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Submitted to Consultation on extension of rights in sound recordings and performances to foreign nationals Submitted on 2024-03-22 14:28:59

# Introduction

## What is your name?

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# Background

Eligibility for rights in sound recordings and performances in UK law Option 0: Maintain the status quo - Questions

## Question 1 Do you consider the way UK currently provides PPR to foreign nationals to be consistent with the UK's international obligations, including those in the Rome Convention and the WPPT? Why or why not? If not, what are the changes needed to bring UK law into line with those obligations?

Provide answer here:

Domino have not carried out a legal assessment for this submission. We suspect that this has been covered extensively by other legal organisations inputting to this consultation.

The current protection granted to foreign nationals is not consistent between producers and performers and the UK does not currently follow the principle of national treatment that dictates a country apply the same laws to foreign nationals as to their own citizens. If this is contradictory to the UK’s international obligations then this should be addressed.

# Option 1: Provide PPR to producers and performers of sound recordings on a broad basis - Questions

## Question 2 Do you agree with the assessment of the impacts of Option 1? If you disagree, why?

Provide answer here:

Implementing Option 1 should not lead to any major changes in how music is licensed in the UK which is important in retaining the value of music broadcast in public. Broadcasters and music users already pay to use any commercially released recorded music on a broad basis due to most repertoire already qualifying for copyright protection under UK law. Option 1 should therefore carry no reduction in licensing fees collected from UK broadcasters and other music users.

The main negative impact we see will be on US record companies who likely release more US recorded repertoire with performers that do not qualify under the current system - they would see a reduction in their UK income as any US performers would then be allocated and paid their shares accordingly. The major record companies will be heavily affected as they receive millions each year from non-qualifying performers that gets paid to UK arms from US signed deals. The independent music sector in the UK has a broad range and size of companies and some specialise in particular genres so it really varies business to business in how much repertoire consists of recordings featuring non-qualifying foreign performers and artists from countries that have not signed up to the Rome Convention. This should all be assessed with PPL.

Around 3-5% of Domino’s UK PPR income arises from non-qualifying performer income – this covers our American nationals recording in the US. As the income is a small percentage of our UK business income it does not have an enormous impact on our investment to artists. The non-qualifying income we do receive is always included as part of any artist profit and loss assessment and is generally invested back into music creation.

Without further assessment into PPL’s response it is not immediately clear whether there would be transitional or other costs that PPL would incur in needing to distribute to more beneficiaries so an analysis into their position on that would need careful scrutiny so as to not negatively impact labels or artists from implementing a fairer system. PPL’s operating costs in 2022 were 14.9% of total revenue.

Overall this solution is fair to our artists, does not decrease the value of music in the UK licensing market and makes the level of protection for labels and

## Question 3 Do you have any other comments on Option 1?

Provide answer here:

For UK commissioned repertoire it is mandatory at PPL for record companies to provide performer data to avoid being financially penalised. This policy was implemented back in 2016. As part of this policy record companies need to provide at least 1 featured performer and 1 non-featured performer or positive confirmation of there being zero non-featured performers for a recording to be made payable to record companies.

Further assessment should be carried out with PPL as to whether this policy would later extend to US commissioned repertoire with a change to Option 1 so as not to penalise US record companies further during a transition of revenue flow.

Option 2: Provide PPR to producers and performers of sound recordings on material reciprocity terms - Questions Question 4 How will/ should licence prices for the broadcasting and public playing of recorded music change under this option? Provide answer here:

Domino is not in a position to answer this question from a licensing point and refers the consultation to PPL’s response and assessment. This option will undoubtedly create seriously complicated negotiations with licensees and there will need to be lots of industry engagement and assessment of repertoire to educate broadcasters on what would and would not be covered under such an option and to then understand whether their habits would change – i.e. playing more US repertoire that would not be due a payment.

When looking at the Top 10 airplay chart in the UK (w/c 20/03). Less than 50% of this music in the Top 10 is signed and commissioned by UK record companies or recorded outside of the US (such as Beyonce, Noah Kahan, Teddy Swims, Justin Timberlake, and Kygo) and under this option it would mean these recordings are not eligible for payment. Any payments due for UK session musicians or other qualifying performers (such as Kygo would be above) would be impacted. Labels often invest resource into radio plugging and pitching and PPR income from the use of the music is generally a return on such investment and resource.

