



Before the
The United States International Trade Commission
Washington, D.C.

In re:

At The Public Hearing On
U.S. SME Exports: Trade-related Barriers
Affecting Exports Of U.S. Small- And Medium-
Sized Enterprises To The United Kingdom
Investigation No. 332-569

**COMMENTS OF
INTERNET ASSOCIATION**

1. Introduction

Internet Association (IA) represents over 40 of the world’s leading internet companies.¹ IA is the only trade association that exclusively represents leading global internet companies on matters of public policy. IA’s mission is to foster innovation, promote economic growth, and empower people through the free and open internet.

In this and other contexts, IA strives to advance the interests not only of its member companies, but also the tens of millions of small- and medium-sized business partners who benefit from our member companies’ services and products. Nearly 20 million small businesses have websites for their business.² Nearly all of the more than 30 million American small businesses are connected to the internet and use it for their business.³ Furthermore, millions of additional micro-businesses earn income through 24 million online income positions that allow them to export internationally with minimal effort -- this simply would not exist without the internet.⁴ Importantly, these small- and medium-sized enterprises (SMEs) view the UK as an important trading partner and seek to maximize exports to the UK.

Small businesses and entrepreneurs in every state and every community in the U.S. use the internet to sell and export across the globe. Internet-connected small businesses are three times as likely to export and create jobs, grow four times more quickly, and earn twice as much revenue per employee.⁵ The internet cuts the trade deficit in every sector of the economy.

The U.S. and UK both have vibrant digital economies and strong commitments to maintaining a free and open internet. One sign of the strong, reciprocal digital trade relationship between our two countries is that both are the most important cross-border e-commerce markets for each other, and both are world leaders in digital exports:

- Forty-nine percent of Americans buy from UK sites and 70 percent of UK e-commerce shoppers use U.S. e-commerce sites.
- The U.S. has a \$172.6 billion trade surplus in digital services, in part thanks to our digital policies.
- Digital trade now accounts for 7 percent of the UK's global services exports.⁶

¹ <https://internetassociation.org/our-members/>

² <https://www.sba.gov/sites/default/files/advocacy/2018-Small-Business-Profiles-US.pdf>

³ https://www.sba.gov/sites/default/files/rs373tot_0.pdf

⁴ <https://link.springer.com/article/10.1057/s11369-017-0053-1>

⁵ <https://internetassociation.org/wp-content/uploads/2016/07/Internet-Association-TISA-Intermediary-Liability-2-Page-Handout.pdf>

⁶ <https://publications.parliament.uk/pa/ld201617/ldselect/lddeucom/135/13508.htm>



- Nearly \$8 trillion is exchanged through global e-commerce annually.⁷
- The UK internet sector is creating jobs more than 50 percent faster than the rest of the economy.⁸
- In the U.S., employment in the digital economy grew at an average pace of 3.8 percent between 2011 and 2016,⁹ compared to 2.2 percent for overall non-farm employment growth overall.¹⁰

The U.S. and UK are also key beneficiaries and drivers of transatlantic flows of data, which are the largest in the world. British and American companies use data like they use intermediate goods and services – as critical inputs in operations and production processes that produce new insights and solutions and improve business processes and products.

IA recently launched an office in London – its first outside of the U.S. – in part due to recognition of the importance of strong links between the U.S. and UK on trade and internet policy.

2. Barriers Affecting U.S. SME Exports To The UK

IA has identified a number of barriers that affect the ability of U.S. SMEs to export and do business in the UK. IA continues to encourage the U.S. government to address these barriers in policy discussions with the UK.

2.1 Unilateral Or Discriminatory Tax Regimes

2.1.1 UK Digital Services Tax

The UK is continuing to pursue problematic digital tax legislation. In the UK’s October 2018 Budget, the government proposed a Digital Services Tax (DST) that would apply a 2 percent tax on gross revenue linked to UK users of three types of business models: search engines, social media platforms, and online marketplaces. This proposal is narrowly targeted at U.S. technology companies. For example, the legislation excludes ads on UK news websites, but includes ads shown to UK users of social media websites or online search engines.

