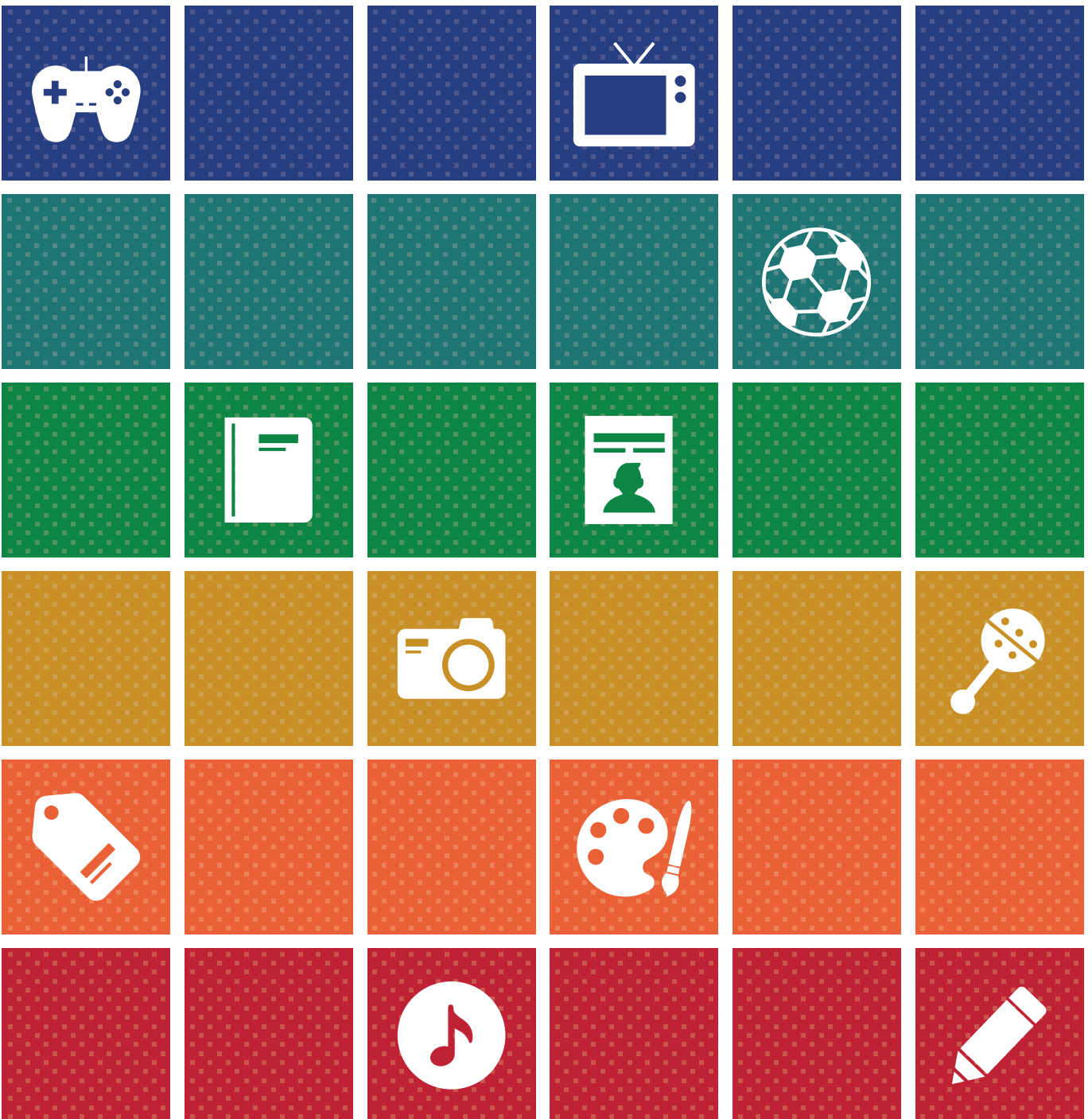


**ALLIANCE**  
FOR INTELLECTUAL PROPERTY

# TRADING PLACES

The UK's IP Future



**TRADING PLACES**  
THE UK'S IP FUTURE



This publication was possible thanks to sponsorship from the following Alliance members:

Premier League  
The Publishers Association  
British Association for Screen Entertainment (BASE)  
The Design and Artists Copyright Society (DACCS)

# INTRODUCTION

The United Kingdom is a world leader in creating brands, designs, programmes and products which are not only commercially successful but also deliver a soft power element that is realised globally. According to the Soft Power 30, the UK is second only to the US in terms of cultural soft power<sup>1</sup>.

The UK also has one of the best developed and applied intellectual property regimes in the world. Creators and businesses have been able to use that framework to develop exciting and innovative products, designs and content using the latest technology and manufacturing techniques. The Taylor Wessing Global Intellectual Property Index (GIPI5) ranks the UK third globally, while the 2017 US Chamber of Commerce International IP Index ranks the UK in second. This current advantage must not be jeopardised as we seek to reposition our trading relationships in preparation for withdrawal from the European Union.

It is vital therefore that the protection and promotion of intellectual property (IP) is at the heart of trade policy, ensuring that everything we create in the UK has the potential to achieve its maximum value and that creators are properly rewarded. The opportunities provided in the coming months and years should be used not to threaten the UK's world leading regime, but to raise the standards in the jurisdictions with which we negotiate. This will not only protect and promote British IP but provide opportunities for creators and rights holders worldwide to benefit socially, culturally and economically in a way the UK already has.

Since the UK's decision to leave the European Union the Alliance has been engaging with politicians and officials to ensure that IP interests are at the heart of policy on trade. We have collated this document covering major export markets for our members' industries, in addition to future priority markets to ensure that the specific issues and opportunities within IP are properly acknowledged and acted upon.

The Alliance for Intellectual Property looks forward to continuing to engage with the Government and all political parties as the UK seeks to reposition its trading relationships around the world, and to emphasise the fantastic opportunities that can ensue.

## Eddy Leviten

Director General, Alliance  
for Intellectual Property



1 The Soft Power 30  
<http://softpower30.portland-communications.com/ranking/>


2 <http://www.theglobalipcenter.com/ipindex2017/>


# KEY EXPORT MARKETS


The diversity of the countries that dominate export markets for just some of the industries that the Alliance represents can be seen below:

 <b>GAMES</b>	
1	USA
2	China
3	Japan


 <b>PUBLISHING - BOOKS &amp; JOURNALS</b>	
1	Europe
2	North America
3	East & South Asia
4	Middle East & North Africa


 <b>MUSIC</b>	
1	USA
2	Germany
3	France
4	Australia
5	Sweden

 <b>TELEVISION</b>	
1	USA
2	Australia
3	France
4	Nordics
5	Rest of Western Europe

 <b>FILM</b>	
1	USA
2	EU
3	Rest of Asia
4	Rest of Europe
5	South Africa

 <b>PUBLISHING - MAGAZINES</b>	
1	USA
2	Australia
3	Canada
4	France
5	Spain

 <b>ART MARKET</b>	
1	USA
2	Switzerland
3	China
4	EU

 <b>IMAGES</b>	
1	Germany
2	USA
3	France
4	Japan
4	Australia

 <b>PREMIER LEAGUE</b>	
1	Nordics
2	USA
3	Sub-Saharan Africa
4	Hong Kong
5	Thailand

 <b>BRANDS*</b>	
1	Ireland
2	Germany
3	Netherlands
4	France
5	USA

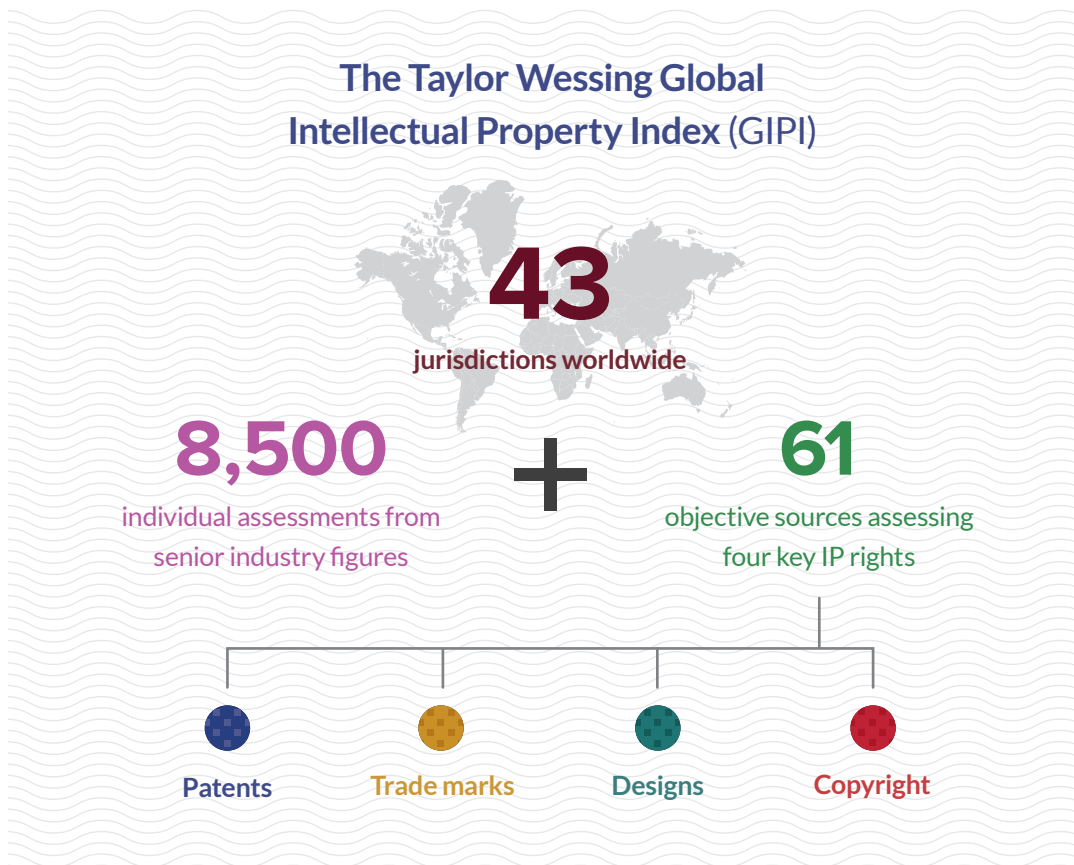
\* This ranking relates specifically to UK branded food and drink (see Brands section)

For others, including Design and Toys, international outreach is diversified and wide ranging.

## IP REGIMES GLOBALLY

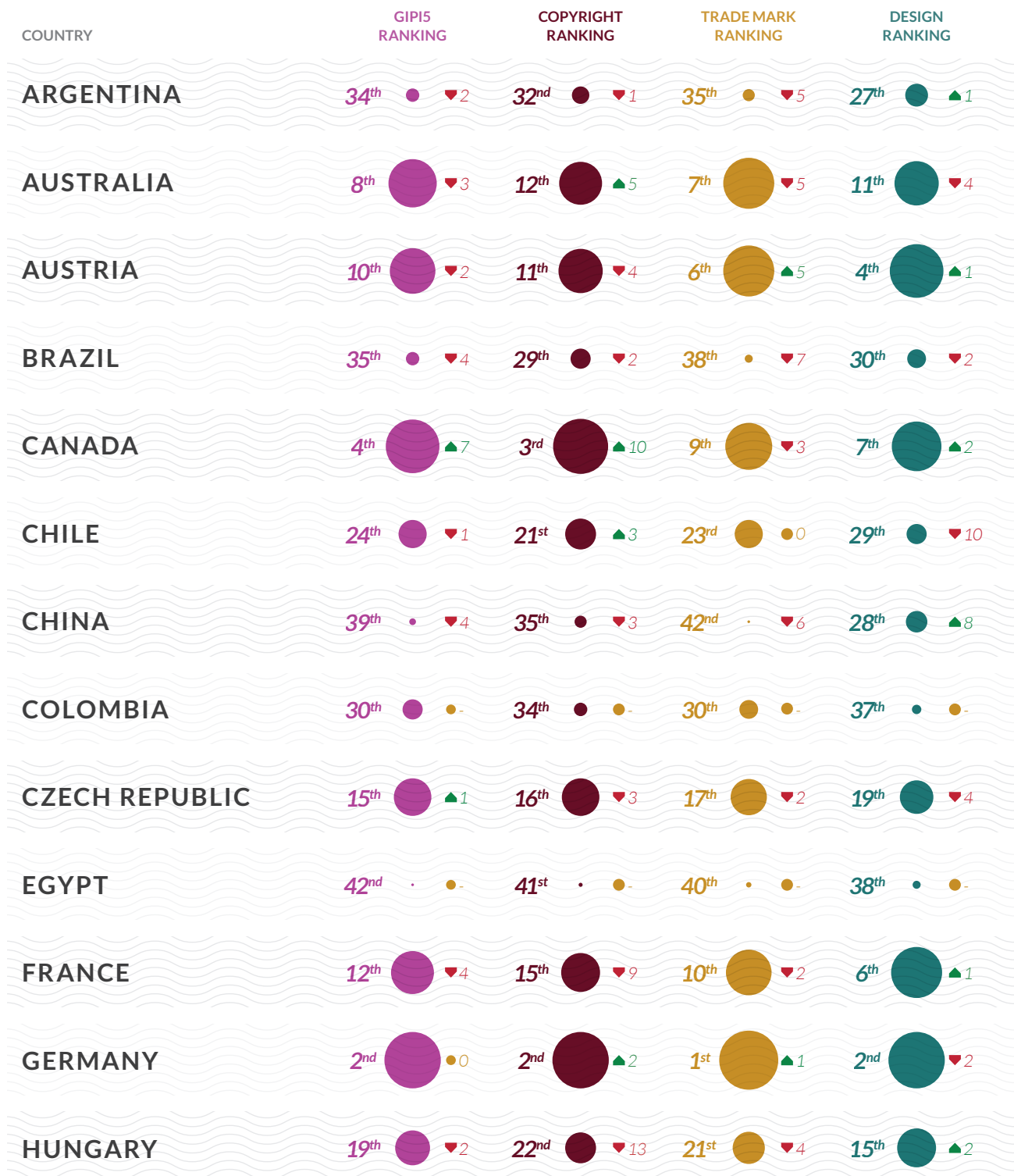
The UK continues to hold its position as a world leader in protecting intellectual property. However many key current and future trading partners, such as those identified by the Alliance membership sectors, do not perform as well. The Government has made it clear that the UK will seek to make new trade deals with a plethora of these countries worldwide – such relationships are necessary regardless of the respective IP regime. But in doing so there are as many threats as there are opportunities. The priorities in relation to IP will vary sector by sector as we approach each of these negotiations. The following sections detail the perspectives of twelve IP-rich sectors.

<sup>3</sup> Where IP rights have been harmonised across the European Union (i.e. trade marks and designs) it is treated as an additional (44th) jurisdiction. Read more about the Taylor Wessing GIPI here: [https://united-kingdom.taylorwessing.com/global-ip-index/executive\\_summary](https://united-kingdom.taylorwessing.com/global-ip-index/executive_summary)

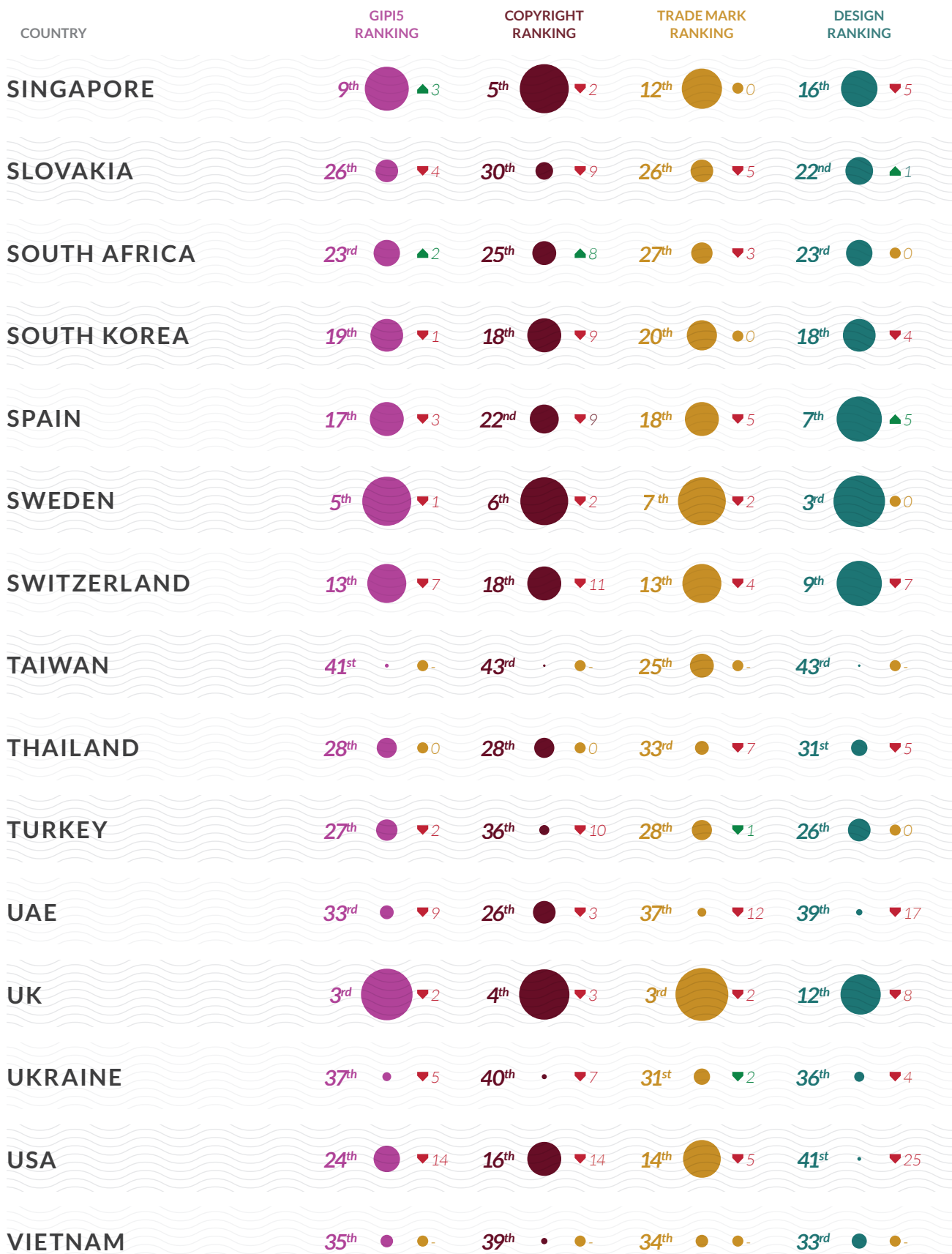


The Taylor Wessing Global Intellectual Property Index (GIPI) provides a comprehensive independent assessment of the IP regimes in 43 jurisdictions worldwide<sup>3</sup>. Its fifth report, GIPI5, was published in June 2016. It is the result of a worldwide survey providing more than 8,500 individual assessments from senior industry figures, combined with data from 61 objective sources assessing four key IP rights – patents, trade marks, designs and copyright – in terms of obtaining, exploiting, enforcing and attacking each around the world.