Some broadcasters have many radio services under their umbrella and there should be further assessment into the split of US/UK repertoire being used to understand how the Top 10 view from the 20/03 compares to yearly radio consumption figures. It is perhaps under 50% but still an alarming amount of repertoire that would then cease to be eligible. This option will likely have many other negative impacts on the UK recorded music industry that would need much further assessment and consultation to the potential values lost.

The government should support initiatives to increase the value of music across all music use.

## Question 5 What would be the benefits of savings for UK broadcasters or those that play music in public under this option?

Provide answer here:

Music use should be assessed fairly and equitably and we can’t see any benefit in a saving for UK broadcasters that generate large sums of income from audiences who are drawn to services through the use of music. Any potential short term financial savings for UK broadcasters and other music users would both financially and culturally damage the UK’s independent music sector and UK music overall which is a detriment to all, including UK broadcasters and consumers.

## Question 6 What would be the benefits or costs in terms of increased or reduced remuneration to UK record labels and performers under this option?

Provide answer here:

There is no benefit in reduced remuneration to record labels and performers. There would certainly be further additional costs that needs more time to review.

Option 2 will have a significant negative impact on the UK independent music sector and there is lots of uncertainty and risk to this option. Ultimately a lot depends on any legislative drafting and how this would be implemented however restricting the protection provided to pre-existing sound recordings after investment has occurred is damaging. Domino invests heavily in recording costs for all artists signed to the label and so recoupment of these costs could be elongated and this would certainly mean more assessment goes into investment of such projects.

We should be creating more simplicity and transparency in our copyright and music eco-system, not further mystifying and adding costs to systems.

The costs of such administration at PPL could further hit record companies and performers on top of reduced licensing fees. Significant further consideration, analysis and consultation would be needed but Domino considers this option wholly unworkable.

## Question 7 What upfront and ongoing administration and legal costs (such as the costs of renegotiating licences) might arise under this option? Can you quantify these?

Provide answer here:

of such a complex licensing structure and a specific set of repertoire. It is not clear whether those costs would be absorbed by record companies and performers or if some costs are passed to UK broadcasters and other music users.

At a really simple level there would likely be need for an “exclusion list” or some sort of view for broadcasters to know what is US commissioned and recorded and therefore not eligible for payment. Something like this could be a highly costly and time consuming process and added step for broadcasters and PPL.

## Question 8 Do you think this option will cause users to reduce the amount of UK music they play? If so, why, and to what extent will this effect take place? How will this affect the UK music industry?

Provide answer here:

UK broadcasters generally play a diverse range of music and the figure for US repertoire being played is very high. With the example earlier for this week’s airplay over 50% is US commissioned and recorded and this won’t be too far off the overall market consumption of US music, perhaps around 40%. I don’t know why broadcasters would cease playing US repertoire for their audiences and playing popular content by artists like Beyonce and Taylor Swift.

## Question 9 How might the costs on foreign (especially US) record labels under this option indirectly affect the UK music industry or UK consumers?

Provide answer here:

The impact assessment does not include any costs to foreign record labels. The impact would likely be felt most by labels that are US-headquartered than UK independents, although this will vary and the UK offices for the major record companies will be heavily affected in income being received and income then being accounted to US affiliates. We believe the damage to the value of music in licensing as well as direct reductions to UK independent producers and performers would outweigh any imagined benefits to them. As such we don’t consider there would be any benefit to the UK music industry or UK music consumers from costs or reductions in income to foreign (including US) record labels.

## Question 10 Do you have any other comments on Option 2?

Provide answer here:

As a record company we rely on music being valued and the work that is carried out for any artist release requires extensive knowledge, resource, and funds for plugging, promoting and marketing. Any reduction in licensing income available to the UK’s music sector by creating a situation where there is an advantage to music users for using music which would not qualify for licensing may unintentionally assert higher market value against particular artist repertoire from qualifying countries, which seems absurd.