IA believes that a UK DST sends a strong signal to internet companies of all sizes – from SMEs to major organizations – that the UK is no longer a welcoming environment for business investment and exports. Due to previous forward-thinking policies from successive governments and a reasonable and stable business, legal, and regulatory environment, the UK had rightly earned a reputation as a great place for U.S. firms to invest and export to, especially internet companies aiming to export to not only UK but also European markets.

The DST puts this position at risk. Companies are likely to either reduce their exports to and investment in the UK, or divert their focus to more welcoming jurisdictions.

While the UK Treasury has indicated it recognizes the potential impact on SMEs, and has proposed a system of thresholds and exceptions designed to exempt certain companies from the DST, the proposed thresholds and exemptions will not fix the underlying problems with the proposed measure and its impact on American businesses.

Consideration must also be given to the small businesses and consumers who ultimately bear the burden of the DST. Although it is branded as a tax on large digital companies, there is a high likelihood

⁷ <https://www.mckinsey.com/industries/high-tech/our-insights/internet-matters>

⁸ <https://internetassociation.org/publications/measuring-the-uk-internet-sector/>

⁹ <https://www.bea.gov/data/special-topics/digital-economy>

¹⁰ <https://data.bls.gov/timeseries/CES0000000001>



that the cost of the tax will be passed down the supply chain to SMEs and consumers, and it is those SMEs and consumers who will suffer the incidence of the tax.

The design of the DST also creates complexity in the UK tax system and leaves uncertainty for U.S. SMEs as to whether or not their exports will be captured by the tax, either directly or indirectly. Consequently it places a new compliance burden on SMEs, even if they are ultimately exempt from the tax, as significant work would be required of them to produce bespoke financial information to confirm that fact. As drafted, the DST further makes the UK a less attractive place to operate an internet business. In addition, the thresholds will also create a disincentive to grow for firms who are at the margin for exemption.

2.1.2 UK Diverted Profits Tax

The UK's diverted profits tax¹¹ is another example of a unilateral approach to international tax policy, diverging from international treaties and the agreed rules for apportioning profits among different countries. This tax was a major step outside of the multilateral tax system, designed to privilege the UK over its trading partners. Under this policy, the UK can levy taxes on structures and payments that are not related to UK activities, creating an impediment to cross-border investment and a significant source of uncertainty among small and medium companies with any ties to the UK market. The SMEs have to spend a disproportionate time complying with this tax policy.¹²

2.2 Internet Safety Regulation

The UK government's recently published Online Harms White Paper¹³ would create significant compliance issues for small- and medium-sized U.S. companies if it's enacted into law.

In the White Paper the UK government proposes, among other things, to apply a new legal "Duty of Care" on a "wide range of companies of all sizes, including social media platforms, file hosting sites, public discussion forums, messaging services and search engines." The Duty of Care would require companies to protect users from a wide range of "online harms." The paper covers both illegal harms (e.g. terrorist content, child sexual exploitation material) and those "harms with a less clear definition" (e.g. cyberbullying, disinformation). The UK proposes to set up a new independent regulator - funded by industry - to assess how well companies are complying with the Duty of Care. The White Paper further consults on a range of penalties for non-compliance with the regulations, including fines, ISP blocking of services, and individual liability for senior management of companies not found in compliance.

IA is committed to working together with the UK and American governments and civil society to ensure that the internet is a safe place to be online, while also guarding against American companies being adversely impacted by an overly broad rule.¹⁴

We are concerned that the scope of the recommendations is extremely wide-ranging and the unintended consequences for American SMEs is still not fully understood. Any proposal needs to be more targeted and practical for both big and small platforms to implement. As drafted, the proposals would potentially restrict access to key digital services that enable small businesses to grow and reach new markets. IA is also concerned that the proposed rules would disrupt the ability of startups and small businesses to build new digital services and to use existing user review and feedback mechanisms to connect with global customers.