# THE TAYLOR WESSING GLOBAL INTELLECTUAL PROPERTY INDEX (GIPI)















COUNTRY	GIPI5 RANKING	COPYRIGHT RANKING	TRADE MARK RANKING	DESIGN RANKING
INDIA	40 <sup>th</sup> • ♥4	37 <sup>th</sup> • ♥2	41 <sup>st</sup> • ♥6	35 <sup>th</sup> ● ●0
INDONESIA	30 <sup>th</sup> ● ▲4	31 <sup>st</sup> ● ▲5	39 <sup>th</sup> ● ♥5	33 <sup>rd</sup> ● ▼1
IRELAND	11 <sup>th</sup> ● ▲1	8 <sup>th</sup> ● ▲9	11 <sup>th</sup> ● ♥4	9 <sup>th</sup> ● ●0
ISRAEL	18 <sup>th</sup> ● ▲2	13 <sup>th</sup> ● ▲9	15 <sup>th</sup> ● ▼3	25 <sup>th</sup> ● ♥4
ITALY	21 <sup>st</sup> ● ●0	20 <sup>th</sup> ● ♥1	16 <sup>th</sup> ● ▲6	14 <sup>th</sup> ● ▼3
JAPAN	14 <sup>th</sup> ● ▲1	10 <sup>th</sup> ● ♥1	18 <sup>th</sup> ● ♥4	13 <sup>th</sup> ● ●0
MALAYSIA	15 <sup>th</sup> ● ●-	13 <sup>th</sup> ● ●-	24 <sup>th</sup> ● ●-	21 <sup>st</sup> ● ●-
MEXICO	29 <sup>th</sup> ● ▲1	32 <sup>nd</sup> ● ♥4	32 <sup>nd</sup> ● ♥4	32 <sup>nd</sup> ● ♥1
NETHERLANDS	1 <sup>st</sup> ● ▲2	1 <sup>st</sup> ● ▲11	2 <sup>nd</sup> ● ▲3	1 <sup>st</sup> ● ●0
NEW ZEALAND	7 <sup>th</sup> ● ♥1	9 <sup>th</sup> ● ▲4	4 <sup>th</sup> ● ♥1	16 <sup>th</sup> ● ♥11
NIGERIA	43 <sup>rd</sup> ● ●-	42 <sup>nd</sup> ● ●-	43 <sup>rd</sup> ● ●-	42 <sup>nd</sup> ● ●-
NORWAY	6 <sup>th</sup> ● ●-	7 <sup>th</sup> ● ●-	5 <sup>th</sup> ● ●-	5 <sup>th</sup> ● ●-
POLAND	21 <sup>st</sup> ● ♥2	24 <sup>th</sup> ● ♥4	21 <sup>st</sup> ● ♥5	20 <sup>th</sup> ● ●-
RUSSIA	30 <sup>th</sup> ● ♥1	38 <sup>th</sup> ● ♥13	29 <sup>th</sup> ● ▲3	24 <sup>th</sup> ● ▲9
SAUDI ARABIA	37 <sup>th</sup> ● ♥12	27 <sup>th</sup> ● ▲3	36 <sup>th</sup> ● ♥10	40 <sup>th</sup> ● ♥12





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## GAMES

(Data compiled by Ukie)

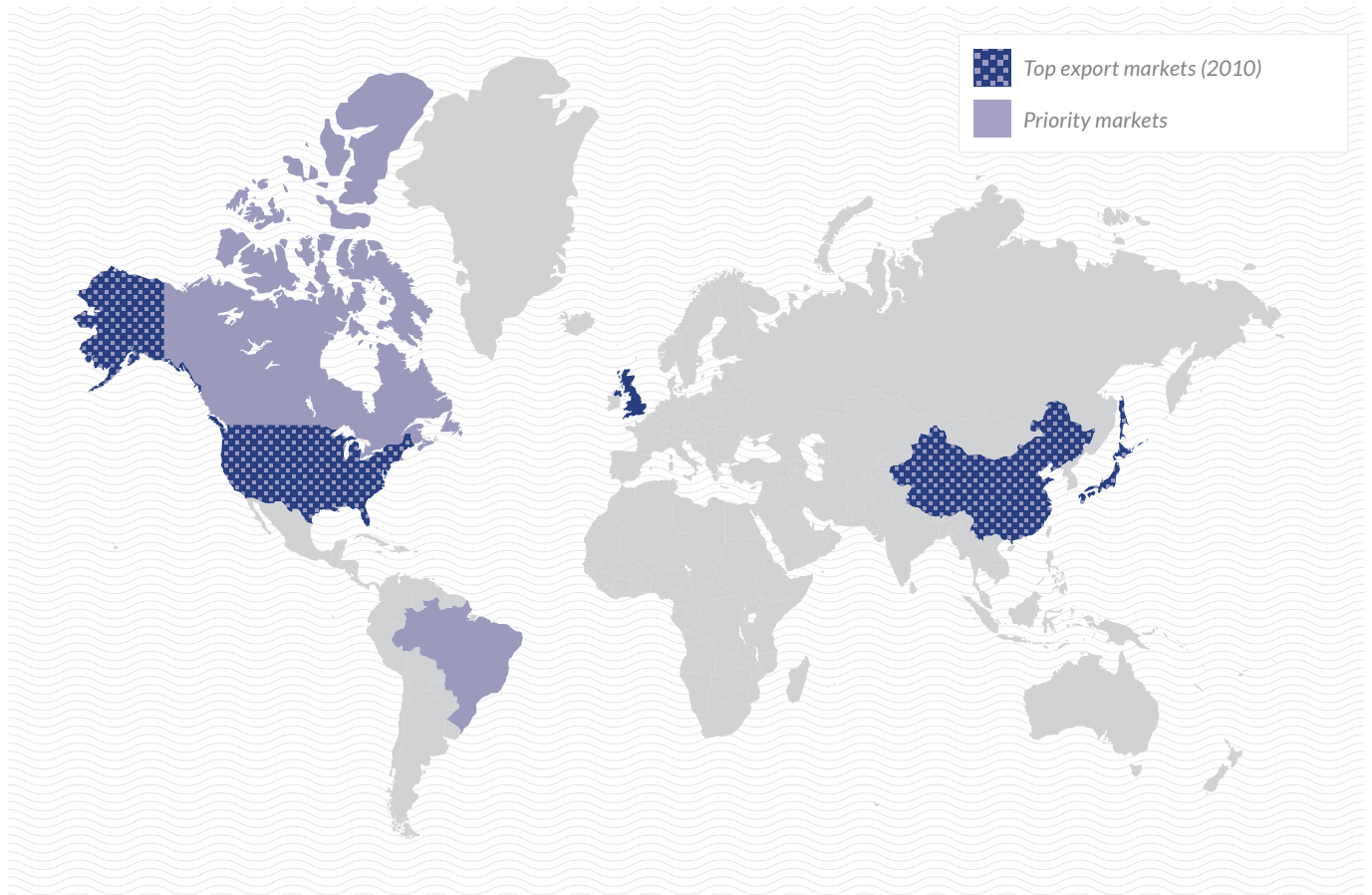
The UK games market is predicted to be Europe's largest by 2021, and is already the fifth largest globally<sup>4</sup>.

The industry delivers benefits right across the country with 95% of UK games businesses small and medium enterprises, and 72% based outside London. Nonetheless the sector is export orientated. A member survey conducted by the Association for UK Interactive Entertainment (Ukie) found that almost three quarters of games businesses generated at least 50% of their revenue overseas in 2016, while a quarter generated over 90% of their revenue overseas<sup>5</sup>.

However due to the difficulty in measuring digital exports, exports performance for the games industry is not captured appropriately in official statistics. Many games are sold through platforms based outside of the UK, and in some cases, even the EU. It is also unknown where exports take place when UK developed games are sold through platforms that are based outside the UK; it is unclear whether the export occurs at the point where the games content is uploaded to the platform, or at the point where a consumer downloads the content. UKIE is currently working with DCMS to determine better methodology for measuring digital exports.

4 Ukie UK Games Industry Fact Sheet October 2017

5 Ukie, 'State of Play: The UK game's industry's priorities for the EU negotiations' (March 2017)



TOP EXPORT MARKETS (2010)	GPI5 COPYRIGHT RANKING	PRIORITY MARKETS (2010)	GPI5 COPYRIGHT RANKING
1. USA	● 16 <sup>th</sup>	1. USA	● 16 <sup>th</sup>
2. China	● 35 <sup>th</sup>	2. China	● 35 <sup>th</sup>
3. Japan	● 10 <sup>th</sup>	3. Japan	● 10 <sup>th</sup>
		4. Brazil	● 29 <sup>th</sup>
		5. Canada	● 3 <sup>rd</sup>

**95%**  
of UK video games developers exporting at least some of their products<sup>6</sup>

<sup>6</sup> Support for the creative economy, Written evidence submitted by TIGA

## Opportunities and threats

The UK's IP framework has managed to successfully encourage investment into the generation of new and innovative content, leading to growth and employment for the UK games sector. We believe that the Government should maintain the current framework for copyright protection and enforcement of IP rights, as any limitation or reduction in protection would put UK businesses at a competitive disadvantage relative to European competitors and risk transferring investment to other countries.

As the European Commission recently published copyright proposals which could impact UK games businesses, whether or not the resulting legislation applies in this country, it is crucial for the UK Government to continue to proactively engage in EU discussions and negotiations to ensure that a satisfactory outcome is secured. We would therefore welcome reassurance from the Government that the current standards of copyright protection will not be reduced following the UK's exit from the EU.

### ***Trade tariffs (Physical Products)***

The WTO's Information Technology Agreement (ITA) expanded in 2015 to include consoles, video games on disk, game controllers, and activation cards used for digital content. This represents a milestone in reducing or eliminating tariffs on a number of video game products, allowing the games industry to export to different countries without having to deal with increased costs. However the ITA only applies to physical products like hardware (consoles) and games sold on physical disks. Whilst our industry would benefit if the UK were able to negotiate a new membership of the WTO and become part of the ITA, from being able to sell goods like consoles to the WTO member states without being subject to tariffs, it would not affect UK games businesses' ability to sell digital games – which is crucial as the games industry transitions more and more to digital products and online services.

### ***Non-tariff barriers (Digital and Mobile Games)***

It is clear that due to the growth in consumer spend on digital and mobile games, a lot of the industry's future growth lies in the ability to trade digital services. The threat of non-tariff barriers being imposed on downloadable software and online services is a key concern of the UK games industry as it transitions more and more to digital products and online services. Non-tariff barriers which would be particularly damaging to the industry include: (1) data localisation, (2) discrimination against foreign digital products, (3) taxes and duties on digital transmissions, (4) forced transfer of source code in exchange for market access.

**Data localisation** requires all companies operating in one jurisdiction to ensure that the personal data (of citizens of that jurisdiction) is collected, stored, recorded and retrieved from data centres located in that particular jurisdiction. This requires foreign companies to install servers in such jurisdiction and process the information of these citizens completely separately to their other data. Newly enacted Russian regulation provides for national “digital sovereignty” requiring that the personal data of Russian citizens be processed via servers located within the territory of Russia, which has created substantial hurdles for the UK games industry in that market. There is also a similar data localization regulation pending before policymakers in Brazil.

**Overly burdensome content and cultural regulation** requires UK games companies to alter the content of their game in order to be allowed to sell it in certain jurisdictions – eg. In China, The State Administration of Press, Publication, Radio, Film and Television exerts creative control over the content of games in the country, making sure certain cultural values are not compromised. Games must be formally examined and approved by them in order for them to be published in China, and previously approved imported online games must undergo import procedures all over again if the games is updated or new material is added e.g. World of Warcraft and Dota 2 have altered the appearance of many characters bearing resemblances to skeletons in order to avoid being perceived as “promoting cults or superstitions” or “harming public ethics or China’s culture and traditions”.

**Forced transfer of source code in exchange for market access:** certain host countries force companies to transfer technology to the host country, for instance through opening R&D labs, in exchange for being able to sell their products or services in the market. China is by far the most prominent actor when it comes to forced technology transfer.

## **Brexit**

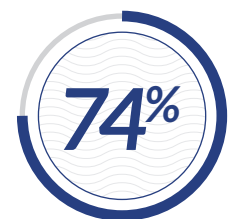
- **Divergence with EU:** Consideration will understandably be given to the merits of adapting, re-legislating or maintaining European laws affecting digital goods and services as the UK exists the EU. However, any significant departures from rules on cross-border commerce, access to content or data protection, for example, might make it more difficult for UK-based companies to offer games directly to the whole EU market e.g. if the UK significantly altered its laws on data protection, the EU could decide that that the UK does not provide adequate level of protection for EU citizens' data and the free flow of data between the UK and EU would come to an end. This would be very damaging to UK games businesses.
- **Digital Single Market:** With the UK no longer at the negotiating table, there is the potential that new legislation could have a negative impact on the UK's interest and future trade with the EU e.g. Draft Directive on Online Sale of Digital Content, the attempt to harmonise rules on the rights consumers are given in relation to the purchase of online content. As they stand, the proposals risk working against consumers' interests through excessive restrictions, for example in relation to free content, which would inhibit innovation and result in increased costs and reduced quality of experience.
- **WTO rules:** When establishing new trade deals, trading with the EU on WTO terms would be damaging to the UK games sector for 2 reasons: (1) WTO terms don't provide for free movement of labour and thus free labour mobility between the UK and EU would cease, (2) WTO terms alone would not provide for free flow of personal data between the UK and EU. It would cease unless the UK obtained an adequacy decision from the EU (as the US & Canada have had to do). The WTO has made less progress than the EU in liberalising the trade of services amongst its member states, and thus there is the risk that the EU could hypothetically impose non-tariff barriers on the UK, such as discriminatory requirements or legislation inhibiting market access, which would be damaging to UK games businesses.

## Data

- Data is of fundamental importance to the UK video games industry - the interaction and associated data flows between players, games and gaming platforms is intrinsic to the proper operation of games, the provision of fair, safe and ethical games, and immersive and interactive gameplay experiences for users.
- Our ability to collect and use data, always in a responsible and legally compliant way, to improve games, develop new business models significantly contributes to the innovation which distinguishes us from other creative sectors and has boosted growth in this area over the past 5 years.
- A large part of the success of UK games manufacturers has heavily relied on their ability to legally gather and move data across national borders. Data and trade go hand in hand in today's global economy, and there is therefore an urgent need to ensure certainty and a clear legal basis for data flows going forward.
- Whilst consideration will understandably be given to the merits of adapting, re-legislating or maintaining the UK's data protection law, we believe that any future changes must continue to allow data to flow freely so that companies operating in the UK and doing business in the EU can continue to smoothly transfer information to one another. We therefore recommend that the Government makes ensuring data adequacy with the EU a top priority during its upcoming Brexit negotiations.

## Skills / workforce

- The ability to recruit easily from across Europe has been a huge benefit to the UK games industry's ability to grow and secure work globally in a highly competitive market. As a global industry, the games sector relies on bringing together top talent from across the world; it is this fusion of diverse backgrounds and experiences which feeds the innovation that the UK games and interactive entertainment sector needs to thrive.
- The UK games industry relies on a highly skilled workforce that possesses leading technical and creative expertise. According to a survey conducted by Ukie, 74% of respondent companies use non-UK EU nationals to fill high-skilled posts. Further evidence gathered from 36 member companies suggest this reliance is significant, with the median response being 20-29% of employees being of non-UK EU origin.



*of respondent  
companies use non-  
UK EU nationals to  
fill high-skilled posts*

- Workers in this sector are increasingly sought-after by other sectors relying on technical and creative talent to drive innovation in the UK and abroad, representing a 'war for talent'. Moreover, market demand for candidates with the skills needed by games companies is significantly outstripping supply, and this risks holding back the UK games industry's growth
- High-skilled talent is thus understandably the number one post-referendum concern for Ukie members with 70% of games firms saying access to talent is "critically" important to the industry. The most detrimental aspects of the referendum result are perceived to be the new difficulties this would bring in sourcing high-skilled EU workers – such as software engineers – who play a big part the UK's game and tech sectors
- The need for clarity and certainty on the status of EU workforce in the UK is vital in order to ensure that firms do not incur an additional 'uncertainty premium' when recruiting from abroad, and that EU citizens currently working for UK games businesses do not look for work elsewhere in the EU in advance of the UK's exit. Development, and therefore studio investment, decisions are made on where the best global talent and teams are, which makes the recruitment and retention of the best a top priority.
- Nevertheless, as the future of the games sector is dependent on maintaining the flow of talent entering the industry, we want to work closely with Government on long-term plans to up skill the UK's population to fill gaps in the future. Further, the referendum result provides an unparalleled opportunity to reform the current visa system, and position the UK as an attractive location for skilled talent from the EU and the rest of the world.



