



Internet Association



# Digital Trade Priorities For A U.S.-UK FTA

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## 1. Introduction

Digital trade represents the future of commerce. Businesses of all sizes, and in every industry are able to reach markets across the world at the click of a button thanks to e-commerce platforms, information flows, and the proliferation of broadband access. Even industries almost as old as humanity itself, like agriculture, are adapting to the digital world and embracing the power of technology.

The U.S. and UK both have vibrant digital economies and strong commitments to the 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. The closely intertwined digital economies make a U.S.-UK free trade agreement (FTA) with strong digital provisions a landmark opportunity for both countries.

The U.S. now exports \$48.8 billion (£39 billion) in digital services to the UK, an increase of 52 percent from 2006 to 2018. Similarly, the UK now exports \$34.8 billion (£27.8 billion) to the U.S., an increase of 56 percent from 2006 to 2017. The U.S. and the UK also rank numbers five and six, respectively, among OECD countries for their share of predominantly digitally-delivered services in commercial services trade. And nearly one fifth of each economy's total employment is in ICT task intensive jobs.<sup>1</sup>

Importantly, those digital exports are not just the products of large technology companies. Roughly a quarter of manufacturing exports are enabled by digitally-intensive services.<sup>2</sup> Online e-commerce platforms also enable a small business on main street or the high street to export to customers around the world. And online ratings and reviews offer a key signal to online shoppers as they look to make a purchase, with more than two-thirds of U.S. consumers saying they check online ratings and reviews either "every time" or "most of the time" before visiting a business or making a purchase online,<sup>3</sup> while in the UK online reviews are as important to consumers as recommendations from friends and family when making purchases.<sup>4</sup>

A U.S.-UK FTA represents more than an agreement between our two nations. It sets a crucial example for other countries to follow. At a time when countries like China, India, and Russia are pushing very different, closed visions of the internet, it is crucial for our two countries to coalesce around best-in-class international trade provisions for the 21st century.

To that end, IA believes the following key digital provisions should be part of any U.S.-UK trade agreement.

## 2. Ensuring The Free Flow Of Information Across Borders And Protecting Privacy

The U.S. and UK are the key beneficiaries and drivers of the largest information flow in the world: the transatlantic data flow. British and American companies across industries rely on the transmission of data to produce new insights and solutions and improve business processes and products. The internet is the key medium for businesses to reach new foreign customers and to purchase software and services which allow them to improve productivity.

<sup>1</sup> <https://goingdigital.oecd.org/en/dimension/market-openness/>

<sup>2</sup> Ibid.

<sup>3</sup> <https://internetassociation.org/publications/best-of-the-internet-survey/>

<sup>4</sup> <https://uk.internetassociation.org/over-two-thirds-of-brits-will-shop-online-to-find-their-gifts-this-christmas-a-new-poll-reveals-today/>



Digital trade agreements should promote the free flow of information, prevent data localization, and protect the privacy of consumers. The ability to transfer and access information across borders is critical to all economic sectors and when information is restricted, the economy and exports are hurt.

Requirements that force companies to manage, store, or otherwise process data locally, or other policies that link market access or commercial benefits to investment or use of local infrastructure, hurt businesses and consumers and threaten the open transnational nature of the internet. Clear and interoperable rules on these issues will enhance consumer confidence in digital trade. A U.S.-UK FTA should ensure that enforceable privacy protections will apply to the digital marketplace. In addition, a U.S.-UK FTA should include mechanisms to promote compatibility between different privacy regimes, giving users and companies greater assurance that privacy will be protected on a cross-border basis. It will be especially important that the commitments made by the U.S. and UK on data flows and privacy are consistent with the objective of keeping data flows operative between the UK and European Union.

### 3. Nondiscriminatory Treatment Of Digital Services

A U.S.-UK FTA should ensure that each government provides full non-discriminatory treatment to digital services and service providers of the other party, and does not apply taxation measures in a way that discriminates against digital services or is not technologically neutral. Any reform to taxation measures affecting digital services should be developed in an internationally coordinated manner.

### 4. Intermediary Liability Protections

Intermediary liability protections remain crucial to the operation of digital platforms and the free flow of information. These protections ensure cloud and other internet services can host third-party content and communications without the service provider being considered the publisher or speaker of that content. Intermediary liability protections enable features such as customer reviews, which have been essential to building customer trust for e-commerce businesses in the U.S. and UK. Without intermediary liability protections, internet services would not be able to function as open platforms for trade and communication.

