

## Updated Suggested Steps the UK Could Take to Address Digital-Related Restrictions

# UK Barriers to U.S. Digital Service Suppliers

Over the past several years, the UK has passed or proposed several key measures that restrict the ability of U.S. digital service suppliers to access the UK market, including: the **digital services tax**, **Investigatory Powers Act**, the **Online Safety Act**, the **Digital Markets, Competition, and Consumers Act**, and proposed **audiovisual or audio funding or quota obligations** (all referenced below).

The net effect of these measures is to put U.S. digital firms at a competitive disadvantage in the UK market. Even where not directly or immediately restricting access, the burdens and risks associated with these measures will severely diminish opportunities to access a market worth \$68.5 billion in U.S. digitally-deliverable services exports to the UK in 2023 (nearly matched by \$66 billion in UK digitally-delivered services exports to the U.S. in 2024).<sup>1</sup>

As the U.S. engages with the UK to seek the removal of trade impediments, several targeted changes could materially improve market access for U.S. suppliers by issuing clarifying guidance, adopting reforms through implementing regulation, and committing not to enact further barriers to U.S. digital services suppliers.

## Tangible Commitments from the UK to Ease Digital Trade Barriers

### Addressing existing barriers:

- Commit to eliminating the 2% **digital services tax**.<sup>2</sup>
- Address concerns with the **2024 Digital Markets, Competition and Consumers Act**,<sup>3</sup> and “roadmaps” from the Competition and Markets Authority (CMA)—that thus far have included a huge range of broadly-defined interventions, creating prolonged uncertainty for American companies, undermining innovation, degrading user privacy and security, reducing consumer welfare, and impairing investment<sup>4</sup>—including by:
  - Committing to meet the unfilled pledge to an open, participatory, and evidence-based process.
  - Limiting the overall scope of conduct requirements and including in the roadmaps a clear indication of interventions that the CMA does not intend to pursue.

<sup>1</sup> [https://ccianet.org/wp-content/uploads/2024/10/CCIA\\_2024-NTE-Digital-Trade-Barriers-UK.pdf](https://ccianet.org/wp-content/uploads/2024/10/CCIA_2024-NTE-Digital-Trade-Barriers-UK.pdf); and <https://apps.bea.gov/iTable/?reqid=62&step=9&isuri=1&product=4#eyJhcHBpZCI6NjIsInN0ZXBzIjpMSw5LDZdLCJkYXRhIjpWvJwcm9kdWN0IiwiNCJdLFSiVGFiGVMaXN0IiwiMzU5Ii1dfQ==>.

<sup>2</sup> <https://www.gov.uk/government/publications/introduction-of-the-digital-services-tax/digital-services-tax>.

<sup>3</sup> <https://www.legislation.gov.uk/ukpga/2024/13/contents>.

<sup>4</sup> Research estimates indicate that the measures under the DMCC could result in up to £160 bn in costs to consumer welfare and up to an 8% decline in investment in digital services. See <https://ccianet.org/research/reports/dmcc-economic-impact/>.

- Providing a clear steer for the CMA to avoid speculative interventions that complicate AI deployment in products and services or that subsidise domestic industries (e.g., news, sector-specific search) at the expense of consumers and other industries (e.g., flights).
- Establishing a requirement for the CMA to limit the extra-territorial impact of its interventions, extending its recent announcement regarding merger control to ensure that mandates such as interoperability do not compromise the integrity of global services.
- Mitigating unreasonable litigation risks for US companies operating in the UK market by fixing the incoherence in evidence standards for private and regulatory enforcement.
- Preventing abusive fines being levied against US companies, particularly the discriminatory practice of basing fines on global turnover rather than UK-specific actual harms.<sup>5</sup>
- Clarify that appeals should be able to consider the substantive merits of a regulator's decision, not only whether the correct procedures were followed.

- Prevent the **Online Safety Act**<sup>6</sup> imposing an unstable and excessive compliance burden for American companies, inhibiting free speech, by committing to:
  - Removing Section 121 or 122, which could be used to require companies to break end-to-end encryption or otherwise weaken the security of products.
  - Reversing overreach in its implementation that has brought generally irrelevant services like online marketplaces and maps potentially into scope for the most burdensome requirements, such as age verification, without establishing a clear risk of harm.
  - Stopping the development of parallel online safety regimes addressing specific categories of content by other parts of the UK Government that exacerbate overall compliance costs and impacts on free speech.<sup>7</sup>
  - Stabilizing the regulatory regime and instituting limits on additional measures, including those already under consideration, such as the "additional safety measures" proposed by the regulator Ofcom.