*of games firms saying  
access to talent is  
"critically" important  
to the industry*



## WE ASK THAT:

- Government maintains the current framework for copyright protection and enforcement of IP rights to maintain the UK games industry's competitive advantage
- The free flow of data continues between the UK and EU by prioritising obtaining a data adequacy agreement with the EU
- Government continues to proactively engage in EU discussions and negotiations on the Digital Single Market copyright proposals to ensure that a satisfactory outcome is secured
- Future trading relationships with the EU and other international markets enshrine existing trade liberalisation and avoid the creation of any new non-tariff barriers to trade



## PUBLISHING - BOOKS & JOURNALS

(Data compiled by The Publishers Association and the Association of Authors' Agents)

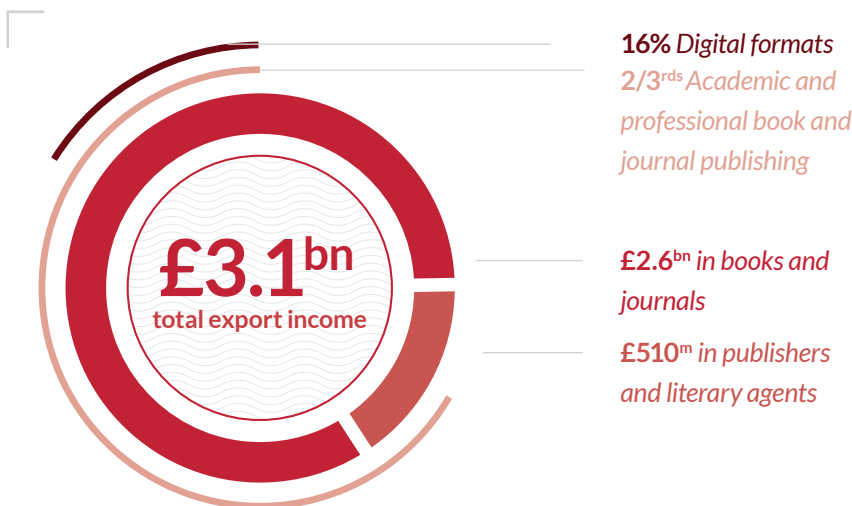
7 The Publishers Association  
Publishing Yearbook  
2016

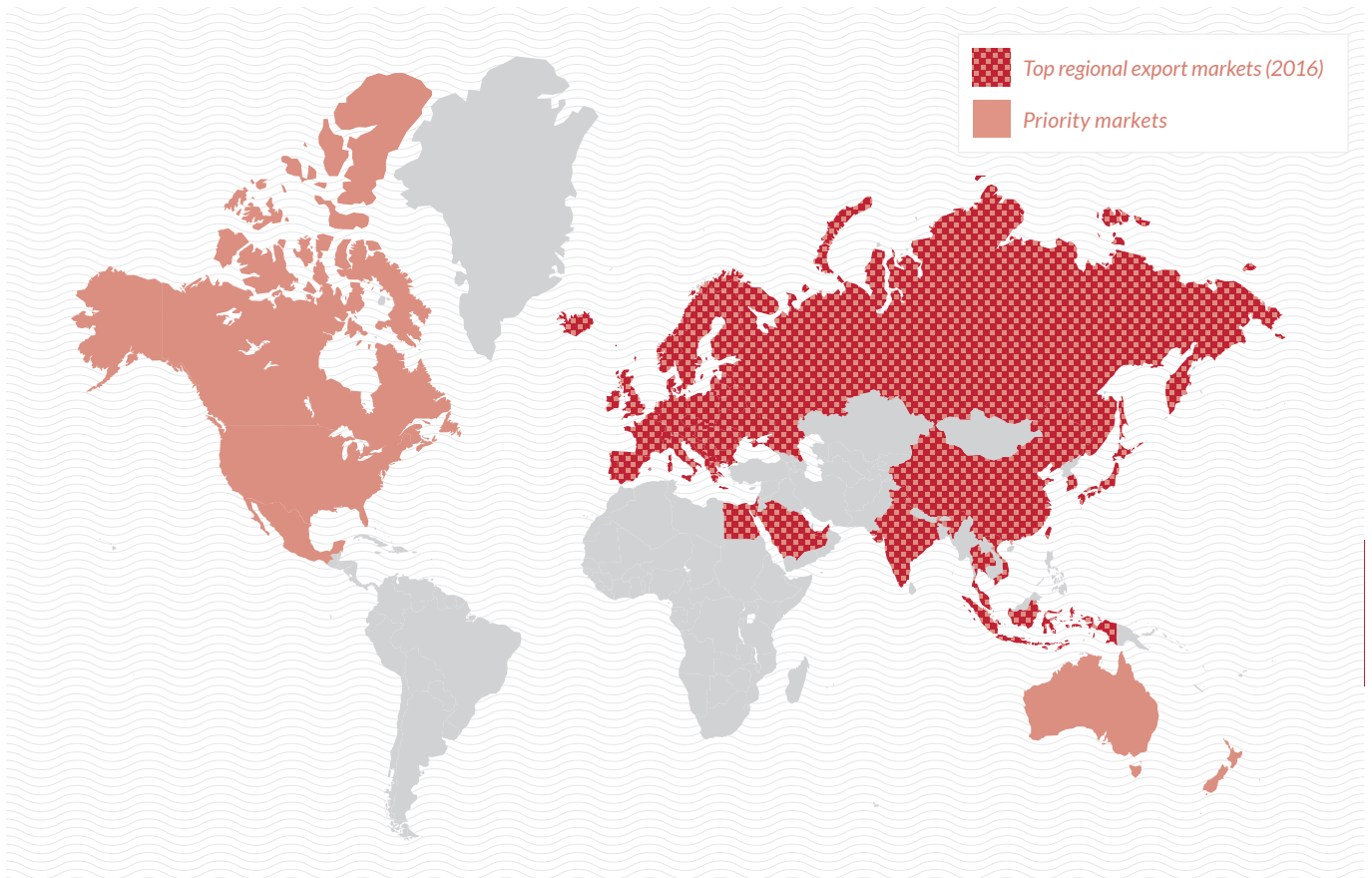
### Book and journal exports and licensing make up over half of the publishing industry's total revenues.

In 2016 statistics showed that there has been continued international demand for UK published material, with a 6% increase in export revenues<sup>7</sup>.

The total export income was £3.1 billion in 2016, including export revenues of books and journals of £2.6 billion and export rights and co-edition income from publishers and literary agents of £510 million. Academic and professional book and journal publishing was the strongest export sector, accounting for two thirds of overall export revenues. Digital formats contributed 16% of the total invoiced value of sales of exported books in 2016.

However, UK publishing's export trade is not restricted to physical copies alone. The UK hosts a significant publishing rights licensing industry. A Rights Income Survey conducted by the Publishers Association from the members of the Association of Authors Agents (AAA) and drawn on for the results shown in the PA Publishing Yearbook 2016 shows a total value of licences of £381m, of which approximately 50% are derived from sales overseas (21% of the overall figure from the US and 27% from translation rights sales). It is in the rights income sector that AAA members are seeing significant growth – 17.3% overall, 55.4% for USA and 38.7% for translation, 2015-16 .





TOP REGIONAL EXPORT MARKETS (2016)

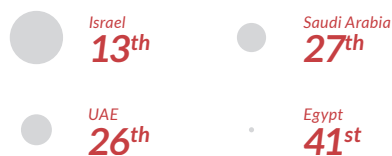
GIPI5 COPYRIGHT RANKING

1. Europe

2. East & South Asia\*



3. Middle East & North Africa\*\*



\* 15 countries not charted  
\*\* 17 countries not charted



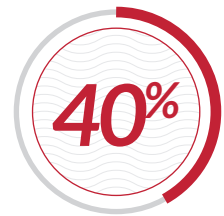
PRIORITY MARKETS (2016)	GIPI5 COPYRIGHT RANKING	
1. North America	USA <b>16<sup>th</sup></b>	Canada <b>3<sup>rd</sup></b>
	Mexico <b>32<sup>nd</sup></b>	
2. East & South Asia*	China <b>35<sup>th</sup></b>	Thailand <b>28<sup>th</sup></b>
	S.Korea <b>18<sup>th</sup></b>	Vietnam <b>39<sup>th</sup></b>
	Taiwan <b>43<sup>rd</sup></b>	Indonesia <b>31<sup>st</sup></b>
	Japan <b>10<sup>th</sup></b>	Malaysia <b>13<sup>th</sup></b>
	India <b>37<sup>th</sup></b>	Singapore <b>5<sup>th</sup></b>
3. Australasia	Australia <b>12<sup>th</sup></b>	New Zealand <b>9<sup>th</sup></b>

\* 15 countries not charted

## Opportunities

During a 2016 survey, members of the Publishers Association said their biggest priority following Brexit is for the Government to maintain a strong commitment to the existing copyright framework. Therefore the PA believes that the UK should make the strong protection of intellectual property rights a red line in all free trade agreements. Publishers suffer from intellectual property erosion and infringement in overseas market and would benefit from continued and vigorous UK support on IP overseas.

There is an opportunity for publishers to take advantage of fast growing markets post-Brexit. Although Europe is currently the biggest export market for publishers, 40% of PA members said North America would be their most important export market after the UK leaves the EU and 29% identified South and East Asia as the most important. This compares with 10% who selected Europe. To help publishers take advantage of these markets, the PA believes the government should start tackling tariff and non-tariff trade barriers, for example the restrictions in China which prevent international publishers operating in the country.



*40% of PA members said North America would be their most important export market after the UK leaves the EU*

Publishers also said the vote to leave the EU could be an opportunity for the UK to legislate to create stronger domestic copyright rules to encourage investment in the UK and to protect creators. Doing this will ensure that publishers and authors alike can continue to turn the creative endeavour into financial reward.

Much like with other Alliance members, the PA believes the government should ensure businesses continue to have access to the people and talent they need. The PA has also called for the UK to maintain access to the European single market.

The AAA also note that at the level of the creator – the initiator of the IP that drives the publishing economy – there is also a practical need to synch the requirements of different tax regimes in order to facilitate the trade of rights. At present, even within the EU, there are very onerous and time-consuming requirements on authors to file certified paperwork in order to avoid double taxation – and even with that in place, withholding tax in the local territory can remain significant. A streamlined tax regime with key trading partners would be of immeasurable benefit.

## Threats

Publishers Association members advised that they believed the greatest challenge for their businesses following the vote to leave the European Union would be higher costs of doing business. This includes higher import costs or higher costs selling to the EU.

In the survey publishers also said they were concerned that the UK would have a reduced voice in the development of the EU's Digital Single Market proposals. The UK has been a strong pro-content industry voice in EU deliberations on copyright, often

balancing the views from member's states which do not have large vibrant content industries, resulting in significant improvements in the copyright reform proposals than were expected. Without the UK's positive influence going forward publishers are concerned the legislation could have a negative effect on the publishing industry. Given the extent of UK publishing exports to the EU and its importance as a market, the UK should continue to find a way to influence EU debates about copyright.

AAA members simply could not operate and their clients' commercial and moral interests be defended without the effectiveness and benefits of the UK copyright regime. The UK's has been the gold standard, and the AAA asserts that UK government should promote that to those with whom we trade rather than have our regime compromised, or our authors' rights compromised in the jurisdictions within which we trade.

Another threat to the industry would be if there are restrictions placed on the number of skilled workers who could come to work in the UK from abroad. The publishing industry employs around 10% of its workforce from Europe, compared with 5.6% in the rest of the economy, meaning it would be disproportionately affected by any changes to the status of EU workers.

The majority of publishing licences granted to UK publishers by UK literary agencies comprise exclusive European and British Commonwealth rights. With the removal of the single market, there is a risk that European territories will override established commercial terms to allow parallel imports and erode the value of British exports to those territories. In any trade deals, this possibility must be guarded against.

## WE ASK THAT:

- Government commits to the existing copyright framework and maintains a strong IP system
- Access continues to Creative Europe and Horizon 2020 or similar levels of domestic investment
- Tariff and non-tariff barriers to free trade are reduced
- Enforcement of existing IP rights is improved
- Our immigration system allows publishers to attract the best and the brightest
- Efforts are made to synchronise onerous tax requirements with partners to facilitate trade





## MUSIC

(Data compiled by UK Music, BPI and PRS for Music)

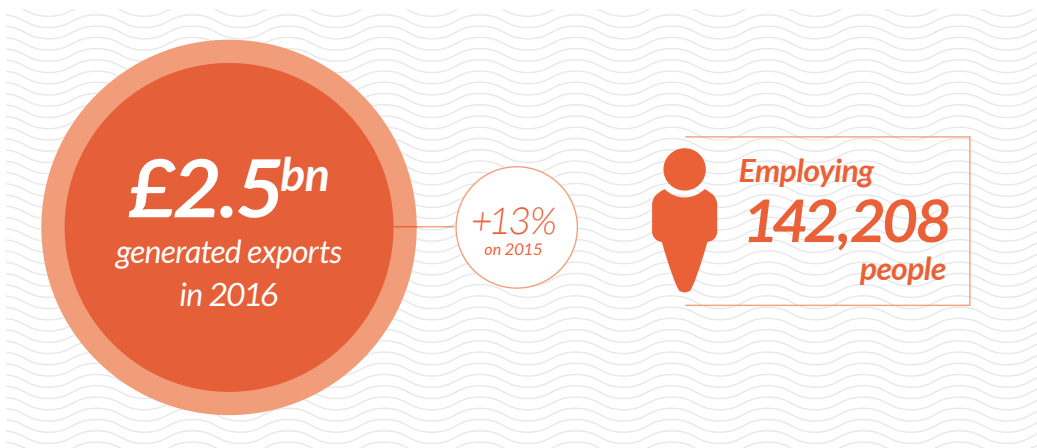
8 BPI, 'British Music Exports Rise in 2016'

9 UK Music 'Measuring Music' 2017 Report

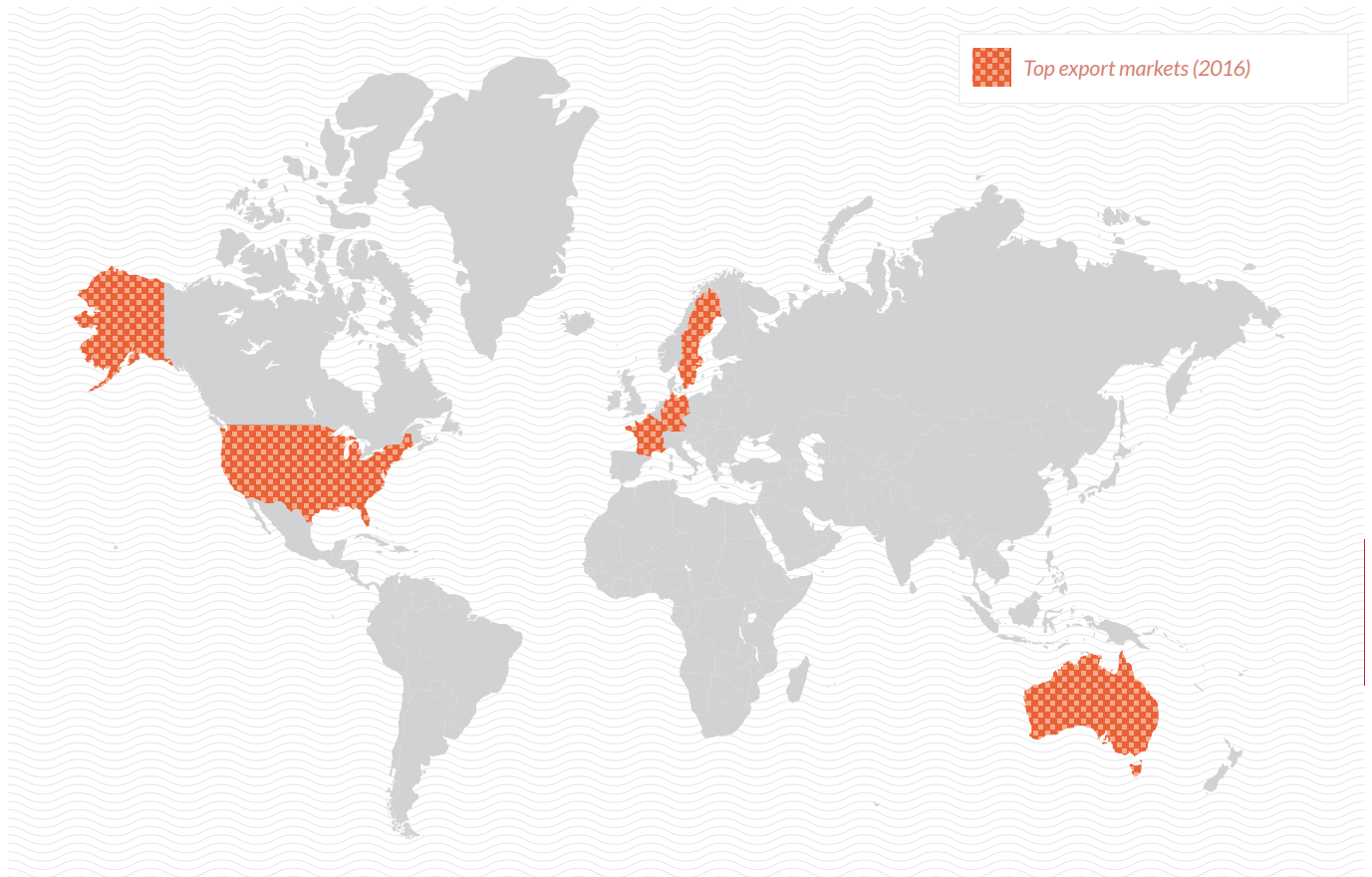
According to UK Music's 'Measuring Music' report, the music industry generated exports of £2.5 billion in 2016, up an impressive 13% on the previous year.

The UK music industry is one of only three net exporters of music globally (the others being the USA and Sweden), with British artists accounting for one in every eight albums purchased around the world in 2016<sup>8</sup>. The sector now employs 142,208 people, and with its £4.4 billion added value to the UK economy up by almost 25% over the past five years, it is considerably out-performing many other sectors<sup>9</sup>.

This commercial success in exporting UK creativity is based on a strong legal framework (copyright and its enforcement), as well as the promotion and support of talent. Copyright and its enforcement should be a key part of the trade negotiations ensuring that our trading partners protect not only their respective creative industries but also the interests of the UK music industry.







TOPEXPORT  
MARKETS (2016)

GIPI5 COPYRIGHT  
RANKING

1. USA 16<sup>th</sup>

2. Germany 2<sup>nd</sup>

3. France 15<sup>th</sup>

4. Australia 12<sup>th</sup>

5. Sweden 6<sup>th</sup>

## Opportunities and threats

UK Music is particularly concerned that the UK's creative industries may be used as a bargaining chip in any trade talks<sup>10</sup>. Our creative industries and music industry enjoys worldwide success and recognition, with the likes of Adele, One Direction, Ed Sheeran and Little Mix enjoying global attention. As the envy of countries around the world, this invaluable soft power should be capitalised, and not taken for granted. With Europe so important to UK music exports (and imports for that matter), it is clear that a close relationship should be sought as the UK exits the EU. The proposals and negotiations on the Digital Single Market in particular are vital to ensure that creativity is allowed to flourish and that creators are properly rewarded for their output. The outcome of all of that will ultimately impact on trade and it is therefore important that the UK continues to seek influence where it can to protect both UK and EU intellectual property. Outside Europe, the opportunities and threats from trade negotiations to the UK music industry are best assessed on a country by country basis.

### *Australia (BPI)*

- The Australian government is considering the widening of ISP liability safe harbours, which would not be in the interests of the music industry and other creative industries
- The Productivity Commission – an independent agency – issues a report with its recommendations for changes to the IPR system in Australia, many of which are of concern to IP-reliant sectors

#### **Asks of the Australian Government:**

Await the outcome of reviews of ISP liability safe harbours in the UK and Europe before amending the existing Australian law on the copyright safe harbours (misapplication of the ISP liability safe harbours by various courts created the Value Gap problem in the music industry)

### *Brazil (PRS for Music)*

- Only 50% of radio stations are licensed. Only one cinema market is licensed (30% of market). YouTube remains unlicensed yet the courts have ruled that this must change.
- Brazilian authorities have put forward legislation that would exempt public bodies, hotels and philanthropic organisations from royalty payments which is highly concerning.
- Brazil should be encouraged to join WIPO copyright treat and WIPO Performances and Phonograms Treaty to protect IP standards.
- It should be noted here that Latin America as a whole has been identified by Music Ally and others as a key emerging market, particularly with regards streaming, and has been the IFPI's fastest growing region two years in a row. The opportunities and threats relating to IP in trade negotiations are diverse in this region<sup>1</sup>.