When considering policies to improve digital safety, care should be taken that measures do not undermine the intermediary liability protections that are crucial to the functioning of the internet economy. In the U.S., intermediary liability protections are key to enabling companies to moderate online content and enhancing digital safety.

### 5. Innovation Oriented Copyright

As traditional industries like manufacturing, agriculture, and financial services embrace the internet for their operations and to export, it is more critical than ever to promote frameworks that are tailored for the digital environment. Future economic growth in nearly every sector is now reliant on internet innovations like cloud computing, artificial intelligence, machine learning, internet of things, computational analysis, text and data mining, and the use of snippets. Critical to these innovations are balanced, innovation-oriented intellectual property frameworks that support exporters.

As more exporters leverage the internet to trade goods and services and use a number of these innovative practices, copyright limitations and safe harbors, tailored for the digital environment,



have become even more critical to the growth of the entire economy. Negotiators should prioritize the intellectual property objectives that are essential for advancing innovation-oriented rules in the U.S. and UK.

An overbroad regime of strong copyright protection and enforcement – without limitations and exceptions like the ‘fair use’ of copyrighted material – would stifle the internet economy. Web search, machine learning, computational analysis, text and data mining, and cloud-based technologies all involve making copies of copyrighted content. These types of innovative activities are possible under copyright law because of robust limitations and exceptions. The U.S.-UK FTA should require governments to adopt clear copyright limitations and exceptions, including fair use and text and data mining rules, to enable innovative uses of copyrighted material.

A “safe harbor” system that protects the interests of copyright holders, online service providers, and users by imposing responsibilities and rights on each is important. Safe harbors are critical to the functioning of cloud services, social media platforms, online marketplaces, search engines, internet access providers, and many other businesses. A safe harbor system also provides incentives for service providers to cooperate with rights holders. A U.S.-UK FTA should require governments to adopt strong copyright safe harbors from liability for online service providers, modeled on the U.S. Digital Millennium Copyright Act that has been the cornerstone of U.S. innovation and protection of rights holders for two decades.

Copyright damage regimes – if not properly calibrated – can have a stifling effect on innovation and legitimate services, especially smaller providers and emerging services. Risks of significant damages can deter startups from developing new technologies, particularly when it comes to newer technologies such as machine learning and comprehensive digital media services that may not be squarely addressed by existing safe harbors and exceptions.<sup>5</sup>

## 6. Customs And Trade Facilitation For Small E-Commerce Sellers

E-commerce and online marketplaces seamlessly connect buyers and sellers across the Atlantic Ocean. Small- and medium-sized businesses (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, nearly \$8 trillion is exchanged through global e-commerce annually.<sup>6</sup> In addition, with the help of e-commerce and online marketplaces, U.S. 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.<sup>7</sup> In the UK, e-commerce is also increasingly pivotal to SMEs. Fifty-three percent of UK SMEs are currently selling online, and for every £1 a sole trader makes, an average of £0.69 comes via online. In fact, nearly half (49 percent) of all the UK’s e-commerce-ready sole traders, do virtually all of their business (91-100 percent) online.<sup>8</sup>

<sup>5</sup> Ibid.

<sup>6</sup> McKinsey Global Institute. “Internet Matters: The Net’s Sweeping Impact on Growth, Jobs, and Prosperity.” [http://www.mckinsey.com/~/media/McKinsey/Industries/High%20Tech/Our%20Insights/Internet%20matters/MGI\\_internet\\_matters\\_full\\_report.ashx](http://www.mckinsey.com/~/media/McKinsey/Industries/High%20Tech/Our%20Insights/Internet%20matters/MGI_internet_matters_full_report.ashx).

<sup>7</sup> Internet Association. “TISA Should Address Intermediary Liability Protections – A Cornerstone of the Digital Economy.” <https://internetassociation.org/wp-content/uploads/2016/07/Internet-Association-TISA-Intermediary-Liability-2-Page-Handout.pdf>.

<sup>8</sup> <https://www.elavon.co.uk/content/dam/elavon/en-gb/documents/perspectives/UK-SME-Pulse-Final-060919.pdf>



Burdensome and complex customs procedures discourage or block online sellers altogether from new, internet-enabled markets. In some cases, internet-enabled exporters are unable to reach international customers because of outdated trade rules that do not accommodate package-level e-commerce exports.