We know that many British musicians and artists also sign to US record labels and currently qualify due to their nationality and residency however the export of British musicians overseas would certainly be less attractive when significant sums they would see from radio and public performance would be diminished based on a rule of reciprocity. This type of approach may have been more relevant as a starting position and when the global performance rights market was less mature. At this time when money from multiple sources is as vital as ever now is not the time to materially reduce sums paid to performers and record companies and punishing those artists who wish to record with like-minded artists and producers around the world for fear of impact on a key revenue stream.

UK labels licensing repertoire from owners or labels in other territories, a rather common industry practice, could be less attractive for catalogues from US origin if there is less or no income available from performance use of those masters in the UK. This could also deprive a thriving vinyl market in the UK of reissues of out of print catalogue of niche or specialist music and streaming services of catalogue not yet available digitally.

We don’t think that the UK music industry is to gain from options 2 and 3 as these are variations of reciprocity that will generally cause everyone to lose.

# Option 3: Apply Option 1 to pre-existing sound recordings and performances, and apply Option 2 to new sound recordings and performances - Questions

## Question 11 How will/ should license prices for the broadcasting and public playing of recorded music change under this option?

Provide answer here:

Same answer applies to that given for Option 2

## Question 12 What would be the benefits of savings for UK broadcasters or those that play music in public under this option?

Provide answer here:

Same answer applies to that given for Option 2

## Question 13 What would be the benefits or costs in terms of increased or reduced remuneration to UK record labels and performers under this option?

Provide answer here:

## Question 14 What upfront and ongoing administration and legal costs (such as the costs of renegotiating licences) might arise under this option? Can you quantify these?

Provide answer here:

Same answer applies to that given for Option 2

## Question 15 Do you think this option will cause users to reduce the amount of UK music they play? If so, why, and to what extent will this effect take place? How will this affect the UK music industry?

Provide answer here:

Same answer applies to that given for Option 2

## Question 16 How might the costs on foreign (especially US) record labels under this option indirectly affect the UK music industry or UK consumers?

Provide answer here:

Same answer applies to that given for Option 2

## Question 17 Do you have any other comments on Option 3?

Provide answer here:

Option 3 is even less clear than Option 2 and would be more costly to implement and therefore damaging to the whole sector. The way it is set out would result in UK performers that perform on a US recording going unpaid in the future whilst rights are extended to US performers on existing repertoire – this feels rather contradictory to provide a new right that then does not continue. UK labels would lose revenues both from US performers becoming qualifying and then lose revenues on income not being generated for US commissioned repertoire. This expands the losses set out in the impact assessment.

Option 3 combines all the issues from Option 2 and adds in the negative affects for UK labels that have recordings with US performers on them who would qualify under option 1.

# Proposed approach Preferred Option

## Question 18 What is your preferred option and why?

Option 1

Provide answer here:

Domino is primarily in favour of Option 1 on a principled basis. We stand for fairness and would like to see an end to discrimination against foreign performers regardless of whether their country of nationality reciprocates the same rights under copyright law. In 2020 the European Court of Justice mandated that member countries apply National Treatment to PPR income and many have implemented this already.

The UK is the 3rd largest music market in the world, based on the IFPI global recorded music reports, and one of the biggest exporters of music to foreign countries. Adopting Option 1 does create some losses for a number of companies however it creates a fairer and simpler musical eco-system seeing creators enjoy remuneration from their hard work and bringing us in line with the changes happening in Europe with national treatment. As a global leader in the development of rights and copyright development in other countries this approach from the UK could encourage other nations to broaden their own protection of foreign national producers and performers.

For countries like the US the lack of broadcast rights and protection for sound recordings is felt by all music creators around the world including US national labels and artists. If record companies can qualify for use of music in the UK then we should ensure US performers are granted the same level of protection rather than broaden the pool of penalisation.

Options 2 and 3 outlined in this assessment would create economic harm and other negative impacts across the sector which have not been fully assessed. Implementing anything other than Option 1 or Option 0 from this assessment would be troubling.

# Confidentiality and data protection

## Confidentiality request:

Provide answer here:

Please do treat this submission as confidential