## Canada (BPI)

- Canada's 2012 Copyright Modernisation Act mandates a full parliamentary review which will be in November 2017, and so far the feedback on the Act has been mixed. Online infringement remains a big issues in Canada, and its mere "notice and notice" system provides insufficient incentives for legitimate Internet intermediaries to cooperate with right holders.
- The Copyright Modernization Act 2012, in combination the Copyright Board decisions, also introduced a number of expansive exceptions to copyright, including the exception for "user generated content" (UGC), which could substantially undermine the exclusive adaptation right that Canada is obligated to provide under the WTO TRIPS Agreement (TRIPS) and the Berne Convention, and its breadth raises serious questions of compliance with the 3-step test for permissible limitations and exceptions.
- Canada also remains on the US government's Special 301 Report Watch List as the US government considers that it has not yet gone far enough in addressing the problems of piracy and counterfeit goods:
  - US government continues to urge Canada to fully implement its commitments pursuant to the WIPO Internet Treaties and to continue to address the challenges of copyright piracy in the digital age
  - Canada does not provide customs officials with the ability to detain pirated and counterfeit goods that are moving in transit or are transhipped through Canada
  - Prior to President Trump's signing of the executive order withdrawing the country from the Trans-Pacific Partnership, it was working closely with Canada on TPP implementation, under which sets strong and balanced standards on IPR protection and enforcement. Despite the US withdrawal of the TPP, Canada has committed to strengthen its IPR regime in many areas of concern

10 UK Music industrial strategy

11 Music Ally: Digital Music Trends from Russia, China, Africa and Latin America (January 2017)

### Asks to the Canadian Government:

- To employ the 2017 statutory review to address the Value Gap affecting the music industry
- End the unfair royalty exemptions in favour of Canadian broadcasts at the cost of music producers and recording artists

### **China (PRS for Music)**

- The broadcasting rate for musical works is just 0.2% of broadcast revenues, one of the lowest rates anywhere in the world and international comparisons suggest it should be far higher (collections from Chinese broadcasters are miniscule compared to their size).
- Previously proposed revisions to copyright law have been again delayed by the Chinese Authorities, despite numerous commitments to legislative changes over the last few years. As a result Chinese copyright law continues not to provide for the right of communication to the public right, which is essential for China to meet obligations under the Berne Convention. The failure to apply a communication right is significantly harming the value of works in China, including in the valuable online content market.
- Music in cinema films is exempt under Chinese copyright law, meaning it is not remunerated. This results in video-on-demand and streaming not being able to be licensed either.

### **India (IPRS for Music)**

- The IPRS was found to be in breach of professional collecting society rules. Assets were also frozen. They are now proposing to offer greater transparency and accountability to members and look to re-register with the government. The UK government should support the re-registration of IPRS, subject to satisfactory implementation of the new governance and operation systems.

### **New Zealand (BPI)**

- The similarities between New Zealand and UK copyright law traditions make UK's experience and engagement on copyright issues directly relevant to the discussions in New Zealand

#### **Asks of the New Zealand Government:**

- Creative industries exporting to New Zealand are worried about the likely push for the introduction of a 'fair use' doctrine in New Zealand
- Copyright term extension to 70 years is a straightforward process and New Zealand are currently favouring a staggered approach which is deemed unnecessary

### North America (PRS for Music)

- Music rights income is significantly lower than in EU. This is part due to low tariffs for online services and live performances and copyright exceptions which limit public performance licensing.
- The “bars and grills” exception allows restaurants and retail outlets not to pay for music. This is in breach of Treaty obligations. Annual losses to EU authors are understood to be \$44 million.
- Existence of consent decrees mean collecting societies should offer all the rights in a musical work even if they do not represent 100% of the rights. This creates market problems and renders some works unlicensable.
- Term of protection for authors in Canada is only life + 50 years, and extensive exceptions were introduced in 2012 for educational establishments and user generated content.
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12 Music Ally: Digital Music Trends from Russia, China, Africa and Latin America (January 2017)

### Russia (Music Ally / PRS for Music)

Russia has been identified as a key emerging market for music, and while piracy remains a major problem, Music Ally writes that Apple’s entry into the market with Apple Music “has brought people to understand that this is something else different, and maybe an easier way to consume digital music”. The country’s leading streaming service, Yandex.music, experienced threefold growth in 2016, ending the year with 250,000 paying subscribers<sup>12</sup>. Nonetheless, there are serious concerns with the country’s IP regime and PRS for Music has expressed the following:

- No collecting society for the “making available to the public right” (i.e. download/streaming)
- Difficult to license due to poor enforcement

- Significant under reporting in live sector
- Accusations of fraud and corruption at the Russian Authors' Society (RAO)
- There is a strong case for a UK IP attaché to be based in Russia

### ***Singapore (PRS for Music)***

- The Singapore government is conducting a review of the copyright system, including a consultation on collective management and we urge that the principles of the Collective Rights Management are incorporated into future changes for increased transparency.
- Broadcast tariffs are very low by international standards.
- A number of international satellite broadcasters broadcast out of Singapore for coverage across Asia. The majority of these broadcasters are unlicensed.

### ***South Africa (BPI)***

- South Africa is the biggest music market in Africa and home to thousands of domestic music companies as well as being a destination for UK music exports and investment. Given South Africa's importance to the music sector, copyright policy developments in that country are watched closely by other African countries. Yet, the policy direction has been causing worrying to copyright industries for some time.
- In 2015, the South African Government (Department of Trade and Industry (DTI)) published a draft Copyright Bill which proposed significant changes to the South African copyright regime. Many of these proposals were not only failing short of the need of a modern copyright marketplace (e.g. South Africa still has not acceded to nor ratified the WIPO Internet Treaties), but some proposals were even regressive. In the face of strong criticism, the Bill was revised in September 2016 and DTI has moved most of the performer related issues into a stand-alone Performers Protection Amendment Bill. DTI also made further changes to the Copyright Bill, which still contains a number of very concerning proposals that would affect UK music business in South Africa.

#### **Asks to the South African Government:**

The UK and South Africa both have vibrant music sectors with huge export and domestic commercial potential; hence both should cooperate on strengthening not weakening the copyright regime.

In that context:

1. WIPO Internet Treaties accession is long overdue for South Africa and aligning its legislation to this international standard would facilitate commerce in music rights (especially for South African music, which is currently missing out on many opportunities in other African markets as a result of not being party to the WPPT/WCT treaties); and
2. It would be particularly helpful if the UK and South Africa could set up a bilateral working group as a platform for discussion of experiences and regulation relating to the digital content marketplace.

### **South Korea (BPI)**

- South Korea has long been a star performer in Asia and has climbed up in the global music market rankings to the top 8th place. However, in spite of the positive growth and the high effectiveness of its copyright enforcement system, the music industry remains concerned by 2 highly worrying facts:
  1. the long-standing failure by South Korea to eliminate the grossly overbroad limitation on the public performance right, which is incompatible with Korea's international trade obligations; and
  2. A surge in efforts to weaken the legal position of music rights holders in negotiations with online music services – either through the misapplication of the so-called “digital audio transmission” right or the contemplated broadening of the “fair use” exception.

#### **Asks to the South Korean Government:**

It is high time to repeal the exception to the public performance right (exempting venues smaller than 3000 sq. m and various other businesses from the public performance fees), which is damaging to the Korean and UK music industry alike (it impacts export revenues of both countries) as creating friction in the international trade governance, given that the exception is incompatible with South Korea's TRIPS and EU-South Korea FTA trade obligations (the EU Commission has said as much in public as well as in bilateral trade meetings with the Korean trade counterparts, and the international music sector bodies have requested the EU to commence dispute settlement proceedings to enforce the relevant trade commitments).

## USA (UK Music)

- Compulsory licenses for the copying of music remove the possibility for publishers and songwriters to negotiate the value of the use of music with commercial digital service providers.
- Under existing US copyright law, there is no right for the producers of sound recordings to receive a royalty when their recordings are included in terrestrial broadcasts (e.g. through FM radio).
- Withholding tax applies to income generated by performances and royalties overseas. The general rule is that any payment of “US Income” made to a non-resident of the US is subject to the 30% withholding requirement. The tax can be claimed back but that incurs compliance costs and delays, as well as complex administration. Improvements to the system should be sought to make it easier to claim the tax back to ensure that those businesses that depend on intellectual property are not at risk. We note that withholding tax is a more general issue and not limited to the US.

### THE CREATIVE INDUSTRIES AND TRADE

Naturally the creative industries form an integral part of the Alliance's membership and the IP-rich business community in general, with the 'creative spark' at the core of what IP rights serve to protect and promote.

The Creative Industries Federation, representing the UK's creative industries, cultural education and arts, will be publishing its own paper on trade in early 2018. It will explore what the creative industries need from upcoming trade deals with the EU, third party nations and new territories in order to survive and thrive. Its paper will add to the body of evidence we have set out here on the importance of intellectual property protection.



## WE ASK THAT:

- A strong level of protection for copyright is maintained, providing certainty for UK creators, performers and rights-holders
- The UK strongly supports enforcement of IP law globally
- Potential liability for linking services (through the issuance of judicial interpretive guidelines) is clarified
- Market access barriers are removed
- Broadcasting and public performance rights can be obtained
- Attempts to introduce cultural exceptions are resisted, ensuring the creative industries are not traded away in any new trade arrangements
- International conventions such as the WIPO Performances and Phonograms Treaty and the WIPO Copyright Treaty are included in agreements to guarantee revenue for UK rights holders



## TELEVISION

Data compiled by BASE, MPA, Pact, ITV Studios, BBC Worldwide and Oliver and Ohlbaum

The UK is the second largest exporter of TV material in the world after USA, with annual exports up by 10% in 2016 to £1.3 billion according to the UK Television Exports Report<sup>13</sup>.

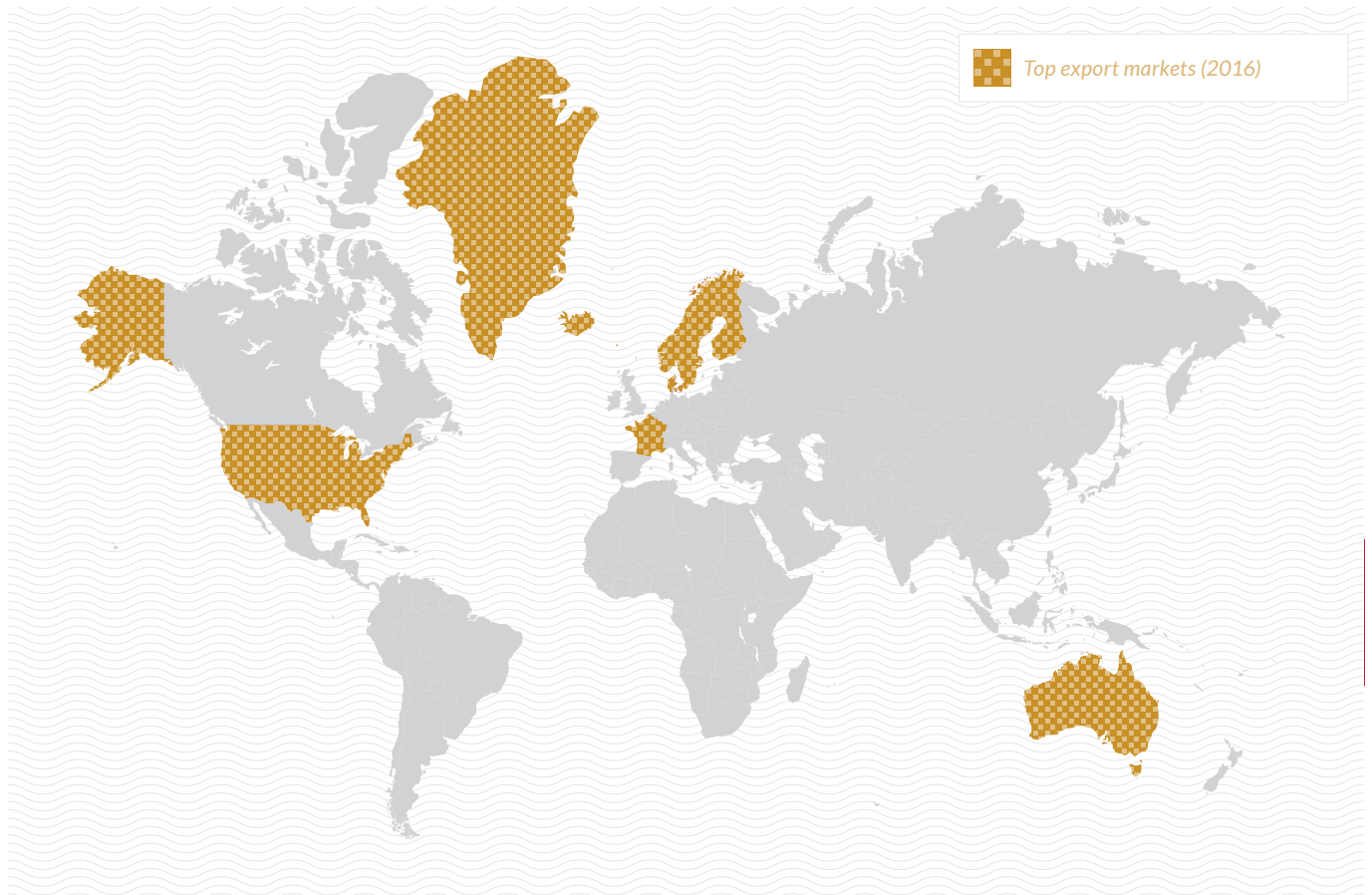
13 UK TV Exports Report 2015-2016

14 Pact welcomes UK - China TV co-production treaty ahead of UK/China creative exchange programme

15 UK TV Exports Report 2015-2016

While the USA remains by far the biggest source of export revenue, there have been sizeable increases in UK exports to Asia in the last few years.

China saw a massive 40% increase on figures from 2014/15, and a co-production treaty<sup>14</sup> between the UK and China signed in December 2016 could see this figure increase further. Revenue from Japan represented the greatest percentage increase from 2014/15, rising 48% to £15 million, and India and South Korea have seen increases of 43% and 39% respectively.



TOP EXPORT MARKETS (2016) <sup>15</sup>			GIPI5 COPYRIGHT RANKING	
1. USA	<b>£497m</b>	+16%	●	<b>16<sup>th</sup></b>
2. Australia	<b>£106m</b>	-7%	●	<b>12<sup>th</sup></b>
3. France	<b>£73m</b>	+5%	●	<b>15<sup>th</sup></b>
4. Nordics*	<b>£70m</b>	+3%	●	Norway <b>7<sup>th</sup></b>
			●	Sweden <b>6<sup>th</sup></b>
5. Rest of Western Europe*			●	Ireland <b>8<sup>th</sup></b>

In 2016, UK TV exports were up by **10%** to **£1.3bn**

\* Not all countries in this region are ranked in GIPI5

## Priority Markets

Pact has targeted the ABACUS territories of Africa, Brazil, Australasia, China and USA in its 'Pact Export Pledge', as part of its efforts to help the UK TV industry double export revenues by 2020.<sup>16</sup> The first two of these see the exploitation of South Africa's DISCOP market and the Rio Content Market as routes into the respective wider regions. Other opportunities for future export growth identified by the TV industry include Russia, India, South Korea and Indonesia. The IP regimes of these countries of course vary greatly, but with most of those identified falling in the bottom half of the GIPI5 Copyright table it is clear that IP will need to be at the forefront of trade negotiations with respect to TV.

<sup>16</sup> Dawn McCarthy-Simpson MBE, 'Want to increase your export revenue? All you need to do is 'Pledge to Export''

## Threats

- With 90% of physical discs imported into the UK coming via the Customs Union; distributors are concerned about a potential increase in tariffs.
- The outcome of the development of the EU's Digital Single Market is important to the UK regardless of Brexit; it is not just an issue for the Department for Exiting the European Union, but across Government departments. As DSM negotiations are ongoing – and we are losing influence in Brussels – we must maintain pressure through either the UK Government or a third party to ensure our interests are expressed. There are serious concerns around the extension of the country of origin principle for UK based broadcasters to online distribution and the move to include audiovisual services in the review of the geo-blocking regulation.
- The AV sector relies on a strong IP and copyright framework that underpins everything, be that territoriality and the need for exclusive licensing, or the particular need for enforcement/compliance.
- Also at risk is the frictionless movement of goods, services and skills and talent, on which the AV sector has depended and thrived.



*90% of physical discs imported into the UK arrive via the Customs Union*

## Opportunities

There is strong emphasis from the sector on the importance of digital rights, sales of which increased by 79% between 2015 and 2016. Well over half of this revenue comes from SVOD services on platforms such as Amazon, Netflix and Hulu. Advisor Oliver & Ohlbaum Associates Ltd (O&O) has stated that by 2025, the UK could be a major source of global IP development in terms of formats and global commissions<sup>17</sup>. On the wider contribution of the sector O&O has argued that “global exposure of UK TV and film output and locations, and UK based stories and characters are likely to add significantly to UK tourism and the UK’s general brand image overseas, helping to drive exports across sectors.”

17 Oliver & Ohlbaum Associates Ltd, “The contribution of the UK based film, TV and TV-related industries to the UK economy, and growth prospects to 2025” (Feb 2017)

18 Oliver & Ohlbaum Associates Ltd: The contribution of the UK AV sector to the UK economy

19 Letter from the EU and UK Permanent Representatives

20 Creative Industries Federation ‘Global Talent Report’ (Oct 2017)

### WE ASK THAT:

- Copyright is respected both in bilateral negotiations and through world bodies such as the WTO and WIPO<sup>18</sup>
- The UK has a more ambitious plan for its own separate schedules of commitments for goods and services as a WTO member, and replication of the UK’s obligations under the current commitments of the EU, as a means to elicit a similar level of openness from others<sup>19</sup>
- Territoriality, and contractual freedom to license exclusively AV content, are defended
- As open an immigration system as possible welcomes talent both from the EU and from the rest of the world, as detailed in the Creative Industries Federation’s recent ‘Global Talent Report’<sup>20</sup>
- Improved enforcement of existing IP rights brings our export destinations up to the level of the UK’s enforcement standards



## FILM

Data compiled by BFI, UK Cinema Association and Oliver and Ohlbaum

The UK film industry exported almost £2 billion worth of services in 2015, compared with £1.2 billion in 2014<sup>21</sup>.

Of this £1.3 billion came from intellectual property (up 148% on 2014) and £0.7 billion from audiovisual and related services. The film industry has made a continuous positive contribution to the UK balance of payments since 2006, with the 2015 trade surplus of £1.2 billion the second-highest in the decade.

The UK Cinema Association reports that the UK Box Office in 2016 reached almost £1.25 billion, the sixth consecutive year that the sector has topped the £1 billion mark. UK cinema operators also directly employ over 17,500 people and support many thousands more jobs in the wider film industry and beyond.<sup>22</sup> Films produced in the UK continue to perform well domestically and internationally, reaching a market share of 37% in UK cinemas (Q1-Q3 2017)<sup>23</sup> and 16% globally (2016)<sup>24</sup>.

