectors_Economic_Estimates_2018_Employment_report.pdf. Also see:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/863632/DCMS_Sectors_Economic_Estimates_GVA_2018.pdf.

emissaries, sharing our countries' values, traditions, and vision, which in turn enhances the bonds between countries, and thus generating further demand for our goods and services.

A U.S.-UK Trade Agreement is a welcome opportunity to reinforce the creative community's growth, sustainability and contribution to both countries' economies and could not come at a more important time. These contributions, however, can only be sustained – and expanded – through the establishment of strong online protections that value copyright and creators. Unfortunately, those protections have been increasingly undermined through broad interpretation and inappropriate application of online safe harbors. As such, this has led to a departure from Congress' original intent which was to provide a level playing field that benefitted all parts of the digital economy.

The extent to which the current online copyright safe harbor system has departed from congressional intent was most recently highlighted in the U.S. Copyright Office's May 2020 report on Section 512 of the Copyright Act, which stated that “the balance Congress intended when it established the section 512 safe harbor system is askew.” That shift in balance, the Copyright Office notes, has produced “an increasing burden on rightsholders.” In contrast to claims made by some that the 512 system creates effective incentives for cooperation with rightsholders that exceed the law's minimum standards, the report concludes to the contrary. The Copyright Office's report makes clear that the creative industries in the U.S. are demonstrably harmed by the current implementation of Section 512.

The report offers numerous recommendations for legislative change that cover virtually every aspect of the law. Indeed, Congress is currently in the process of its own review of Section 512, hosting hearings and roundtable discussions to examine the law and find the best path forward to address its flaws. Adopting language reflecting Section 512 into our trade agreements at a time when the law is under evaluation would run contrary to the ongoing review process. Exporting this system would jeopardize U.S. creators in foreign markets and weaken the global leadership of our creative industries. Those creative industries – and our nation's economy – cannot afford that.

While some argue that the Trade Priorities and Accountability Act of 2015 (TPA) provides that U.S. trade agreements should include Section 512 copyright safe harbors, this is not the case. Not only does TPA fail to require any copyright safe harbor language, it expressly requires “providing strong enforcement of intellectual property rights, including through accessible, expeditious, and effective civil, administrative, and criminal enforcement mechanisms.”

As such, any copyright safe harbor provision incorporated into the U.S.-UK Trade Agreement should eschew detailed obligations and overly prescriptive text. Language should be short and high-level, broadly reflecting the goals of the different systems.

A strong trading relationship between the United States and the United Kingdom is essential to our mutual economic prosperity, and this foundational Agreement will undoubtedly serve to inform subsequent international partnerships. We greatly appreciate your consideration of the

concerns we have outlined here and look forward to a U.S.-UK Agreement that reflects the critical importance of copyright protection and the creative industries.

Sincerely,

Alliance for Recorded Music
American Association of Independent Music
American Federation of Musicians
American Society for Collective Rights Licensing
American Society of Composers, Authors, and Publishers
American Society of Media Photographers
Artist Rights Alliance
Association of American Publishers
Authors Guild
CreativeFuture
Department for Professional Employees, AFL-CIO
Digital Creators Coalition
Digital Media Licensing Association
Directors Guild of America
Future of Music Coalition
Getty Images
Independent Film & Television Alliance
International Alliance of Theatrical Stage Employees
International AntiCounterfeiting Coalition
Motion Picture Association
Music Artists Coalition
Nashville Songwriters Association International
National Music Publishers Association
News Media Alliance
Recording Academy
Recording Industry Association of America
The Society of Composers and Lyricists
Screen Actors Guild-American Federation of Television and Radio Artists
Songwriters Guild of America
SoundExchange