E-commerce is powering trade by giving internet-enabled businesses the ability to find customers around the world. However, 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 small businesses from exporting all together – as firms with small resources cannot afford to navigate these complex rules on their own. Establishing commercially meaningful de minimis thresholds are key to enabling 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.

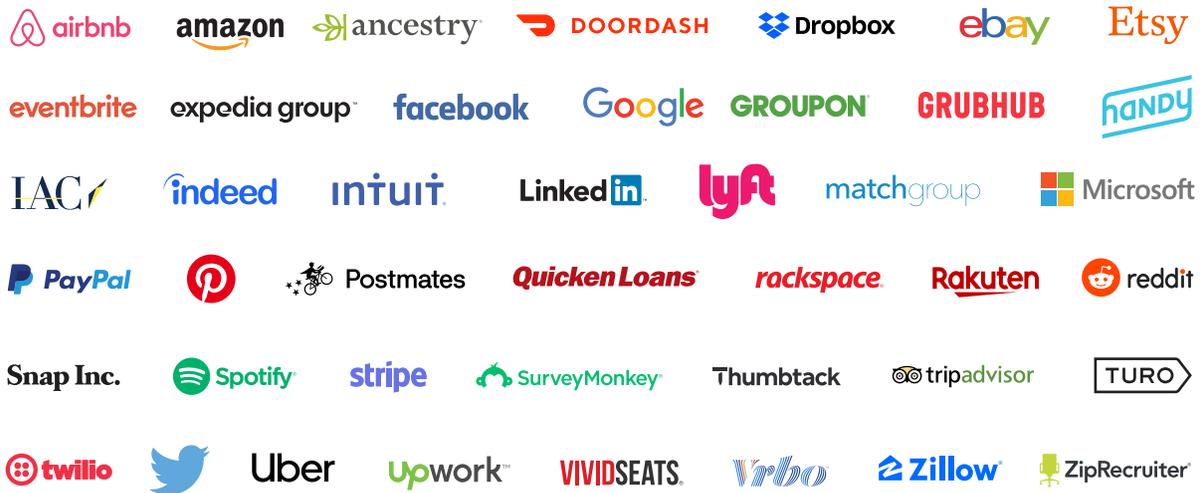
## 7. Prohibition On Disclosure Of Encryption, Source Code, Or Digital Customs Duties

It is important that the U.S. and UK work to ensure the integrity of encryption and source code; that there are no customs duties on digital transmission; and that there is no unnecessary regulation of online services. Other countries require access to encryption keys or source code as a condition for letting technology imports into their market. Such measures, if left unchallenged, would compromise technology and hurt trade. Some countries have threatened to apply customs duties on digital products. World Trade Organization members have only agreed to a temporary moratorium on imposing such duties. A U.S.-UK FTA should ensure that governments cannot impose tariffs on the flow of music, video, software, e-books, games, and information as they move across borders. This will continue to benefit the creators, artists, and entrepreneurs who depend on online sales to get ahead.

Some foreign governments are seeking to limit market access by imposing complex and unnecessary licensing requirements on online services. This makes little economic sense. Unlike traditional public utility infrastructure, online service markets typically have no serious barriers to new market entrants and have low switching costs. Sharing economy services also face significant market access and operational barriers in markets that limit the ability to supply or consume services offered by these platforms.

## 8. Conclusion

A U.S.-UK FTA represents a significant opportunity for the internet sector, and every industry that benefits from the internet. Internet Association appreciates that both the U.S. and UK governments understand the importance of strong digital trade provisions as they negotiate this FTA. Beyond strong provisions in a potential digital trade chapter, the agreement should include important provisions in intellectual property, small business, financial services, and customs and trade facilitation chapters. We urge both governments to give all affected stakeholders the opportunity to provide input into the negotiating process, including draft text. Increased openness and transparency in U.S.-UK trade policy is likely to lead to better outcomes for both economies, and more public understanding of the benefits of digital trade. Internet Association stands ready to work with both U.S. and UK officials to help develop best-in-class international trade provisions for the 21st century.



We are the unified voice of the internet economy

[www.internetassociation.org](http://www.internetassociation.org)

*Internet Association is the only trade association that exclusively represents leading global internet companies on matters of public policy. Our mission is to foster innovation, promote economic growth, and empower people through the free and open internet. We believe the internet creates unprecedented benefits for society, and as the voice of the world's leading internet companies, Internet Association works to ensure legislators, consumers, and other stakeholders understand these benefits.*