On the wider contribution of the sector Oliver & Ohlbaum Associates Ltd has argued that “global exposure of UK TV and film output and locations, and UK based stories and characters are likely to add significantly to UK tourism and the UK’s general brand image overseas, helping to drive exports across sectors.”<sup>25</sup>

21 BFI 'The UK Film Economy' (Aug 2017) Data for 2016 are expected to be available at the end of January 2018

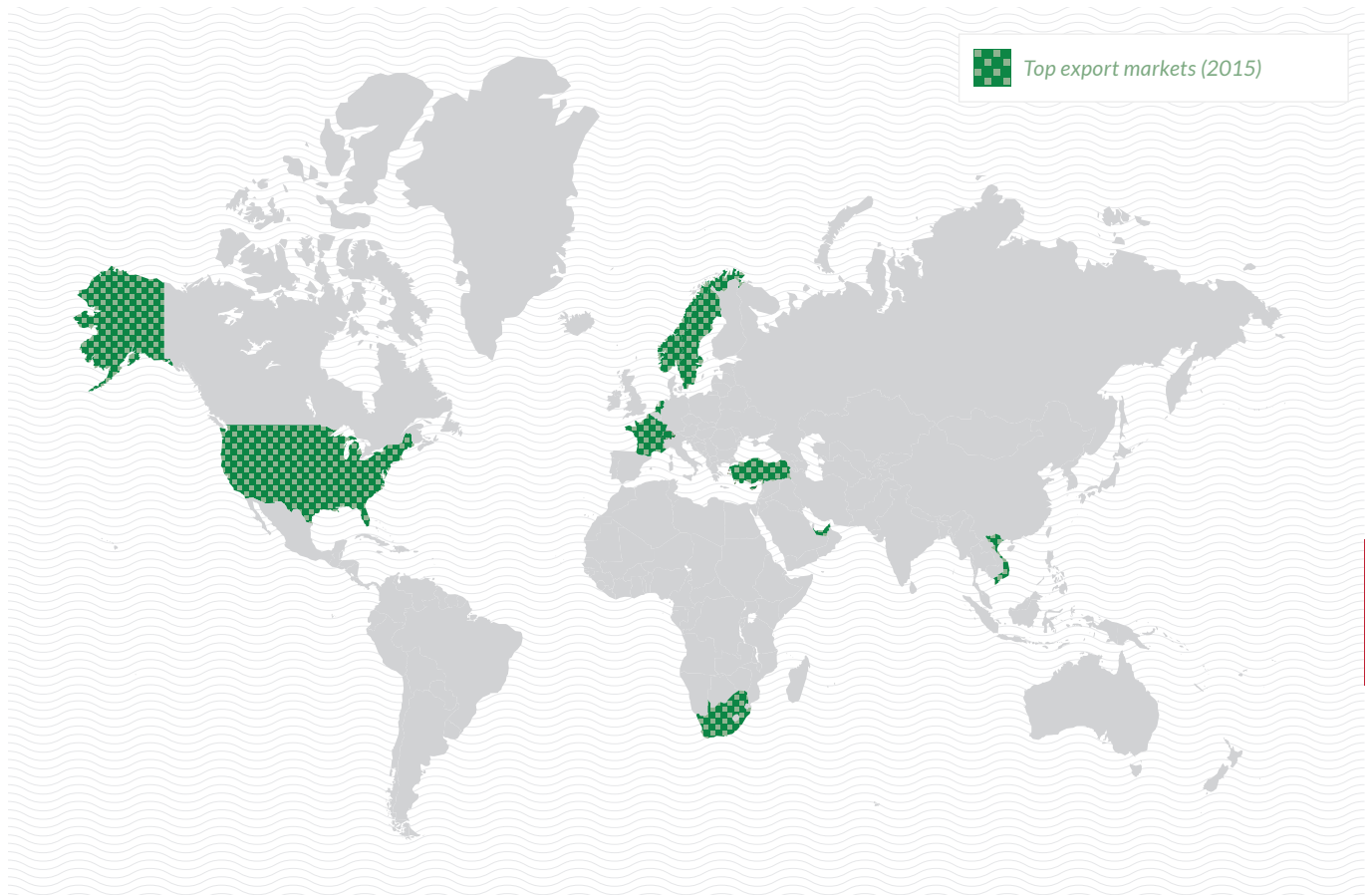
22 UK Cinema Association 'Facts and figures' 2016: At a glance

23 BFI 'Film and other screen sector production in the UK' (Q1-Q3 2017)

24 BFI 'UK films at the worldwide box office' (2016)

25 Oliver & Ohlbaum Associates Ltd: The contribution of the UK AV sector to the UK economy

26 ONS 'International Trade in Services' (Jan 2017)



TOP EXPORT MARKETS (2015) <sup>26</sup>	GIPI5 COPYRIGHT RANKING
1. USA <b>£779m</b>	● <b>16<sup>th</sup></b>
2. EU <b>£750m</b>	● Sweden <b>6<sup>th</sup></b>
	● France <b>15<sup>th</sup></b>
	● Netherlands <b>1<sup>st</sup></b>
3. Rest of Asia* <b>£106m</b>	● UAE <b>26<sup>th</sup></b>
	● Vietnam <b>39<sup>th</sup></b>

TOP EXPORT MARKETS (2015)	GIPI5 COPYRIGHT RANKING
4. Rest of Europe* <b>£106m</b>	● Norway <b>6<sup>th</sup></b>
	● Switzerland <b>18<sup>th</sup></b>
	● Turkey <b>36<sup>th</sup></b>
5. South Africa <b>£61m</b>	● <b>25<sup>th</sup></b>

\* Countries not featured in GIPI5

## Threats

- With 90% of physical discs imported into the UK coming via the Customs Union; distributors are concerned about a potential increase in tariffs.
- The outcome of the development of the EU's Digital Single Market is important to the UK regardless of Brexit; it is not just an issue for the Department for Exiting the European Union, but across Government departments. As DSM negotiations are ongoing – and we are losing influence in Brussels – we must maintain pressure through either the UK Government or a third party to ensure our interests are expressed. There are serious concerns around the extension of the country of origin principle for UK based broadcasters to online distribution and the move to include audiovisual services in the review of the geo-blocking regulation.
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- Also at risk is the frictionless movement of goods, services and skills and talent, on which the AV sector has depended and thrived.





## Opportunities

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27 Oliver & Ohlbaum Associates Ltd, “The contribution of the UK based film, TV and TV-related industries to the UK economy, and growth prospects to 2025” (Feb 2017)

28 Oliver & Ohlbaum Associates Ltd: The contribution of the UK AV sector to the UK economy

29 Letter from the EU and UK Permanent Representatives

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- Territoriality, and contractual freedom to license exclusively AV content, is defended
- As open an immigration system as possible welcomes talent both from the EU and from the rest of the world, as detailed in the Creative Industries Federation’s recent ‘Global Talent Report’<sup>30</sup>
- Improved enforcement of existing IP rights brings our export destinations up to the level of the UK’s enforcement standards



## PUBLISHING - MAGAZINES

Data compiled by the PPA

PPA's Brexit Survey conducted in December 2016 highlighted the importance of member's exports, with 89% of members earning revenue from EU markets and 85% from non-EU export territories<sup>31</sup>.

31 PPA 'Brexit Survey' (Dec 2016)

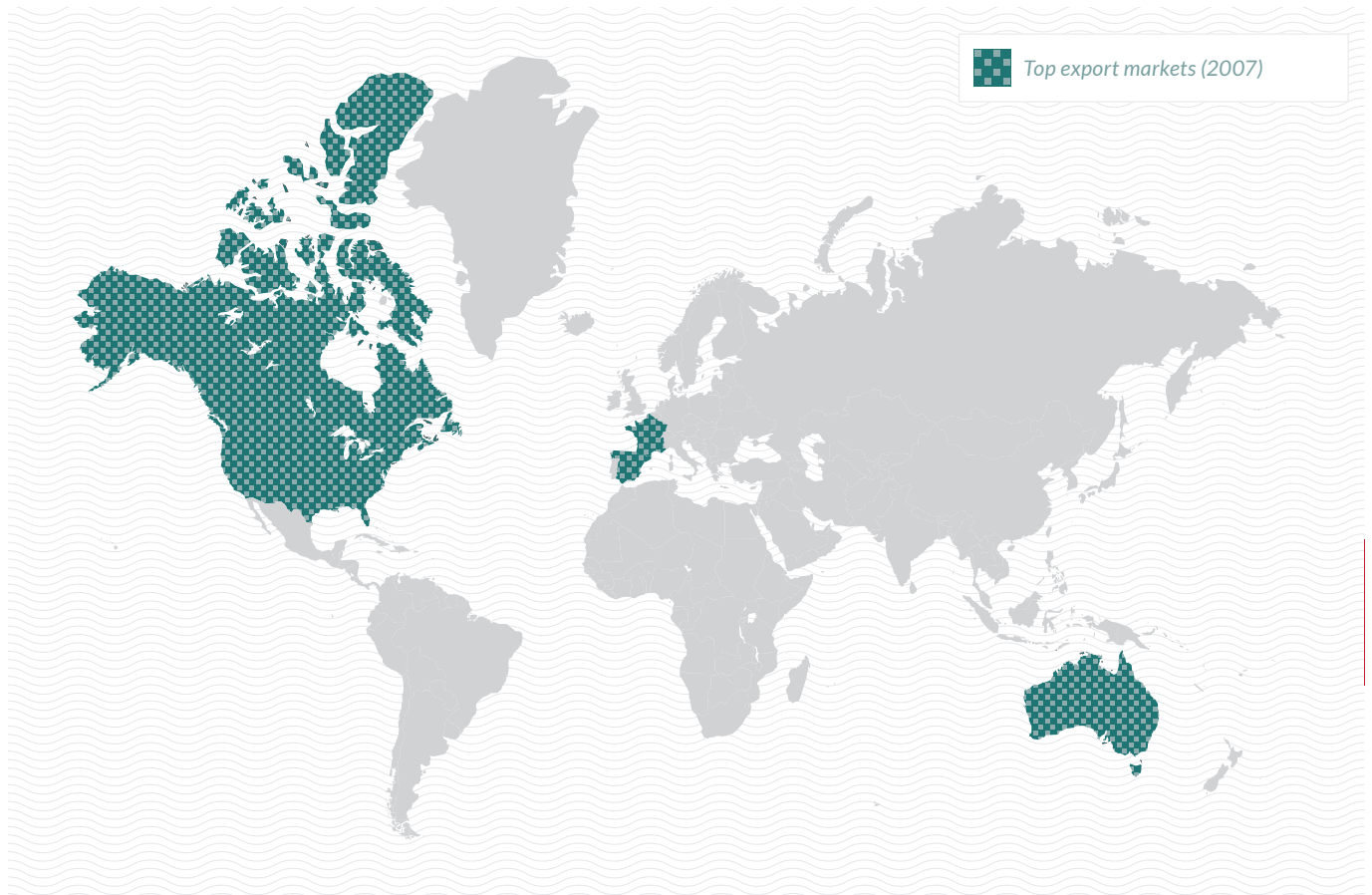
32 PPA Export Statistics Report: 2004-2007

33 PPA Export Statistics Report: 2004-2007'

On average 9.8% of publishers' total revenue is earned in EU markets, with 19.4% of revenues coming from non-EU markets.

While there are many individual success stories, with continued growth in print circulation, the broader print market UK circulations have seen sustained decline over many years, as brands continued to reach ever larger audiences across digital platforms. With publishers facing pressures from declining advertising revenues (as a small number of major global players suck up an ever greater share of advertising revenues) and rising print and paper costs (exacerbated by the fall in value of sterling after the referendum result), export markets represent an attractive additional source of revenue and potential that many have yet to fully realise.

Titles like the Economist are global brands and have regional editions in the Far East and North America, whereas Cosmopolitan, FHM and Empire are not exported as a print product as the brands are distributed in to local markets under licensing and syndication models, which deliver export benefits to the UK while tailoring content to local markets<sup>32</sup>. The US is the largest market but also the least efficient; it has proven to be costly to service, and continues to challenge exporters. Markets such as Spain meanwhile rely entirely on tourism and strong sales of weekly magazines to expatriates and visitors.



TOP EXPORT MARKETS (2007) <sup>33</sup>		GIPI5 COPYRIGHT RANKING
1. USA	19.1%	16 <sup>th</sup>
2. Australia	15.3%	12 <sup>th</sup>
3. Canada	6.8%	3 <sup>rd</sup>
4. France	4.2%	15 <sup>th</sup>
5. Spain	4.1%	22 <sup>nd</sup>



## Priority Markets

Mature European and US markets have seen significant new growth in recent years with publishers expanding portfolios and a large number of smaller values deals being completed. Markets of particular interest remain China (although there are significant IP and cultural challenges), Northern Africa, and South America.

<sup>34</sup> <http://www.ppa.co.uk/policy/news/ppa-publishing-post-brex-it-survey-analysis/>

## Opportunities and threats

Publishers are highly concerned about the prospect of tariffs, as current EU tariffs for printed magazines, digital media services and related paper products entering the EU market are all at nil. The PPA's Brexit survey highlighted that 41.3% of publishers are concerned about tariffs, however this rises dramatically to 82.8% among publishers with 500+ employees who are more likely to be exporting in significant volume.

Currently, more than 75% of publishers employ staff from EU nations, making up around 8.5% of the workforce, and with this there is a great deal of concern about their ability to retain and attract EU nationals.

With 90% of PPA members earning revenue from other EU member states, the referendum result has had a direct impact on investment decisions. A total of 30% of PPA members say they have taken investment decisions as a direct result, mostly to delay investment in the UK. Asked about Government plans to reduce corporation tax to 15% against a set of similar costed alternative proposals, there was clear support for lower Corporation Tax as a route to driving investment in the UK. Publishers equally supported a cut in Business Rates to boost investment and confidence with over 72% rating this a highly-effective measure.<sup>34</sup>

The PPA conducted a survey among their membership following the UK's vote to leave the European Union. At that time, a clear majority of publishers wanted to see the UK remain in the Single Market. However, as we now know that this will not be the case, publishers have a clear preference for a bespoke UK-EU deal over European Free Trade Association or European Economic Area membership. Publishers across the board would also like to see the single European/UK trademark registration retained.



## WE ASK THAT:

- Both domestic and international IP law and enforcement is respected when negotiating new trade deals globally
- The trade deal between the UK and EU forms a bespoke relationship
- Single European/UK trademark registration is retained



## ART MARKET

(Data compiled by DACS)

The UK continues to hold its place as the second largest art market in the world and was worth \$10.8 billion in art sales in 2016<sup>35</sup>.

UK auction houses and galleries are expanding their global reach by selling art works through online auctions, contributing to the huge growth in the online art market that was worth \$3.75 billion in 2016. For the last 30 years, the UK has predominately been a net exporter for art and antiques but following the financial crisis, between 2011 and 2013, imports picked up faster in the UK than exports until the export market recovered in 2014.

As of 2015, the UK is the second largest trader of art and antiques globally at 22.4% and the largest importer and exporter in the EU. The UK's art import market is worth \$6.275 billion and its export market is worth \$9.24 billion – the highest level of exports to date and almost two-thirds of the European export market<sup>36</sup>.

Although the exact value for fine art sectors still within copyright can't be extracted from import/export figures, all categories of fine art (including post-war and contemporary, modern, impressionists and post-impressionists and old masters) accounted for 78% share of the value of all global imports of art and antiques (\$19.3 billion) and 84% of global exports (\$23.1 billion) in 2014. In the UK, fine art sectors for post-war and contemporary, and modern art, the predominant sectors for works that enjoy copyright protection, were worth \$2.27 billion<sup>37</sup>.

The value of imports in addition to exports reflects the UK's position as a global player in the art market, attracting high-value art buyers from around the world. Government statistics<sup>38</sup> group 'Design: product, graphic and fashion design' together, and includes photography in the category with Film, TV, video and radio. It is therefore impossible to determine based on this the export value of the art and photography markets. It is also worth noting that the UK art market import/export figures do not account for the value of the prolific cross-border licensing deals between artists and users. Users in this context include the creative industries, such as book publishers, broadcasters and advertisers, who license visual artists' work for each individual use.

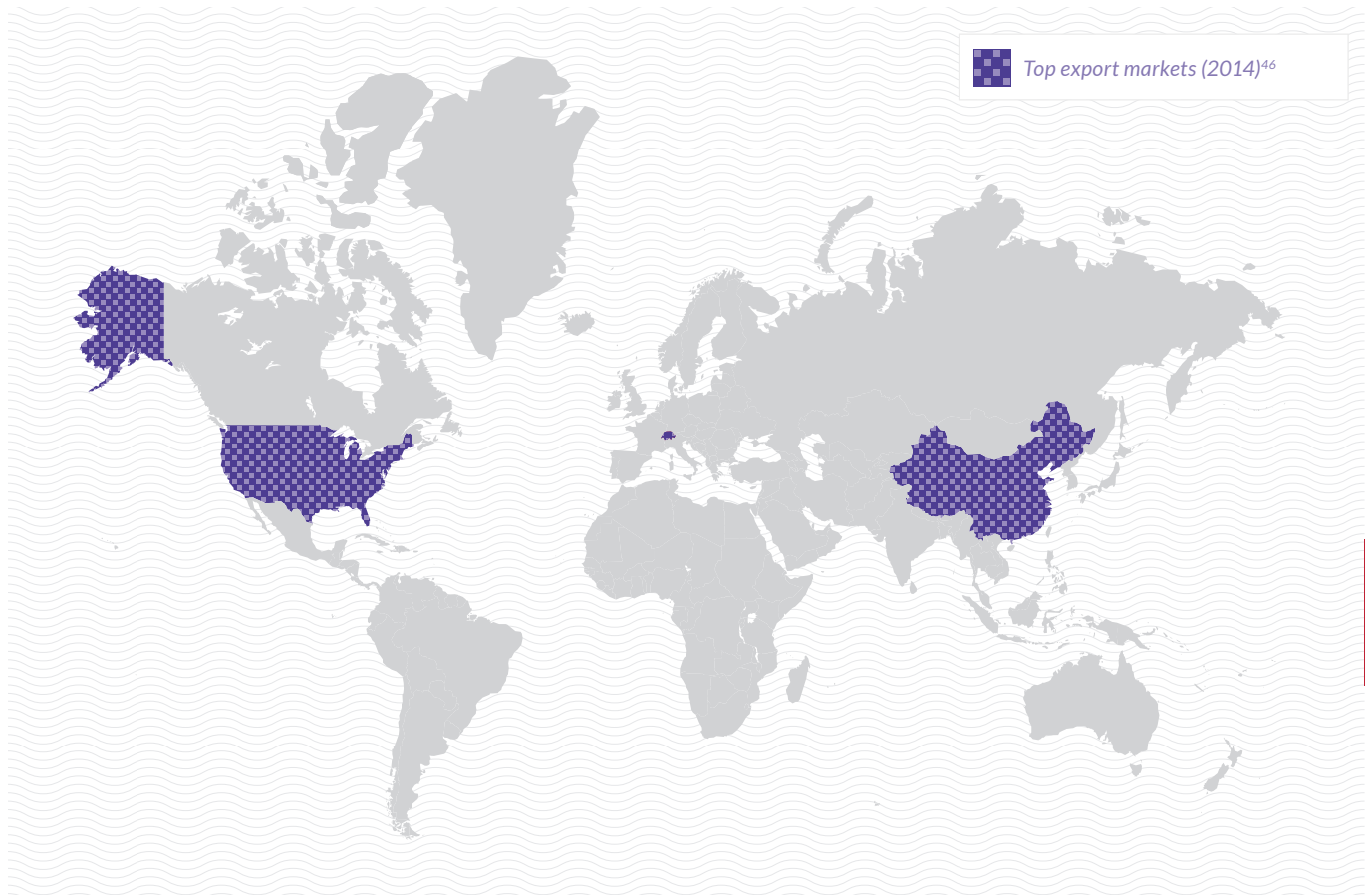
35 TEFAF Art Market Report 2017. The European Fine Art Foundation, prepared by Prof. Dr. Rachel A.J. Pownall. April 2017

