



Department for Business & Trade

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Dear Donald,

Thank you for attending the Grand Committee for the Trade (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) Bill on 14 December. During the debate, you raised several points regarding intellectual property, specifically impacts on creative industries with regards to performers' rights. I promised to respond to those points.

Scope of Clause 5

You raised some points around which performers may qualify for rights in their performance in UK law. During the debate I said I would clarify.

Clause 5 of the CPTPP Bill adds new grounds on which a performer can qualify for rights in their performances in UK law. Once the Bill comes into effect, a performer will be eligible for rights in UK law if any of the below criteria apply:

- they are a national or resident of a 'qualifying country'
- their performance took place in a 'qualifying country'
- their performance is included in a sound recording that is first published in a 'qualifying country'
- their performance is included in a sound recording the maker of which (e.g., the record label) is a national of a 'qualifying country' or a body incorporated under the law of a qualifying country
- or their performance was broadcast live from a 'qualifying country'.

'Qualifying country' is a term that is already defined in UK law, and includes the UK and any country that is party to a relevant treaty on performers' rights.

You asked whether the Bill is being used to make changes that go beyond what is necessary for CPTPP. The measures in the Bill are being made in order to implement and comply with obligations in the CPTPP. This is a necessary part of our accession to the CPTPP. But we are applying the changes not only to CPTPP Parties but also to other

countries that are party to a relevant treaty, to comply with our existing national treatment and most favoured nation obligations under those treaties.

The changes in the Bill extend eligibility and will apply to all performers irrespective of nationality if a recording of their performance is first published in the territory of a CPTPP Party (or another qualifying country), or they meet any other of the eligibility criteria.

Impact on Creative Industries

You also noted that, while the government had set out its view that the impacts of these changes on UK parties would be small, we had not explained clearly the basis of our assessment.

As I set out in my previous letter, most foreign performers are already entitled to most rights in UK law. The measures in the Bill will result in more foreign performers becoming eligible for more rights in UK law but the additional protection that will be extended to them as a result of these changes is, for most rights, limited.

The single area where we believe greater impacts could arise – and which we believe to be the focus of those in industry to whom you referred – is the right for performers to receive equitable remuneration when their performances are broadcast or played in public, such as when recorded music is played on the radio or in a shop or nightclub.

Some foreign performers are currently not eligible for this right in UK law. The measures in the Bill will change this and will mean that some of them will in future enjoy a larger share of revenues collected in the UK for broadcasting and playing recorded music in public. Those revenues would be paid by the owners of the recordings of their performances.

This will only directly affect certain foreign performers – those who are currently ineligible for the right and who will become eligible as a result of these changes – and the owners of the recordings in which they feature. We expect the latter to primarily be foreign record labels, and not UK record labels. This is because UK record labels are generally more likely to work with UK performers or performers who give their performances in the UK, all of whom are already entitled to this right to equitable remuneration in UK law.

However, we appreciate that there is potential for indirect impacts and impacts that we have not captured. How UK law provides this right, and the equivalent rights of record labels, to foreign performers will be the subject of the Intellectual Property Office's consultation to which I referred in Grand Committee. That consultation will look at whether we should make secondary legislation to modify the impacts of the Bill in relation to these rights. We are exploring whether to do so because, for these rights in particular, the treaties on performers' rights allow a greater degree of flexibility in how parties provide the rights to foreign performers.

We will seek in that consultation views from the music industry and others on what approach we should take, and whether they agree with our assessment of the impacts. That consultation will be supported by a published impact assessment setting out our analysis.

While the consultation, and the impact assessment, will not be specific to CPTPP – they will look at how we provide these rights to foreign performers generally – I hope it will make clearer why we consider the impacts of an expansion in eligibility for performers' rights to be of limited impact to UK stakeholders.

I am placing a copy of this letter in the Library of the House.

With very best wishes,

A handwritten signature in black ink, appearing to read 'D. Johnson', with a horizontal line underneath.

Lord Johnson of Lainston CBE
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