United States-European Union Trade Agreement
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Comments of the Recording Industry Association of America (RIAA)
December 10, 2018

The Recording Industry Association of America (RIAA) is the trade organization that supports and promotes the creative and financial vitality of the major music companies. Its members are the music labels that comprise the most vibrant record industry in the world. RIAA members create, manufacture and/or distribute approximately 85 percent of all legitimate recorded music produced and sold in the United States. Our membership includes several hundred companies, many of which are small-to-medium-sized enterprises (SMEs) distributed by larger record labels.

The RIAA welcomes this opportunity to provide information to the Trade Policy Staff Committee (TPSC) in order to assist the Office of the United States Trade Representative (USTR) as it develops its negotiating objectives and positions for the United States-European Union (EU) Trade Agreement. In response to this *Request for Comments on a Proposed U.S.-EU Trade Agreement including U.S. Interests and Priorities, in order to Develop U.S. Negotiating Positions* (Federal Register Volume 83, Number 57526 (Thursday, November 15, 2018)), RIAA provides the following comments regarding matters relevant to the negotiation of a U.S.-EU Trade Agreement. Given our significant SME membership, RIAA also urges the TPSC to consider the following comments as also representing the interests and priorities of U.S. sound recording industry small-to-medium sized enterprises (SMEs).

Introduction

Supported by a strong U.S.-EU trade relationship, the U.S. recorded music industry makes significant contributions to the U.S. economy, including enhancing economic growth, high-quality jobs and trade competitiveness.

As a threshold matter, the strength of trade in U.S. recorded music to the EU relies heavily on legal and market conditions that: advance creativity and innovation through strong copyright protection and enforcement; power digital trade through music licensing; secure market access for digital products and services; promote fair competition between online music services; and ensure digital platform accountability.

Fortunately, the United States and the EU each provide favorable conditions that promote these priorities, including by each maintaining among the highest levels of copyright protection and enforcement in the world. While some differences may exist between the respective systems and areas for improvement remain with respect to each system, both systems currently provide a critical enabling environment that promotes the American sound recording industry's contributions to U.S. economic growth, employment, and trade.

Therefore, understanding that if the scope of U.S.-EU negotiations may be of a targeted nature, it is critical that any such bilateral engagement between the United States and the EU not diminish these high levels of copyright protection or otherwise undermine domestic efforts to clarify and improve such copyright protection to further promote those enabling environments.

U.S. Recording Industry's Contributions to the U.S. Economy

The U.S.-EU trade relationship is a high priority for the U.S. sound recording industry. Our industry is highly trade-intensive and relies heavily on transatlantic commerce supported by strong domestic disciplines that promote creativity and that ensure fair and legitimate trade in creative goods and services.

Supported by such disciplines, our industry makes considerable contributions to U.S. economic growth, high-quality American jobs, and U.S. trade competitiveness. For example, the industry contributed $143 billion annually in value to the U.S. economy in 2016 and created, directly or indirectly, 1.9 million U.S. jobs across a very wide variety of fields.[1] Likewise, copyright-intensive industries, including the music industry, contributed $1.3 trillion to the U.S. economy in 2017, and grew at an aggregate annual rate of 5.23 percent from 2014 to 2017, compared with average annual growth rate of 2.10 percent for the U.S. economy generally.[2] These industries supplied 5.7 million U.S. jobs in 2017,[3] and the compensation paid in the copyright-intensive

[1] Siwek, Stephen; *The U.S. Music Industry: Jobs & Benefits*; April 2018; pp. 5, 7; available at: http://www.riaa.com/wp-content/uploads/2018/04/US-Music-Industries-Jobs-Benefits-Siwek-Economists-Inc-April-2018-1-2.pdf

[2] Siwek, Stephen; *Copyright Industries in the U.S. Economy: The 2018 Report*; Economists Incorporated; Prepared for the International Intellectual Property Alliance; 2016; p. 3; available at: https://iipa.org/files/uploads/2018/12/2018CpyrtRptFull.pdf

[3] Siwek, Stephen; *Copyright Industries in the U.S. Economy: The 2018 Report*; Economists Incorporated; Prepared for the International Intellectual Property Alliance; 2016; p. 3; available at: https://iipa.org/files/uploads/2018/12/2018CpyrtRptFull.pdfhttps://www.uspto.gov/sites/default/files/documents/IPandtheUSEconomySept2016.pdf.

industries far exceeds that of U.S. workers overall – amounting to a compensation premium of 39 percent over the average U.S. annual wage.[4]

Effective copyright regimes in the United States and EU likewise help drive U.S. sound recording industry exports and surplus of goods and services. For instance, the sale of U.S. copyright products in third countries around the world amounted to $191.2 billion in 2017. Notably, these foreign sales surpass the sales of other major U.S. industries, including electronic equipment, appliances and components ($174.2 billion), agricultural products ($138.2 billion), chemicals (excluding pharmaceuticals & medicines) ($137.0 billion), aerospace products and parts (134.4 billion), and pharmaceuticals and medicines ($55.8 billion).[5] As for services, intellectual property rights (IPR) licensing, including copyright licensing with respect to sound recordings, is the second largest services export category valued at $128 billion in 2017 (representing 16 percent of total U.S. exports of services), and which accounted for a $77 billion trade surplus that year.[6]