36 Hiscox Online Art Trade Report 2017

37 TEFAF Art Market Report 2017. The European Fine Art Foundation, prepared by Prof. Dr. Rachel A.J. Pownall. April 2017

38 TEFAF Art Market Report 2016. The European Fine Art Foundation, prepared by Dr. Clare McAndrew. April 2016

39 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/528175/Creative\\_Industries\\_2016\\_Focus\\_on\\_Exports\\_of\\_Services.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/528175/Creative_Industries_2016_Focus_on_Exports_of_Services.pdf)



TOP EXPORT MARKETS (2014) <sup>39</sup>	GIPI5 COPYRIGHT RANKING	ARTISTS' RESALE RIGHT	TOP IMPORT MARKETS (2014)	GIPI5 COPYRIGHT RANKING	ARTISTS' RESALE RIGHT
1. USA	55% ● 16 <sup>th</sup>	No resale right	1. USA	29% ● 16 <sup>th</sup>	No resale right
2. Switzerland	21% ● 18 <sup>th</sup>	No resale right	2. Switzerland	17% ● 18 <sup>th</sup>	No resale right
3. China	11% ● 35 <sup>th</sup>	No resale right	3. France	14%* ● 15 <sup>th</sup>	Resale right exists
4. Intra-EU	2%	Resale right exists	4. Italy	8%* ● 20 <sup>th</sup>	Resale right exists
			5. Netherlands	5%* ● 1 <sup>st</sup>	Resale right exists
			6. China	4% ● 35 <sup>th</sup>	No resale right
			7. Germany	4%* ● 2 <sup>nd</sup>	Resale right exists

\*Intra-EU Total (36%)

## Opportunities and threats

### Artist's Resale Right

The Artist's Resale Right (ARR) is derived from the EU Resale Right Directive, and implemented into UK law in 2006. It entitles creators of particular works to royalties where their work is resold through galleries, dealers or auction houses at €1,000 or more, and has been important in ensuring an artist's income and a legacy.

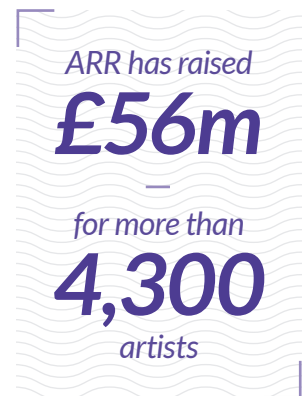
Since its introduction, ARR has raised £56 million for more than 4,300 artists and estates<sup>40</sup>. Despite its positive contribution, some UK art market professionals want to see ARR disbanded, amended or claim it is inapplicable following the referendum to leave the European Union<sup>41</sup>. Although it is claimed that ARR has negatively impacted the competitiveness of the UK art trade, this claim is unfounded and an independent study commissioned by WIPO found no evidence of any negative impact on the art market<sup>42</sup>. It should also be noted that the total amount of ARR royalties paid to artists is equivalent to less than 1% of the UK's post-war, contemporary and modern art sales and the UK's art market is the second largest in the world.

ARR is a fit for purpose and essential right for creators that has a significantly positive effect on artist's ability to continue their practice. It is vital that it is preserved via trade deals to continue to drive creators' input into the art market and the creative economy and to ensure a lasting cultural legacy that is revered across the world.

### Copyright Licensing

Visual art works are licensed on an international basis for various uses such as digital and print publishing, merchandising, advertising and use in broadcasts. This is a successful venture in which DACS has, through more than 30 years of experience, created fair, balanced and proportionate pricing structures in consultation with licensing clients. DACS works through a network of sister societies who license UK artists' works in their territory, and this contributes to the total exports for all image licensing.

Trade deals could negatively affect licensing deals by imposing licensing restrictions or tariff restrictions, increasing copyright exceptions that would erode licensing practices or by perceiving certain activities as barriers that should no longer be allowed. This would be hugely detrimental to copyright holders and licensing customers who would be negatively affected by a lack of control on pricing and freedom in licensing.



<sup>40</sup> These figures show the distribution of royalties made by DACS since 2006 and published in DACS' Annual Review 2016. It must be noted however that DACS is not the only society distributing ARR royalties to artists. The Artist's Collecting Society (ACS) also distribute ARR royalties and their annual reports since 2013 show annual ARR distributions of £1m - £1.4m

<sup>41</sup> 'The arts and culture sector and exit from the European Union'

<sup>42</sup> WIPO Magazine | 'The artist's resale right: a fair deal for visual artists' by Catherine Jewell



## *International conventions*

International agreements such as the Berne Convention, the World Intellectual Property Organization (WIPO) Copyright Treaty and the Trade Related Aspects of IP (TRIPS) Agreement must be adhered to. Trade deals should not move away from these important international conventions, which safeguard creators who are the driving force of the successful UK creative industries.

Some trade deals have required a minimum level of compliance with a national law, for instance with the USA's Digital Millennium Copyright Act. A UK trade deal must not derogate away from established legal frameworks by being forced to adopt legal concepts that are alien to and untested under UK law, such as the 'fair use' approach to copyright exceptions which is entirely different to the UK's 'fair dealing' approach. UK law should maintain its sovereignty and not compromise the intellectual property framework: following two extensive reviews of copyright (Gowers and Hargreaves), the UK has a fully modern and strong copyright law. Trade deals must not intervene by creating new exceptions or adopting new concepts.

### **WE ASK THAT:**

- The Artists' Resale Right is safeguarded throughout negotiations and after Brexit to protect artists and their estates
- The UK's copyright framework is maintained so the country's position as a global player in the art market is preserved
- All trade deals ensure the rights of UK creators are strengthened by adhering to international conventions



## BRANDS

(Data compiled by the British Brands Group and Anti-Counterfeiting Group)

Brands have a value far greater than the products with which they are associated and British brands are no exception, with buyers around the world prepared to pay a premium for branded products from the UK.

British brands also shape the reputation of the UK abroad, supporting export performance more broadly.

Brands rely on a range of IP rights to build and sustain their reputations. Arguably the most important are trade marks. As an ownable sign of origin, a trade mark allows a company to capture and protect investments in reputation and is therefore often considered a proxy for brands. To give an example of the strength of branded exports, UK branded food and drink exports alone were valued at £5.2 billion in 2016, an increase of 11.5% over the previous year. As is visible in the table below two-thirds were exported to other EU countries.

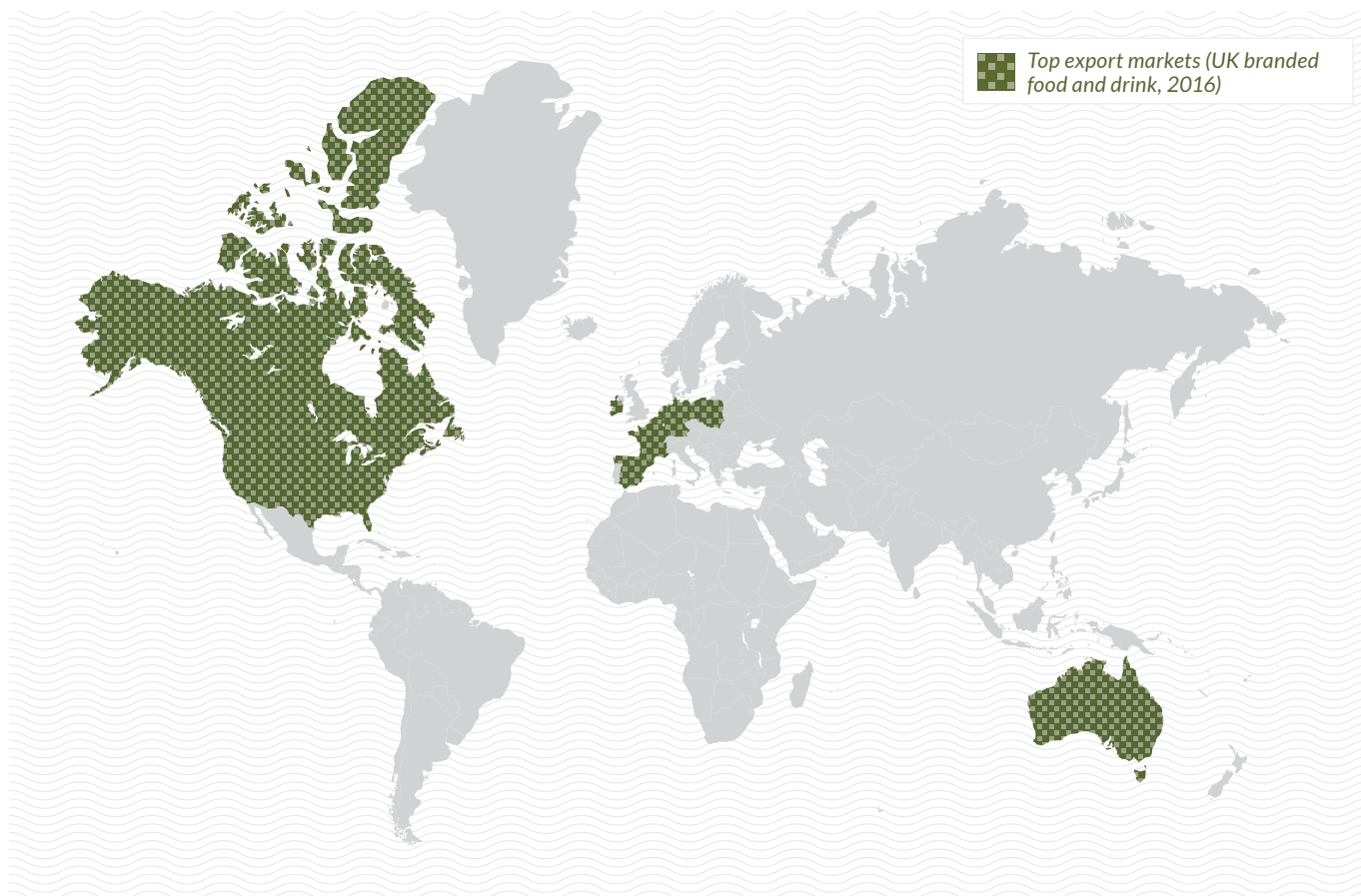
Vehicles are one of the most valuable UK export categories, valued at £51.7 billion, and the fastest-growing of the top 10 export categories, up 80.8% for the 7-year period starting in 2009. Including brands such as Mini and Jaguar, 80% of vehicles produced in the UK are exported<sup>43</sup>.

The success of British brands overseas is not constrained by geography, originating in many parts of the UK. In fact British brands need not necessarily be British-owned to be successful. Many foreign-owned brands can end up playing upon their British heritage even more when they are exported to international markets.

Similarly British brands are not constrained by company size. An eBay for Business Index report in 2017 found that 93% of the 200,000 small businesses that trade on eBay in the UK also export overseas to an average of 20 different countries, with 24% of eBay sellers reporting an increase in interest in buying British in the last 12 months<sup>44</sup>. The US, Australia, Germany, France and Italy are the top five export markets for British goods on eBay.

43 Society of Motor Manufacturers and Traders (Oct 2017)

44 Internet Retailing: 'Small businesses that trade online are more likely to export: eBay study', Chloe Rigby



TOP EXPORT MARKETS  
(UK BRANDED FOOD  
AND DRINK, 2016)<sup>45</sup>

GIPI5 TRADE MARK  
RANKING

1. Ireland	£1,315.6m	● 11 <sup>th</sup>
2. Germany	£472.9m	● 1 <sup>st</sup>
3. Netherlands	£390.4m	● 2 <sup>nd</sup>
4. France	£347.4m	● 10 <sup>th</sup>
5. USA	£197.1m	● 14 <sup>th</sup>

TOP EXPORT MARKETS  
(UK BRANDED FOOD  
AND DRINK, 2016)

GIPI5 TRADE MARK  
RANKING\*\*

6. Australia	£144.6m	● 7 <sup>th</sup>
7. Spain	£128.1m	● 18 <sup>th</sup>
8. Poland	£119.1m	● 21 <sup>st</sup>
9. Belgium	£117.9m	
10. Canada	£115.9m	● 9 <sup>th</sup>

\* Country not ranked in GIPI5

\*\* The European Community trade mark (which applies in all of these countries except USA, Australia and Canada) receives a separate ranking in GIPI5 of joint third, climbing 17 places since GIPI4

45 Food and Drink  
Federation  
Exports Snapshot  
2016

## Opportunities and threats

Trade mark-intensive industries are by far the best performing of IP-intensive industries economically, generating more than double the GDP and double the jobs of the next best-performing IP right (patents and designs respectively). Trade mark-intensive industries are also the best performing in trade terms, generating the most exports and the most imports, indicating the strength of the two-way trade<sup>46</sup>. Given the strength of British brands the opportunities for export growth as we negotiate new trade deals are therefore considerable.

However the performance of these brands domestically and internationally through exports relies substantially on IP rights, most importantly trade marks, and any deterioration of these rights threatens the ability of brands to contribute to export performance and in turn the wider economy.

There is also evidence that the way in which consumers view countries impacts upon their purchases of goods and services from these countries, and therefore the investments UK companies make on branding has a spillover effect into the perceptions that people in the world have of the UK, enhancing the perceived standing of UK PLC. The Nation Brand Index, which helps governments and business understand, measure and ultimately build a strong national image and reputation, places the UK third out of 50 countries measured. Consequently, any deterioration in the performance of British brands caused by a weakening of IP rights could also have knock-on impacts on the UK's commercial reputation globally.

46 Intellectual property rights intensive industries and economic performance in the European Union, EUIPO and European Patent Office, 2016

## WE ASK THAT:

- Registered and unregistered IP rights are reciprocal so companies have the confidence to invest in innovation, reputation and quality knowing such investments are protected at home and abroad
- Registry performance in terms of process and timescales converge, so that the granting of rights is timely and efficient and, once granted, there can be confidence in their validity
- An effective enforcement regime exists for when registered and unregistered IP rights are infringed
- Competitive tariff and non-tariff arrangements are agreed with other countries so companies can compete on a fair, level playing-field.



## DESIGN

(Data compiled by Anti-Copying in Design and Design Council)

According to the Design Council, the Gross Value Added of the design economy totalled £72bn in 2013<sup>47</sup>. This meant the UK had the second-largest design sector in the world and the largest design industry in Europe.

Research also shows that for every £1 invested in design, companies can expect £4 increase in profits and a return of over £5 in increased exports<sup>48</sup>.

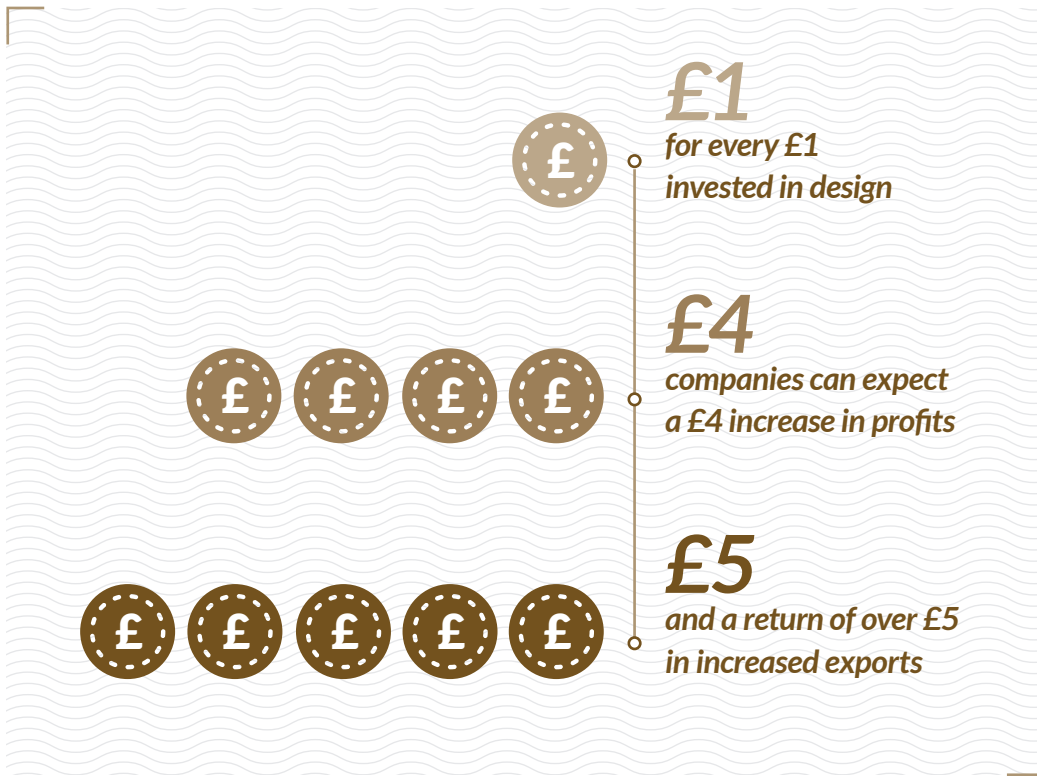
The most recent assessment of the value of UK design-related exports, incorporating all goods and services where design had made a key contribution, measured a considerable £34bn in 2013 - 7.3% of all UK exports<sup>49</sup>. This places the UK fifth globally in terms of exports. "With further investment and support," argued the Design Council, the UK "could move from being world class to the global lead".