¹¹<https://www.gov.uk/government/publications/diverted-profits-tax-changes/diverted-profits-tax-amendments>

¹²<https://www.bna.com/insight-uk-diverted-n73014483427/>

¹³https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/793360/Online_Harms_White_Paper.pdf

¹⁴<https://internetassociation.org/statement-on-the-release-of-the-uk-governments-online-harms-white-paper/>



IA urges the U.S. government to engage with the UK government on these potential rules and to minimize any potential conflicts with recently negotiated provisions in the USMCA. IA will continue tracking closely the UK government's actions on the Online Harms White Paper and will submit formal comments to the UK government during the current consultation period ending July 1.

Even ahead of any further regulatory measures, U.S. small companies have noted that they need to spend increasing time and effort engaging with the UK policymaking process, which in itself is a barrier to SME trade with the UK for those companies that are unable to devote resources to this important policy dialogue.

2.3 Unbalanced Copyright And Liability Framework

On March 26, 2019, the EU passed a Copyright Directive that would disrupt settled law and harm transatlantic digital trade. The changes to its copyright framework will make it harder for U.S. small businesses to effectively compete in Europe and will burden U.S. companies with compliance obligations if they decline to pay European companies or organizations for activities that are entirely lawful and legal under the U.S. copyright framework.

While there is significant uncertainty related to Brexit, if the UK were to implement the just passed EU measures, online service providers in the U.S. and elsewhere would be subject to a moving target in the UK for years to come. Smaller startups and entrepreneurs would be deterred from entering the UK market, given the difficulty of raising funds from venture capitalists that have consistently characterized such rules as strong impediments to investment.

The U.S. copyright framework is a model for balancing the rights of content owners while also guarding the rights of users to engage in legitimate speech and activity. The framework achieves this balance by providing online platforms with limited protection and clarity for their obligations to address complaints of copyright infringement by users of their platforms. The U.S. recently negotiated a provision in USMCA¹⁵ reflecting this core principle. The new EU policy destroys that balance – it effectively mandates content filtering systems for internet services without regard to whether the content filtering would adequately address unlawful conduct without also removing protected speech, ignoring fair use, and misidentifying legally distributed works.

The intended purpose of the recent EU copyright changes is to target U.S. tech platforms and thus the small businesses that utilize them. The new system mandates the installation of filtering technologies if license negotiations do not produce suitable “value” to European copyright owners.

The new copyright system raises insurmountable hurdles for startups and new businesses who will not be able to afford the necessary technologies, and whose existing notice and takedown tools and practices may actually be more effective at combating copyright infringement concerns. The policy also holds user-upload services directly liable for copyright infringement committed by others. Recent proposals would even vitiate existing cooperative arrangements between service providers and rightsholders that are essential to fighting piracy online.

The copyright policy compels U.S. companies to pay for activities that are entirely lawful under U.S. copyright law. Copyright has always allowed for using brief snippets of copyrighted material for legitimate, referential purposes, and Article 10(1) of the Berne Convention further protects the right to provide “quotations from a work lawfully made available to the public.” Online platforms consistently exercise this right when they provide services that index websites, aggregate news headlines, and refer online users to third-party articles. Yet the policy includes vague measures that would create a “quasi-copyright” publisher right whose primary goal is to require U.S. services to remunerate or obtain

¹⁵ USMCA Article 20.89



authorization for the use of such content for uses otherwise permitted by copyright law.

The U.S. government has repeatedly recognized that these measures are “key barriers to digital trade [that] impose financial and operational burdens on U.S. firms that help drive traffic to publishing sites.”¹⁶ Even the European Parliament and European Commission have expressed “doubt that the proposed right will do much to secure a sustainable press.”¹⁷ Yet at the behest of a small subset of European stakeholders, they have pressed on with a highly discriminatory and unwaivable right that would make it very difficult to deliver meaningful search and news results in the EU.