Moreover, the U.S. sound recording industry is digital trade intensive, with digital accounting for 90 percent of our revenues in the United States, and streaming accounting for 75 percent of revenues. The licensing of copyright that protects sound recordings is a digital service that fuels trade in sound recordings, which are digital products that can be streamed or downloaded. The profound importance of the provision of such services to the U.S. economy is exemplified by the considerable contributions of IPR to the U.S. digital services trade surplus. IPR licensing continued to be a key driver of the U.S. digital services exports and surplus. For example, in 2017, IPR licensing accounted for $129 billion in digital services trade exports and generated a $78 billion digital services trade surplus, which was second only to financial services by a narrow margin.[7]

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[4] Siwek, Stephen; *Copyright Industries in the U.S. Economy: The 2018 Report*; Economists Incorporated; Prepared for the International Intellectual Property Alliance; 2016; p. 3; available at: https://iipa.org/files/uploads/2018/12/2018CpyrtRptFull.pdf

[5] Siwek, Stephen; *Copyright Industries in the U.S. Economy: The 2018 Report*; Economists Incorporated; Prepared for the International Intellectual Property Alliance; 2016; p. 3; available at: https://iipa.org/files/uploads/2018/12/2018CpyrtRptFull.pdf

[6] Allen, Shari; Grimm, Alexis; and Steiner, Christopher; "U.S. International Services: Trade in Services in 2017 and Services Supplied Through Affiliates in 2016"; *Survey of Current Business, The Journal of the U.S. Bureau of Economic Analysis*; Volume 98, Number 10; October 2018; available at: https://apps.bea.gov/scb/2018/10-october/1018-international-services.htm

[7] Allen, Shari; Grimm, Alexis; and Steiner, Christopher; "U.S. International Services: Trade in Services in 2017 and Services Supplied Through Affiliates in 2016"; *Survey of Current Business, The Journal of the U.S. Bureau of Economic Analysis*; Volume 98, Number 10; October 2018; available at: https://apps.bea.gov/scb/2018/10-october/1018-international-services.htm

U.S.-EU Trade Fuels the Sound Recording Industry's Contributions to the U.S. Economy

Specifically, the EU is a critical market for the U.S. recording industry, with many EU member states ranking among the top markets for trade in U.S. sound recordings, including with respect to disciplines governing goods, services and digital products.[8] In fact, European countries account for ten of the top twenty markets for the U.S. sound recording industry.[9] Specifically, in 2017, Europe was responsible for 33.2 percent of worldwide revenue for recorded music. In that year, music streaming became the single largest revenue category in Europe for the industry, increasing by 30.3 percent, and accounting for 35.5 percent of total industry revenues in the region.[10] Likewise, Europe was a critical region for other recording industry revenues, including performance rights – i.e., the revenue generated from the use of recorded music by broadcasters and public venues. For example, in 2017, Europe represented 57 percent of total performance rights revenues globally.[11] With respect to recorded music revenues *per capita*, thirteen European countries ranked in the top twenty markets with the largest *per capita* revenues globally.[12]

In turn, the American sound recording industry helps fuel the substantial surplus in U.S. services trade globally and with Europe in particular. For example, charges for the use of IPR (i.e., IPR licensing, including of sound recordings) has been among the top three contributors to the U.S. services surplus since 2006.[13] Likewise, in 2017, five of the top ten markets for U.S. services trade exports globally were European. That year, IPR licensing accounted for the second largest export value of all services categories at $78.7 billion, with the services trade surplus in IPR

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[8] For a more detailed analysis of the top markets for recorded music in Europe, see RIAA's public filing to the U.S. International Trade Commission on Global Digital Trade 3, available at: http://www.riaa.com/wp-content/uploads/2018/12/RIAA-Filing-With-US-International-Trade-Commission-On-Digital-Trade.pdf

[9] The following European countries rank among the top 20 recorded music markets in 2017: Germany (third); United Kingdom (fourth); France (fifth); Netherlands (eleventh); Italy (twelfth); Spain (thirteenth); Sweden (fourteenth); Norway (fifteenth); Denmark (sixteenth); and Switzerland (seventeenth).

[10] *Global Music Report 2018*; IFPI; available at: http://www.ifpi.org/downloads/GMR2018.pdf.

[11] *Global Music Report 2018*; IFPI; available at: http://www.ifpi.org/downloads/GMR2018.pdf.