*Due to the lack of available data for export markets for the design industry, the Alliance for Intellectual Property is unable to provide market specific information.*

47 Design Council 'The Design Economy' (Oct 2015)

48 Design Council 'New government figures show UK has largest design sector in Europe' (January 2015)

49 Design Council 'The Design Economy' (Oct 2015)



## Opportunities and threats

Following the UK's decision to leave the EU the Design Council conducted a survey of members and identified the following:

- We are concerned about the potential loss of product and service standards and regulation which currently stem from EU legislation, particularly for physical products, digital technology, and development within the built environment.
- The standards which regulate design quality in the UK come from multiple sources: from the UK, the EU and international level; range from enforced regulation to voluntary schemes; and cover issues from health and safety to environmental sustainability.
- We are clear that where there has been European harmonisation of standards, such as that engendered by the European Committee for Standardisation (CEN), the UK must ensure that it remains a party to these conversations, and continues to promote the importance of common international standards.
- We are especially concerned about UK designers' lack of access to Registered Community Design and Trade Mark registrations across all EU member states in the event of the UK leaving the European Union. The UK system is not an adequate replacement for the European system in its current operation. Recent changes to UK registered design rights by the IPO have been welcome, but there is much more work needed to make the system clear and appealing (in price and coverage) for UK designers, to try and bring it to parity with the European system.
- There is also significant concern about the function of the Community Unregistered Design Right in the event of Brexit. The UK Unregistered Design Right is not an equitable right for UK designers, as it is both longer in coverage, and – crucially – does not cover surface decoration. This is of particular concern for fashion and furniture designers.



## ALLIANCE MEMBER ANTI-COPYING IN DESIGN (ACID) ALSO HAD THE FOLLOWING TO SAY:

- EU unregistered design laws offer more protection than the UK equivalent. Basic laws enable design businesses to exist. Whilst we need to enshrine these EU protections into UK law we also need to ensure that current protections are not diminished. UK unregistered design laws protect the shape and configuration of a design whereas EU unregistered design laws protect the individual character of a design such as texture, patterns, colour combinations, contours, line drawings etc. These features provide crucial protection to design led industries such as the furniture, lighting and fashion industries and without this protection the impact on these design sectors could be catastrophic.

## WE ASK THAT:

- Trade negotiations take into account the huge importance of the UK design sector, and the central role that IP rights play in allowing designers to contribute to the UK culturally and economically
- The status of EU Unregistered and Registered Designs Rights is preserved in the UK post-Brexit
- UK designers are put on a level playing field with their EU counterparts for Unregistered Design Rights



## IMAGES

(Data compiled by BAPLA)

The global image sector is predicted to have an annual growth rate of 7.76% from 2017-2021<sup>50</sup>.

The image sector covers the business of licensing pre-produced visual content for specific uses. The value chain of this industry includes image creators, image users, and image suppliers who provide the commercial trade of usage rights in return for remuneration.

The photo library and agency sector is unique within the framework of the image industry as it is a vital economic link for many professional image-makers. We specialise in recognising the 'marketplace value' of images and for decades have supported the ability of professional image-makers to derive income and reinvest in their creativity. Innovation and new business opportunities has been the key driving force behind BAPLA members' ability to create and maintain a strong global image industry<sup>51</sup>.

A global market report published in 2012 showed the three largest concentrations of image suppliers were Germany (31%), the UK (19%) and the US (18%)<sup>52</sup>. BAPLA also undertook two key surveys on trading in Europe (2016) and internationally (2017)<sup>53</sup> to identify where most trading currently takes place and where there is trade growth potential. The proportion of European licensing/dealings, compared to UK trade, makes up 40% of members' incomes for over 80% of the membership; plus over 50% of members replying to the survey have European staff working for them. The key skillset European workers bring to the image sector are language skills, as well as customs and IP knowledge, which are difficult to replicate. Employing workers with territorial expertise improves new market penetration and trading efficiencies.

50 Still Images Sector: Worldwide Forecast until 2021, March 2017

51 The United Kingdom is one of the three largest markets in the world, alongside the US & Germany, providing two thirds of all image suppliers - Page 4,

52 The Global Image Stock Market 2012

53 BAPLA members survey conducted between October and December 2016, and May 2017, not publicly disclosed



TOP EXPORT MARKETS (2017)*	GIPI5 COPYRIGHT RANKING	PRIORITY MARKETS (WITHIN EUROPE)	GIPI5 COPYRIGHT RANKING	PRIORITY MARKETS (OUTSIDE EUROPE)	GIPI5 COPYRIGHT RANKING
1. Germany	● 2 <sup>nd</sup>	1. Germany	● 2 <sup>nd</sup>	1. China	● 35 <sup>th</sup>
2. USA	● 16 <sup>th</sup>	2. France	● 15 <sup>th</sup>	2. USA	● 16 <sup>th</sup>
3. France	● 15 <sup>th</sup>	3. Italy	● 20 <sup>th</sup>	3. Japan	● 10 <sup>th</sup>
4. Japan	● 10 <sup>th</sup>	4. Netherlands	● 1 <sup>st</sup>	4. Australia	● 12 <sup>th</sup>
5. Australia	● 12 <sup>th</sup>	5. Spain	● 22 <sup>nd</sup>	5. Brazil	● 29 <sup>th</sup>

\* BAPLA International Trade Survey (June 2017)

## Opportunities and threats

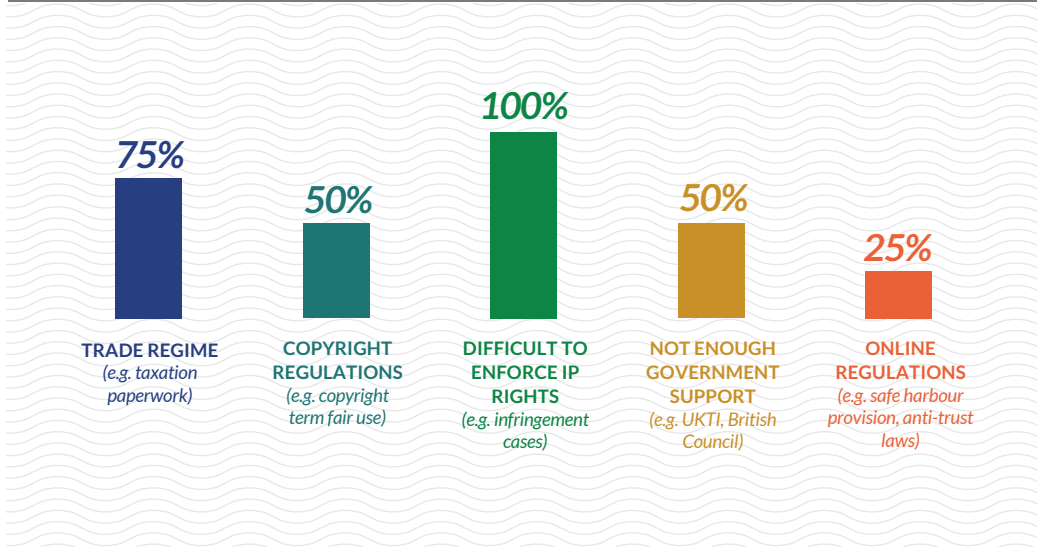
The Asia-Pacific (APAC) market for the image sector is expected to grow exponentially during the period 2017-2021 due to rapidly growing internet use in these areas. Aside from continuing trade agreements with European countries (which accounts for 40% of income), China appears highest on the list of countries where image libraries and agencies see potential growth, followed by Japan in third place.

However copyright infringements can be particularly high in the APAC region due to a lack of enforcement policies, which also prohibit growth potential. The copyright volatility in this region and in others (such as Australasia and South America) results in high levels of missed revenue opportunities. Image piracy is a potential barrier to market growth for image rights holders looking to expand their businesses beyond Europe. Therefore it is essential to receive vital trade support to expand in these countries in order to tap into the market potential. The US is still seen as a viable market, but over the years, since a 'fair use' doctrine and 'safe harbour' provisions were introduced, the market, whilst potentially being one of the largest global trade markets, it is a double-edged sword for many in the image sector.

From BAPLA's 2017 survey members identified, and ranked in order, the following prohibitive reasons for trading internationally:

- 1** *Difficult to enforce IP rights*
- 2** *Trade regime*
- 3** *Copyright regulations*
- 4** *Not enough Government support*
- 5** *Online regulations*

WHAT REASONS PROHIBIT YOU FROM TRADING WITH OTHER COUNTRIES



When asked (2016 survey) what was important for members specifically on IP rights, members' comments ranged from: "The protection of copyright is the foundation of creativity"; "Our business is based on a robust copyright framework which allows us to reinvest in the works we produce and licence, anything that could jeopardise it, such as a reduced copyright term or a fair-use system would result in our business model becoming redundant and therefore obsolete"; "Licensing images of this [national collection] helps generate vital income for the gallery. Softening UK copyright law would make it harder for us to control, and generate income from images". Overall there was a concern that copyright would be used as a "bargaining chip" in any trade agreements. The image industry's 'red line' would be legislation that undermines their ability to conduct business effectively online and through trade deals.

**There are four key IP policy elements that would enable image rights holders to enforce their IP rights and support the continuing success of the image industry:**

### **A strong copyright regime**

Unequivocally, one of the UK's strengths is its copyright legislation, which we strongly believe is a necessity for the image sector. It not only provides business certainty, it also enables image-makers to create new works and allows rights holders to reinvest in areas, which include technology. Any changes to further democratise image content or introduce exceptions via legislation could have a profound negative economic impact.

### **Narrowing the value gap**

UK legislation recognises the certainty and sensibility of the value chain, but we need clarification online. The "value gap" for the creative industries is a "value block" for the image sector. Our industry has faced unprecedented challenges in staking a claim in the online value chain. For example, unlike music and video right-holders, image owners are not able to participate in YouTube's Content ID system. The challenge of protecting images online cannot be overstated - notice & take downs are relatively ineffective to deal with millions of images generated each month, and image search engines are able to take advantage of a current loophole in order to "frame" images<sup>56</sup> without requiring the consent of the copyright owner.

### **Strengthening enforcement policies internationally**

The UK Government has made great strides in improving the enforcement of IP<sup>54</sup>. BAPLA would like to see this continue and expand to include digital works such as images<sup>55</sup> by working to ensure it forms part of trade deal agreements. We have long campaigned over piracy issues that challenge the existence of our industry, particularly in relation to images exploited by others through social media channels to the point at which they are becoming substitution for normal creative channels. For us to champion investment into areas like tech, we need to be supported by positive IP policies and legislative measures in international trade agreements.

### **Acting upon the intermediary liability**

A significant priority for the image sector is to ensure that the interests of image rights holders are taken into account. Of particularly high importance are developments relating to the liability of online platforms, therefore it is essential that when any new trade agreements are made, which relate to IP and copyright (whether directly or indirectly) that sensible arrangements are made to ensure rights holder remuneration travels all the way through the value chain and is not merely recycled amongst 'super-platforms' creating unfair competition<sup>57</sup>.

54 Examples include the introduction of the IPEC Small Claims Court, and a recent Code of Conduct, which remains publicly undisclosed (the possibility of working towards a 'Code Phase 2' to include looking at the piracy of images would be welcomed).

55 Over the past few years image recognition software technology has rapidly developed across the market (PicSout, ImageRights, ImageProtect, Pixelrights, etc)

56 What makes framing different from "linking" is that instead of taking the user to the linked website, the information from that website is imported into the original page and displayed in a special "frame." Users viewing framed images are connecting to the site doing the framing, 'not' the site whose images appear in the frame.

57 The E-Scraper and E-Monopsony, April 2017

Following enforcement issues which prohibit trade, the second highest concern were barriers to trade, such as the prospect of complex tax systems, high tariff charges, withholding tax, exchange rates, and unfair competition laws.

## WE ASK THAT:

### *Government provides more support:*

- Ensuring a fair and competitive online environment to enable image rights holders to be remunerated for the use/sharing of their works
- Via DIT & UK government officials abroad to assist with creating business connections and access to market
- By example, as the UK has a strong copyright regime and improved enforcement policy, we would like Government to use the UK creative sector as an example of economic success in relation to copyright

### *And, specifically:*

- Government supports the enforcement of UK IP assets
- Red tape, paperwork, import duties and other trade barriers are reduced
- The exchange of image content between countries is protected
- Assistance with set-up costs and HR is provided in new territories

If image rights holders are to share in any of the economic value that such works contribute, then an inclusive international trade plan encompassing the creative sector and a strong IP policy is key, particularly when striking new tariff-free trade deals. Now is a golden opportunity for the image sector to remain one of the UK's great exports.

BAPLA hopes to see at an international level closer proximity to our own IP regime to increase confidence and investment, and strengthen our ability to innovate on an international level in order to maintain our global position.



## TOYS

(Data compiled by the British Toy & Hobby Association (BTHA))

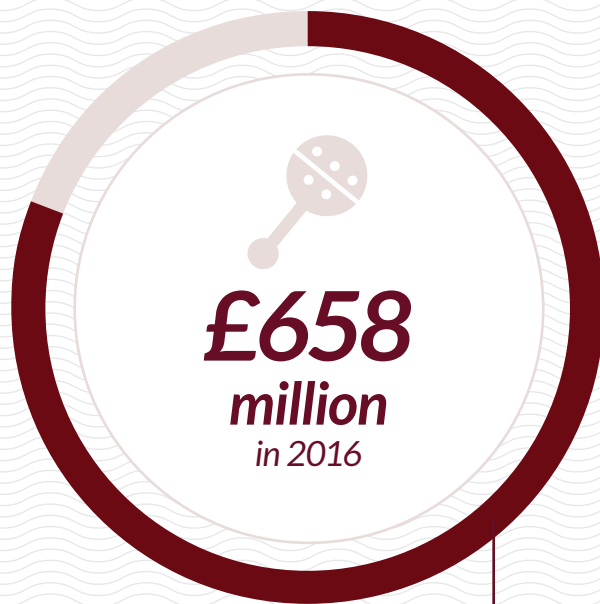
The UK toy market was worth £3.5 billion in 2016, the largest in Europe, and the fourth largest in the world – behind the USA, China, and Japan.

The UK's toy and hobby sector is highly innovative, giving it an important leadership role within the global industry. Since 2012, there have been 4,489 UK registrations of EU trademarks for toy, games and playthings which is equivalent to almost a fifth of all European registrations. Globally, only the USA and Germany account for more registrations. However, this does not capture the full extent of innovation within the sector – in 2016 alone, 63,400 new toy lines were launched in the UK.

UK toy industry exports totalled £658 million in 2016. The EU is the dominant export market for British toy companies, accounting for more than four-fifths (81 percent) of exports. Due to the lack of available data for export markets for the toy industry, the Alliance for Intellectual Property is unable to provide any more detailed market specific information.



**UK toy industry  
exports totalled**



**81%**

*The EU is the dominant export market  
for British toy companies, accounting  
for more than four-fifths of exports*

## Opportunities and threats

Intellectual property theft is a significant issue for the toy industry, most often in the form of counterfeit toys. Recent estimates indicate that as many as one toy in ten is counterfeit, inflicting an estimated damage of £400 million on the UK toy industry, and depriving the UK economy of more than £270 million in GDP. The British Toy and Hobby Association has also identified the following related concerns:

- UK toy manufacturers develop toys between 18 months and 2 years in advance. Uncertainty over what our future trading relationship with Europe will look like will have huge implications for the future development, and pricing of products, with the potential to stifle innovation and growth. 61% of BTHA members indicated that lack of clarity represented a significant concern.
- The prospect of higher tariffs for toy exports to Europe would significantly undermine the progress of the UK toy industry and leave the UK market vulnerable to international competitors within the EU.
- 85% of the industry are small and medium sized businesses, rising costs of Brexit is one of the greatest concerns for our industry.
- Reduced voice in Europe on the development of new standards and regulations that the UK toy industry must adhere to, in order to export into the European market is a real concern.
- The growth of the British toy industry has been built on a reputation of high quality and safe toys; moving away from the world-leading European regulations would therefore represent a significant and potentially damaging backwards step.

Whilst a favourable trade agreement with the EU is undoubtedly the priority for both the Government and the BTHA, there is also a need to pursue deals with other strategic partners. Any deals however, would also need to take into account the regulatory environment of the country concerned. For Example, the USA has significant inconsistency across different US states which makes trade and regulation complex and expensive.

Undesirable parts of the Union Customs Code should be removed and the legislation should be made simpler to facilitate trade, such as:

- Removal of Customs guarantees for potential duty; royalties are not added to customs tariffs for valuation purposes
- Removing the ability of EU companies to “grey import” to the UK
- Reintroduction of the first sale for export rule

## WE ASK THAT:

- British designs will in the future be able to be easily registered and protected throughout the UK, Europe and the rest of the world to support continued innovation in our industry
- The CE mark or equivalent is considered – recognition is key for exports to the EU. There is also a risk that the UK could become a ‘dumping ground’ for potentially unsafe and sub-standard products as operators meeting non-compliant goods tend to target markets that have lesser standards than CE marking
- Alignment with the European level of toy regulations is maintained, to ensure British toys adhere to the highest and safest standards, and to protect our ability to trade with our European partners
- Access to CEN and CENELEC continues, to maintain a voice in standards development
- The UK continues collaborating closely with European authorities and partners following Brexit to ensure we are best placed to deter and remove counterfeiters from the market



## PREMIER LEAGUE

Premier League football is broadcast in 185 countries (2014/15)<sup>58</sup>, and brought in revenue of over £3bn for its 2016-19 overseas broadcasting rights deal<sup>59</sup>.

The Premier League and its clubs together generated over £6.2 billion in economic output that contributed approximately £3.4 billion to national GDP in 2013/14. With total Club revenues of £3.3 billion in the 2013/14 season, the Premier League was the third largest professional sports league in the world by revenue, behind only Major League Baseball (MLB), and the National Football League (NFL). 800,000 tourists attended a Premier League match in 2014/15.