<sup>5</sup>

<https://www.uschamber.com/assets/documents/Arbitrary-and-Abusive-US-Chamber-Report-on-EU-Fines-of-American-Companies.pdf>.

<sup>6</sup> <https://www.legislation.gov.uk/ukpga/2023/50>.

<sup>7</sup> For example:

<https://ccianet.org/library/ccia-response-to-knives-and-offensive-weapons-consultation-on-personal-liability-measures-on-senior-executives-of-online-platforms-or-marketplaces/>.

- Preventing abusive fines being levied against U.S. companies or criminal sanctions against its people, particularly the discriminatory practice of basing fines on global turnover rather than UK-specific actual harms.<sup>8</sup>
- Stabilizing the regulatory regime and instituting limits on additional measures, including those already under consideration, such as the “additional safety measures” proposed by the regulator Ofcom.
- Reducing the granularity of baseline data requested under requests for information, which may not align with internal data collection, creates a significant time and resource cost to organisations.
- Review and clarify the **Investigatory Powers Act (IPA)**<sup>9</sup> and relevant **Codes of Practice**,<sup>10</sup> including:
  - Committing that TCNs issued pursuant to the IPA will not create any obligation that the U.S. supplier must weaken product security—including by requiring that they be capable of decrypting data or blocking the rollout of security features.
  - Clarifying that upon a request from a U.S. company, such a company is authorized to discuss with appropriate UK and U.S. officials any ongoing request or underlying investigation and its parameters.
  - Committing to informing relevant U.S. authorities within a specified period after signing an order under the IPA targeting a U.S. supplier.
  - Allowing relevant U.S. officials to intervene in court proceedings, authorizing action under the IPA that targets or otherwise impacts U.S. persons.
  - Amending the Retention of Communications Data Code of Practice,<sup>11</sup> Rule 3.15, to require the Secretary of State to consider impacts on innovation and privacy and burdens on product development prior to issuing a data retention notice.
  - Establishing a reasonable time for response, and a *de minimis* threshold for notification notices to avoid complex global services having to issue an unreasonable volume of notices.
  - Explicitly provide companies with the ability to request that the Secretary of State undertake an expedited review for a TCN in a shorter period than 180 days

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<sup>8</sup>

<https://www.uschamber.com/assets/documents/Arbitrary-and-Abusive-US-Chamber-Report-on-EU-Fines-of-American-Companies.pdf>.

<sup>9</sup> <https://www.legislation.gov.uk/ukpga/2016/25>.

<sup>10</sup> <https://www.gov.uk/government/collections/investigatory-powers-act-codes-of-practice>.

<sup>11</sup>

[https://assets.publishing.service.gov.uk/media/5a816635e5274a2e87dbd6b2/Retention\\_of\\_Communications\\_Data\\_Code\\_of\\_Practice\\_March\\_2015.pdf](https://assets.publishing.service.gov.uk/media/5a816635e5274a2e87dbd6b2/Retention_of_Communications_Data_Code_of_Practice_March_2015.pdf).

to avoid product delays or stopping measures that may be necessary to protect the security of users.

- Exempting AI developers from the requirement to provide notice for changes in data retention, given the risk of impeding developers' ability to train leading AI models in the UK.
- Commit to appropriate **copyright limitations and exceptions** to enable model training without incurring copyright liability in the UK, and prevent UK copyright law from undermining America's AI Action Plan, by:
  - Enabling text-and-data mining for commercial purposes; and
  - Introducing a commercial research exception to ensure the UK is competing on a level playing field and allow U.S. businesses to invest and grow in the UK.

### **Addressing Proposed Barriers:**

- Commit to not imposing audiovisual or audio **funding or quota obligations** for online streaming providers that would undermine the operations of foreign services suppliers that currently export UK content to audiences around the world.

### **Additional References**

[New CCIA Briefing Explores How the US and UK Can Deliver Growth with a New Digital Trade Agreement](#)

[CCIA UK responds to reports Apple is removing encryption tool for UK customers](#)

[CCIA Responds to Reports of UK Demand for Worldwide Apple iCloud Access](#)

[CCIA Welcomes US Push Back Against Digital Service Taxes Targeting US Companies](#)

[CCIA Responds to UK's Online Safety Act Enforcement](#)

[Impact of the Liberal Democrats Proposed Increase to the UK Digital Service Tax](#)

[CCIA Supports U.S. Agreement with Five Countries to End Digital Services Taxes](#)