[12] In 2017, the following countries ranked in the top twenty for music revenue per capita (in US$) with European countries underlined, and current EU member states in bold: (1) <u>Norway</u> ($26.13); (2) **<u>Denmark</u>** ($24.60); (3) Japan ($21.57); (4) **<u>Sweden</u>** ($20.30); (5) **<u>United Kingdom</u>** ($19.98); (6) <u>Iceland</u> ($19.13); (7) United States ($18.11); (8) Australia ($17.77); (9) <u>Switzerland</u> ($16.73); (10) **<u>Germany</u>** ($16.42); (11) New Zealand ($15.86); (12) **<u>Netherlands</u>** ($15.77); (13) **<u>France</u>** ($14.73); (14) **<u>Finland</u>** ($14.37); (15) Canada ($12.32); (16) **<u>Ireland</u>** ($11.91); (17) **<u>Austria</u>** ($11.81); (18) **<u>Belgium</u>** ($10.58); (19) South Korea ($9.66); (20) Hong Kong ($6.01). See *Global Music Report 2018*; IFPI; available at: http://www.ifpi.org/downloads/GMR2018.pdf.

[13] Allen, Shari; Grimm, Alexis; and Steiner, Christopher; "U.S. International Services: Trade in Services in 2017 and Services Supplied Through Affiliates in 2016"; *Survey of Current Business, The Journal of the U.S. Bureau of Economic Analysis*; Volume 98, Number 10; October 2018; available at: https://apps.bea.gov/scb/2018/10-october/1018-international-services.htm.

licensing with these ten markets totaling approximately $41 billion.[14] In 2016, IPR licensing accounted for the second largest services trade exports to the EU at $50.2 billion.[15] Similarly, European countries, including EU member states, are among the top *digital* services trade export markets for IPR licensing, including for sound recordings. According to U.S. Bureau of Economic Analysis data from 2006 to 2014, nine European countries are among the top twenty markets for growth and value in U.S. digital services exports and surplus globally.[16]

Priorities for U.S. and EU Enabling Environments for Trade in U.S. Sound Recordings

Given the volume and value of trade in U.S. sound recordings to the EU, and the contributions of such trade to American economic growth and job creation, it is critical that U.S.-EU trade negotiations maintain the integrity of the respective enabling environments for such trade, including by rejecting any efforts to diminish copyright protection and enforcement or to otherwise erect barriers to digital trade in sound recordings. Critical aspects of the transatlantic enabling environment that must be maintained include:

- Copyright Protection. Strong copyright protection includes the rights of making available, public performance, and broadcasting as well as protections against the circumvention of technological protection measures (TPMs) and prohibiting commerce in TPM circumvention devices.

- Copyright Enforcement. Strong copyright enforcement includes primary and secondary liability for copyright infringement, website blocking of copyright infringing websites and the availability of injunctions addressed to non-infringing third parties, and damages.

[14] In 2017, the following countries ranked in the top ten for IP licensing exports globally with European countries underlined (in U.S.$): (1) Ireland ($18.4 billion); (2) Switzerland ($12.3 billion); (3) United Kingdom ($9.8 billion); (4) China ($8.7 billion); (5) Canada ($8.4 billion); (6) Japan ($7.0 billion); (7) Germany ($6.3 billion); (8) Brazil ($3.7 billion); (9) Mexico ($3.6 billion); (10) United Kingdom Caribbean Islands (i.e., British Virgin Islands, the Cayman Islands, Montserrat, and the Turks and Caicos).

[15] USTR, European Union page, available at: https://ustr.gov/countries-regions/europe-middle-east/europe/european-union

[16] Between 2006-2014, the following countries ranked in the top twenty for growth in U.S. IP licensing exports, with European countries underlined (in U.S.$): (1) Ireland ($18.7); (2) Switzerland ($10.6 billion); (3) United Kingdom ($9.7 billion); (4) Canada ($8.7 billion); (5) Japan ($8.6 billion); (6) China ($6.8 billion); (7) South Korea ($6.0 billion); (8) Germany ($5.9 billion); (9) Taiwan ($5.1 billion); (10) Netherlands ($4.7 billion); (11) Brazil ($4.0 billion); (12) Hong Kong ($3.3 billion); (14) Singapore ($3.3 billion); (14) France ($3.2 billion); (15) Mexico ($3.1 billion); (16) Australia ($2.8 billion); (17) Belgium-Luxembourg ($2.4 billion); (18) Bermuda ($2.1 billion); (19) Italy ($1.6 billion); and (20) Spain ($1.3 billion). See Grimm, Alexis; "Trends in U.S. Trade in Information and Communications Technology (ICT) Services and in ICT-Enabled Services"; Bureau of Economic Analysis, Economics and Statistics Administration, U.S. Department of Commerce; May 24, 2016; p.11, available at http://www.esa.doc.gov/economic-briefings/new-bea-estimates-international-trade-digitally-enabled-services.

- Domestic Efforts to Remove Barriers to Digital Trade in Sound Recordings. Barriers to digital trade in sound recordings include overbroad provisions on copyright safe harbors that facilitate the misapplication of such safe harbors, overbroad application of copyright exceptions and limitations, and the lack of online platform accountability, all of which threaten the U.S. digital trade surplus in IPR licensing.

Conclusion

RIAA welcomes this opportunity to provide these comments to the TPSC regarding the role of trade negotiations within the overall U.S.-EU trade relationship, where market access, strong copyright protection and enforcement, and platform accountability are mutually reinforcing and contribute to the overall welfare of the U.S. economy, and its businesses, workers and consumers. RIAA looks forward to continuing to engage intensively with the TPSC on U.S.-EU trade engagement.