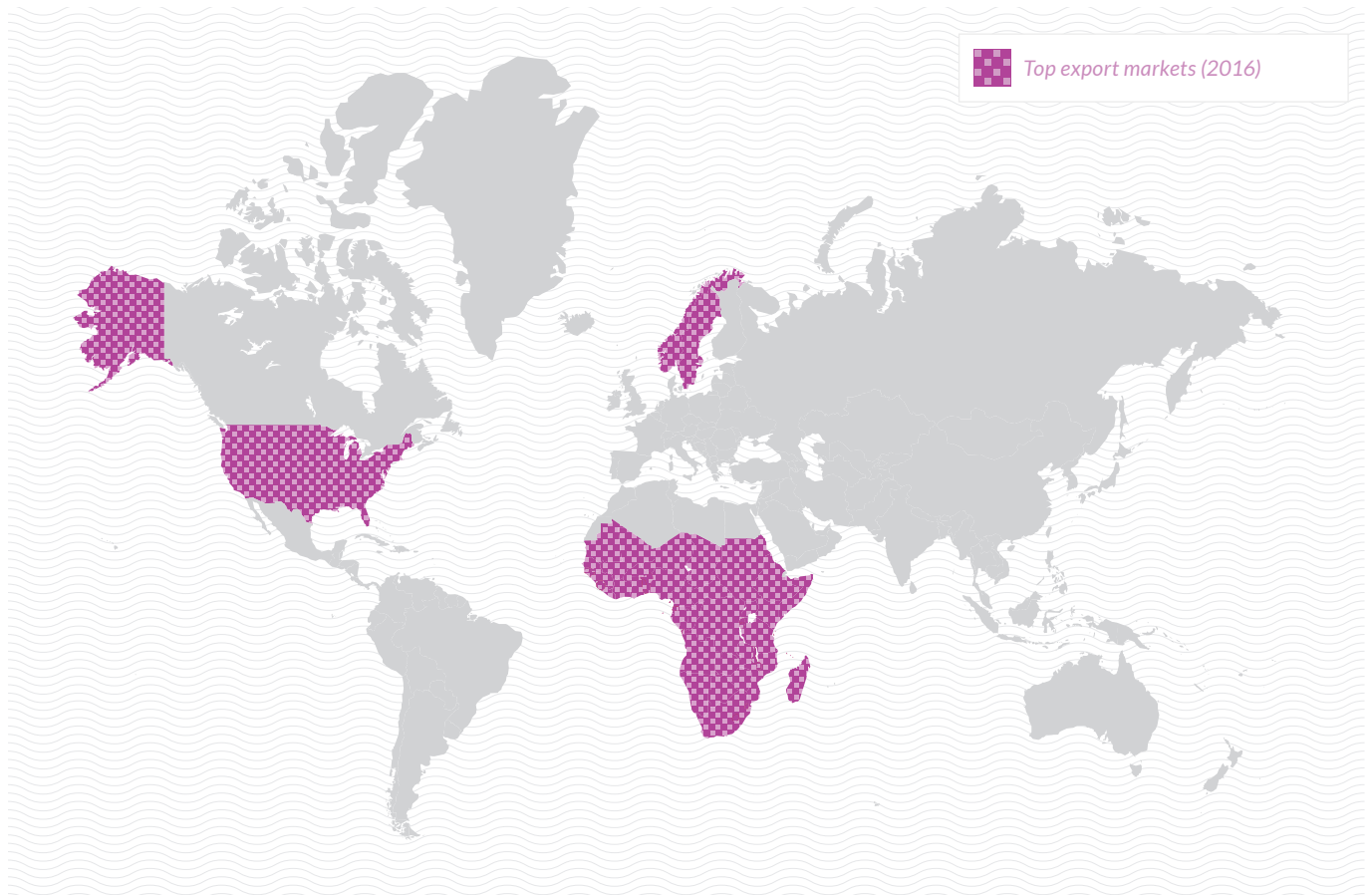
### Opportunities and threats

- IP creates the framework that allows rights to be sold and supports the value chain
- IP manifests itself best in territories with strong enforcement regimes. China is an example of a country that is now a major trade partner due to its changing attitudes towards piracy
- Access to talent is very important; although not specifically an issue for trade deals, it would be a result of good and robust trade agreements. Barriers in accessing talent have the potential to severely damage the Premier League's business model and destroy the value chain
- It is vital to allow rights to be negotiated and sold on a territorial basis which gives overseas broadcasters the opportunity to customise and tailor content to suit their own individual audiences and markets

58 EY, The economic impact of the Premier League

59 BBC 'Premier League TV rights'

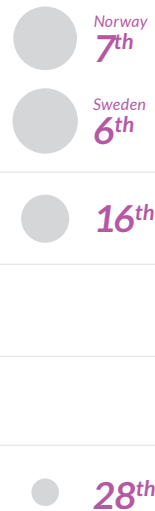
60 Per-year figures based on unconfirmed reports of 2016-19 overseas broadcasting rights deals, except Thailand figure which is per-year based on the 2013-16 deal. Daily Mail 'Premier League set for £3bn windfall from global TV rights' (Oct 2015)



TOP EXPORT  
MARKETS (2016)<sup>60</sup>

1. Nordics	<b>£110m</b>
2. USA	<b>£110m</b>
3. Sub-Saharan Africa*	<b>£98m</b>
4. Hong Kong*	<b>£92m</b>
3. Thailand	<b>£68m</b>

GIPI5 COPYRIGHT  
RANKING



The Premier League and its clubs together generated over

**£6.2bn**

in economic output that contributed approximately

**£3.4bn**

\* Not all countries in this region are ranked in GIPI5

# INTERNATIONAL IP REGIMES: COUNTRY-BY-COUNTRY ANALYSIS

This paper highlights the significance of intellectual property to the success of UK exports for a wide range of industries, and it is clear that there will be opportunities for these IP-rich industries as new trade relationships are negotiated.

Nevertheless, within each of the significant territories, challenges exist over effectiveness in terms of the application of copyright, trade mark and design right laws at national level. The examples below have been provided by the Alliance and its members, by reference to concerns raised within the indices referred to in the introduction. A more detailed country-by-country assessment of IP regimes globally can be found in the Taylor Wessing GIPI5 report<sup>61</sup>.

Working to increase international recognition of good practice and effective application of copyright and design rights for enforcement of them must be addressed in setting the Intellectual Property chapters which will form an increasingly important part of any UK trade deals in the future.

## USA

As illustrated in this document, the USA is a vital export partner for IP rich industries represented by the Alliance for IP.

Although the country still considers itself at the forefront of the international drive to improve copyright regimes, both through its Special 301 report and activity at the WTO, there are concerns at the effect of current transposition of some international treaty provisions within the United States when addressed in terms of UK export markets.

Rights holders were likely to have been unsettled by the US Appeals Court ruling in October 2015 that "Google Books" constituted fair use and was not a violation of the authors' copyright.

The US music publishing community would also have been concerned by the suggestion in a review carried out by the US Department of Justice at the end of 2015 that ASCAP and BMI could license 100% of the rights required to publicly perform any musical work in their

61 Taylor Wessing  
Global Intellectual  
Property Index:  
Fifth report  
(GIPI5)

respective repertoire regardless of whether the work is wholly or partially owned by its members. US Copyright Office rejects the idea that full performance rights to a co-written song could be granted without fully owning the rights to the track.

## China

Within China, recent new provisions to support recognition of copyright are welcome but there are concerns about consistency in addressing copyright enforcement, costs effectiveness for enforcement and the copyright balance.

Outstanding revision of the Copyright Law which started in 2012 appears to have no end of the process in sight. Although China has made significant efforts to increase copyright enforcement through measures such as the criminal enforcement campaign “Swordnet 2015”, and the Draft Administrative Copyright Punishment Measures issued by the NCAC, online piracy and infringement is widespread. The National IP Strategy emphasises the need to create digital content for marketing and exporting which aligns with its improved score for exploitation. However, the complicated process of providing evidence in enforcement cases and the myriad of sometimes competing agencies claiming jurisdiction trigger a mix of frustration and disillusion for respondents. In terms of exploitation under licence, one respondent lamented the absence of Chinese copyright collecting societies in some areas:

“It makes it difficult to properly license rights and contributes to uncertainty. Establishment of organisations similar to ARS (US) and DACS (UK) in Asia is long overdue. Orphan works (copyright owners cannot be determined or located) are still a huge problem (including in the UK despite the new orphan works registration system) – making it more difficult or risky to use works which cannot be licensed”.

China remains on the US Government’s Special 301 Report Priority Watch List for numerous reasons:

- Progress toward effective protection and enforcement of IP rights is undermined by unchecked trade secret theft.
- Market access obstacles to ICT products raised for ‘security’.
- Measures favouring domestically owned IP in the name of promoting innovation in China.
- Significant piracy and counterfeiting in China’s massive online and physical markets.

- Extensive use of unlicensed software.
- Supply of counterfeit goods to foreign markets.
- Unnecessary introduction of inapposite competition concepts into IP laws.

However:

“The United States welcomes the commitment of China’s leadership to intellectual property and innovation, and urges it to seize the opportunity of ongoing legal and regulatory reform to translate policy commitments into an intellectual property environment in China that provides for effective IPR protection and enforcement, incentivises innovation, and facilitates trade in IPR-intensive goods and services.”

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## **Japan**

Provisions supporting copyright exploitation and cost-effectiveness are recognised. However a reported decline at national level in perception of copyright balance between rights owner and user is a concern for those reliant upon copyright and related rights to support the basis for exports.



2015 saw some amendments to its Copyright Act and developments arising out of the Trans-Pacific Partnership agreement pursuant to which Japan and other countries agreed to strengthen IP rights. The latter is likely to lead to more reforms to its copyright laws and strengthening of rights holders' positions e.g. extending the term of protection.

## **Australia**

Good provision for IP enforcement in Australia is recognised, but concerns over cost effectiveness for those seeking to enforce rights exist. Some positive recent developments include:

- Site blocking provisions inserted by the Australian parliament into the Copyright Act 1968, applicable to sites outside Australia where “the primary purpose” is copyright infringement, or facilitating copyright infringement.
- Government requirements for the ISP industry and rights holders to develop a code to address peer-to-peer piracy.
- A landmark Federal Court decision requiring an ISP to disclose names and addresses of its customer who has illegally downloaded the 2013 film Dallas Buyers Club.

On the down side, uncertainty remains due to the ongoing debate in respect of the recommendations made by the Australian Law Reform Commission that Australia should adopt a fair-use style flexible copyright exception.

## **Canada**

Procedural improvements introduced in 2015 by the Federal Court of Canada allow for improvements for cost-effectiveness of enforcement.

From 1 January 2015, Canada has operated a notice-and-notice regime for ISPs seeking to avoid liability for user-uploaded infringing materials. ISPs can escape liability provided they pass on to the relevant under the notice they get from the rights owner. Its enforcement score will have been improved courtesy of a record \$10 million damages award, made in early 2014, by the Canadian Federal Court.

However, concerns exist over the application of rules for some widely interpreted copyright exceptions and limitation, particularly in the area of education, and the damaging knock on effects that provisions have had for the strength of local educational publishing businesses.

In addition, Canada remains on the US government's Special 301 Report Watch List as the US government considers that it has not yet gone far enough in addressing the problems of piracy and counterfeit goods.

Canada remains on the US Government's Special 301 Report for the following reasons:

- Concerns around full implementation of its commitments pursuant to the WIPO Internet Treaties, and the US has said that Canada should continue to address the challenges of copyright piracy in the digital age.
- Canada does not provide customs officials with the ability to detain pirated and counterfeit goods that are moving in transit or are transhipped through Canada.
- Concerns remain around the availability of rights of appeal in Canada's administrative process for reviewing regulatory approval of pharmaceutical products as well as about the breadth of the Minister of Health's discretion in disclosing confidential business information.
- Lack of clarity and the impact of the heightened utility requirements for patents that have been imposed by Canadian Courts.

## France

France has taken major and welcome steps to foster the exploitation of AV content with more tax breaks and support for AV works. In terms of enforcement, reorganisation of the competent national jurisdictions so that copyright cases are now handled by divisions forming part of the civil courts has also been welcomed. This has allowed for quicker handling of cases by specialist judges.

In the U.S. Chamber International IP Index 2017, France scored 6/45, with key areas of weakness being uncertainty over enforcement of copyright online and plain packaging of tobacco packaging.

HADOPI was an agency that implemented a three-strike regime against copyright infringers, however it has since been removed by the Senate. The Supreme Court had also ordered the Prime Minister to take measures to indemnify ISPs.

In June 2016, the French Parliament adopted a bill on "Freedom of Creation, Architecture and Heritage", but remains mostly silent on the online environment with an exception on demanding search engines to pay royalties for indexing images online. The Bill "For a Numerical Republic" adopted in October 2016 which introduces into French law a freedom of panorama exception, did not adopt an amendment proposing a proactive role by intermediaries against piracy and counterfeit online. However, this remains under discussion in the framework of the EU copyright reform.

The index also highlights as a "weakness" the plain packaging of tobacco packaging, as it has been argued that "the introduction of plain and standardised packaging would significantly

restrict the use of brands, trademarks and trade dress on retail packaging, undermining the benefits of trade marks to businesses and consumers alike, and setting a negative precedent for IP policy<sup>62</sup>.

## Sweden

Swedish Courts continue to handle cases relating to copyright infringement by The Pirate Bay websites. In May 2015, a Swedish district court ruled that the domain names piratebay.se and thepiratebay.se must be transferred to the Swedish state. In November 2015, the District Court of Stockholm held that the ISP Bredbandsbolaget was not responsible for any copyright infringements occurring on The Pirate Bay site and so was not required to block access to it. The Judgement may be appealed.

In the U.S. Chamber International IP Index 2017, Sweden scored 5/45 and the above case with Bredbandsbolaget contributed to their weaknesses as it severely limits rights holders' recourse mechanisms for copyright infringement online. A further issue that the US deems to be a key weakness within Sweden is the restrictions of use of brands on tobacco packaging as it would affect the rights provided under the Swedish Freedom of the Press Regulation. It has been argued that "the introduction of plain and standardised packaging would significantly restrict the use of brands, trade marks and trade dress on retail packaging, undermining the benefits of trade marks to businesses and consumers alike, and setting a negative precedent for IP policy"<sup>63</sup>.

## Netherlands

According to Taylor Wessing GIP15, the Netherlands scores well for enforcement of copyright, cost-effectiveness, speed of procedures, consistency of decisions, strength of court remedies and competence, reputation and specialisation of judges.

The Copyright Contract Act came into effect on 1 July 2015 and it strengthens the position of authors. The Act contains a 'bestseller' clause, giving authors the right to reclaim a work of art if it is not being used and more rights for authors to claim proportionate and fair compensations from right holders such as producers<sup>64</sup>.

## Brazil

In 2014, welcome efforts were made to improve the domestic IPR regime of Brazil.

The National Council on Combating Piracy and Intellectual Property Crime carried out several successful anti-piracy operations targeting the importation of counterfeit goods, as well as providing effective training to help consumers identify counterfeit goods associated with the 2014 World Cup, significant concerns remain with respect to the high levels of counterfeiting and piracy in Brazil. In the absence of legislation regulating digital

62 The Roots of Innovation  
U.S. Chamber  
International IP  
Index | Fifth Edition,  
France

63 The Roots of Innovation  
U.S. Chamber  
International IP  
Index | Fifth Edition,  
France, Sweden

64 Taylor Wessing  
Intellectual Property  
Index (GIP)

exploitation of works, a Brazilian court has found that transmission of music over the internet does not give rise to the collection of public performance royalties.

Brazil is on the US Government's Special 301 Report Watch List for the following reasons:

- High levels of counterfeiting and piracy, including Internet piracy.
- National Council on Combating Piracy and Intellectual Property Crimes was identified in past years as an effective entity for carrying out public awareness and enforcement campaigns, but the CNCP was underutilised and did not deliver similar accomplishments in 2015.
- Long delays in the examination of patents and trademarks persist with a reported pendency average of three years for trademarks and 11 years for patents.
- Strong IPR protection, available to both domestic and foreign rights holders, provides a critical incentive for businesses to invest in future innovation in Brazil.

## **Mexico**

As yet, Mexico has failed to fully implement the WIPO Copyright Treaties. The policy by which Mexican customs authorities and the Attorney General's Office worked jointly to intercept and prosecute transshipments of counterfeit and pirated goods, in place up to 2011, has shifted so that authorities now only take action against transshipments of suspected infringing goods if there is evidence of "intent for commercial gain" within Mexico.

Mexico is on the US Government's Special 301 Watch List for the following reasons:

- Widespread availability of pirated and counterfeit goods in these markets and throughout Mexico including goods made available by Transnational Criminal Organisations.
- Infringement cases are extremely lengthy and appeals of initial decisions can continue for over 10 years
- US suggests Mexico needs to improve coordination among federal and sub-federal officials, devote additional resources to enforcement bring more IPR related prosecutions and impose deterrent penalties against infringers.
- Yet to fully implement WIPO Internet Treaties.
- Remains an issue with enforcement against the unauthorised camcording of motion pictures in cinemas

- Enforcement against suspected infringing goods at the border remains hampered. Following a shift in policy, Mexican authorities can only take criminal action against in-transit shipments of suspected infringing goods if there is evidence of “intent for commercial gain” in the Mexican territory, which is very difficult to determine.

## Russia

“Anti-Piracy Law” – introduced web blocking interim injunctions in 2013. The law was expanded in May 2015 to cover almost all copyright works (excluding photos). However there are suggestions that the law remains too ambiguous. There are also concerns that the procedures for introducing and enforcing injunctions are too open to circumvention to be effective.

Whilst Russian courts have begun to issue criminal convictions for online piracy, they have resulted in suspended sentences, undermining any deterrent effect such convictions may have had.

Russia remains on the US Government’s Special 301 Report Priority Watch List for the following reasons:

- Significant challenges remain with copyright infringement, trademark counterfeiting and non-transparent collecting society procedures.
- IPR enforcement continued to decline overall in 2015, following similar declines in the prior three years including a reduction in resources for enforcement personnel.
- Remains home to many other sites that facilitate online piracy, damaging both the market for legitimate content in Russia in addition to other countries. Issuing injunctions against infringing websites does not address the root of the problem; Russia should be investigating and prosecuting the operators of such sites.
- Overall number of raids, criminal charges and convictions have declined in recent years.
- Lack of enforcement of trade marks has resulted in the continued problem of counterfeit goods in Russia – counterfeit goods continue to be manufactured, transhipped and sold in Russia (including counterfeit seeds, agricultural chemicals, electronics, information technology, auto parts, consumer goods, machinery and other products).

## Switzerland

Switzerland’s decline in GIPI5 mirrors its results in all the copyright sub-indices. Recently, the Swiss Federal Court initiated steps to modernise its copyright law regime, attempting to better face Internet piracy and the challenges of the current technological developments.

## *Greece*

Greece is on the US Government's Special 301 Report Watch List for the following reasons:

- Greece's prioritisation of IPR protection and enforcement appears to have diminished – neither the inter-ministerial IPR coordinating committee nor the public-private online piracy working groups met in 2015.
- Concerns around copyright protection, enforcement issues including regarding border and criminal enforcement.

## *Spain*

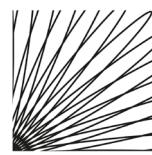
The Spanish government reformed its Copyright Act in January 2015. However, the provisions are subject to a challenge within the European Commission by several Spanish internet user associations. Their complaint is that the obligation for news aggregators (e.g. Google News) to compensate publishers for using their content is anti-competitive and has led some content aggregators to turn their backs on the Spanish news services market.

Other reforms made in 2015 seem not yet to have led to better international recognition of effectiveness. They include amendment to collecting society rules, expanding the definition of infringement to include indirect infringers, improving civil procedures, increasing criminal penalties and criminalising new additional forms of behaviour.

## *India*

India remains on the US Government's Special 301 Report Priority Watch List for the following reasons:

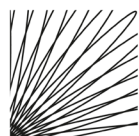
- Has not taken the opportunity to address long-standing and systematic deficiencies in its IPR regime and has endorsed problematic policies that may leave open the door for backsliding in the future.
- Proposed Patent Rule Amendments would introduce concerning new incentives to pressure patent applicants to localise manufacturing in India and require the submission of sensitive business information to India's Patent Office.
- For industries that create and supply content, high levels of piracy and unpredictability in the market undermine a vibrant and competitive sector.
- Brand owners face delays and challenges in obtaining trademarks, and rampant counterfeit products in the market.
- India has not yet joined important international IP treaties such as the WCT, the WPPT and the Singapore Treaty.



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