As entrepreneurs start the next great businesses, they require a responsible copyright regime that enables continued innovation in the field of artificial intelligence to benefit customers worldwide. The ability to engage in informational analysis of lawfully acquired works, using technologies such as machine learning, provides the foundation for artificial intelligence and is used by all manner of researchers, businesses, and startups for data analytics. Copyright law has never been used to stop people from understanding and analyzing copyrighted works that they have lawfully accessed, nor has it prevented the use of unprotected facts and ideas contained in any copyrighted work.

Departures by the EU and possibly the UK from the proven, successful policies that we have followed to date on both sides of the Atlantic risk thwarting the continued growth of innovative and creative industries alike.

2.4 Platform-to-Business Regulation

The EU is finalizing negotiations on a new regulation on “platform-to-business” (P2B) relations that would require online intermediaries to provide redress mechanisms and meet aggressive transparency obligations concerning delisting, ranking, differentiated treatment, and access to data. These rules would apply not just to marketplaces with business users but also to non-contractual relations between businesses and platforms, mobile operating systems, and search engines, going far beyond the scope of early versions of the regulation.

Among other obligations, online intermediaries would be required to “outline the main parameters determining ranking,” including “any general criteria, processes, specific signals incorporated into algorithms or other adjustment or demotion mechanisms used in connection with the ranking.” In addition, recent proposals for Article 5 of the regulation would provide insufficient protections for trade secrets, which are critical to how platforms fight spam and abuse. P2B regulations account as a market access barrier for platforms, small business developers, and other SMEs seeking access to the UK and EU markets.

2.5 The UK’s Low De Minimis Level

E-commerce and online marketplaces seamlessly connect buyers and sellers across the Atlantic Ocean. SMEs who a generation ago would have faced insurmountable barriers to participating in international commerce and trade are turning to the internet to reach global consumers and suppliers. Today the UK is the fifth-largest export market in the world for U.S. goods, and ranks as the largest European consumer of American imports.¹⁸ In addition, with the help of e-commerce and online marketplaces, small businesses grow up to four times faster than businesses that do not embrace the internet, create twice as many jobs, are 50 percent more likely to be exporters, and bring in twice as much revenue through exports as a percentage of sales.¹⁹

¹⁶ <https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2018/march/2018-fact-sheet-key-barriers-digital>

¹⁷ [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596810/IPOL_STU\(2017\)596810_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596810/IPOL_STU(2017)596810_EN.pdf).

¹⁸ <https://www.export.gov/article?id=United-Kingdom-Market-Overview>

¹⁹ <https://internetassociation.org/wp-content/uploads/2016/07/Internet-Association-TISA-Intermediary-Liability-2-Page-Handout.pdf>



Unfortunately, burdensome, complex, costly, and time-consuming customs procedures make it difficult to ship products across borders in a cost-effective way. These barriers are so significant that they can prevent SMEs from exporting all together – as firms with modest resources cannot afford to navigate these complex rules on their own.

In the UK, the de minimis value for private and commercial shipments is £135, which is significantly lower than the US’s level of \$800. Establishing commercially meaningful de minimis thresholds are key to maintaining an environment conducive to e-commerce because they simplify import requirements, reduce and make transparent import costs, and expedite customs clearance for e-commerce shipments. Studies have indicated that a reasonable de minimis threshold can make the difference between a small business succeeding or closing for companies that depend on cross-border sales for their livelihood.²⁰ A higher de minimis rate will help American small businesses compete fairly and will substantially increase U.S. exports by small and medium-sized firms to the UK.

3. Conclusion

There are tens of millions of small- and medium-sized business partners who benefit from internet companies’ services and products. These companies span every industry and are found in every American state. The UK is a prime market for American SMEs to engage, but due to barriers facing digital companies, these entrepreneurs face an undue burden to working in the UK. The UK is currently moving tax, copyright, and digital policies that will directly harm American SMEs.

²⁰ <https://piie.com/system/files/documents/pb18-8.pdf>