# March 2024 IPO Consultation: Extension of Public Performance Rights to Foreign Nationals

**Association of Independent Music (AIM) Response**

**Introduction**

The Association of Independent Music (‘AIM’) is the not-for-profit trade body exclusively representing the UK’s independent music sector, which makes up a third pf the recorded music market alone and extends into many other areas of music activity. Started by a group of founding member businesses to level the playing field for independently owned music businesses and now in its 25th year, AIM has over 1,000 independent record label and associated businesses as members and represents thousands of music professionals. AIM’s members range from the largest, most globally respected record labels and associated music businesses to ‘DIY’ or self-releasing artists and the next generation of entrepreneurs in music. AIM promotes and supports this exciting and diverse sector and community globally and provides a range of events, services, commercial opportunities and practical help to members, enabling them to innovate, grow and break into new markets.

AIM’s members are among the most innovative and nimble businesses in the UK music industry, with the independent music sector responsible for an estimated 80% of all new releases. They are a broad and diverse community of people and companies who share the uniting experience of being driven by a passion for the music they produce and a desire to build successful businesses around it in the 21st Century. Our members are largely headquartered in the UK and are UK taxpayers, directly employing British creative workers and indirectly providing work and incomes across the whole music sector.

Our members come from across the independent music business community including some of the biggest and most well-respected labels like Beggars Group (Radiohead, FKA Twigs, Sampha, and more), Domino (Wet Leg, Arctic Monkeys), Mute (Goldfrapp, Erasure), Ninja Tune (Young Fathers, Bicep) and Partisan Records (PJ Harvey, Idols, Ezra Collective), to globally celebrated specialists and newer challengers such as Brownswood i.e. Giles Peterson’s label (Kokoroko), Black Acre (Connie Constance), Hospital Records (Drum’n’bass specialists) and Transgressive (Arlo Parks, Let’s Eat Grandma, Damon Albarn). AIM also has a significant membership of independent artists who self-release their music through a range of business partners, ranging from those just starting out to established names who are known the world over.

Our members work on the basis that, by standing together as a united community, they are stronger. Growing a business can be a very isolating experience, so in coming together through AIM, our members learn from each other and support one another. They also support AIM financially, which enables us to carry out the vital work we do to support them – our member contributions make AIM a truly unique and autonomous safe-haven and a source of power and strength for the independent music community.

AIM is a stakeholder of UK Music and has contributed to its response paper. We support UK Music’s response, and particularly its points in relation to Options 2 and 3 which are representative of a broad consensus across the music sector. This response is intended to add the perspective from the independent music sector.

We understand that some of our members and member businesses are submitting their own responses, some of which are primarily in favour of Option 1 largely on a principled basis. AIM respects and supports those responding in this way and, further, supports Option 1 as the only viable alternative to Option 0. However, as AIM exists to represent the interests of the independent music sector as a whole, including a diversity of businesses, participants and priorities, our primary support must go to the option which does not create economic harm and other negative impacts across the

sector, for many of AIM’s members, and for the artists and music that relies on the investment and activities of the sector to develop and support artists, their music and their careers.

As a result, we are supporting Option 0 as our preference but, if it is found following consultation and further legal advice to be contradictory with the UK’s legal position, we would support Option 1 as an alternative. We are opposed to Options 2 and 3 for the reasons set out in the responses to this consultation and also in the responses of UK Music, PPL, independent music businesses, and others in the music sector.

## Question 1. *Do you consider the way UK law 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?

Although AIM’s members and BPI’s members often have a different outlook on matters, as both organisations represent sound recording producers (as these terms are understood in the context of this consultation) there is a broad commonality in outlook in relation to UK laws as they relate to the recorded music sector. AIM has had sight of an outline of the BPI’s legal analysis on this matter and are in agreement in our belief that the current UK law in this area already meets the obligations of the Rome Convention and WPPT. We refer this consultation to BPIs detailed legal analysis on this point with a caveat that we have not had the opportunity to inspect the full detail at the time of submission of this paper.

We suggest, further, that the impact assessment presented does not have enough detailed business and financial information at this time for government to consider any change in the UK’s laws in this area. We would welcome further analysis and engagement with us and the sector we represent before any change in the law is considered.

**Question 2. *Do you agree with the assessment of the impacts of Option 1? If you disagree, why?*** The independent music sector represents a broad community of businesses with variations in how much repertoire consists of recordings featuring non-qualifying foreign performers under PPR. There is also variety in the contractual terms between independent producers and performers, and between independent music businesses and their business partners in the countries of non-qualifying performers. Partnership between businesses who are specialists in their own countries is a common business style in the independent music business community and a distinct difference between the styles of independents and corporations in music (who are more likely to have regional offices). Some of these agreements will result in a portion of the PPR for non-qualifying performers to be paid through to those performers or to partner businesses in the countries of those non-qualifying performers.

As a result of this variety of business models, it is difficult and, given AIM’s resources, unfeasible certainly in the time available to respond to this consultation, for us to carry out a detailed financial and business impact analysis across the UK independent music sector. That said, our consultation with PPL and others, as well as data from a cross-section of AIM’s members, suggests that the impact assessment supplied alongside this consultation, although giving a broadly accurate assessment of the effects of a change to Option 1 on the independent music sector has not considered all aspects involved or the nuanced impact on UK music.

Our members often operate on tight economic margins. As independent businesses, they invest revenues directly into production and marketing of music including the creation of music and artist career development, tour support and music export, as well as by employing staff and hiring freelancers to undertake this activity. Our members provide jobs for UK workers across a range of

activities from music creatives through marketing and distribution executives to back office administrative functions including royalty accounting and data handling.

From our consultation, we understand that at least £400,000 would have been lost directly to UK independent producers in 2022 if operating under Option 1 and this money forms an important part of affected members’ overall revenues and business planning. This is equivalent to funding the creation of 11 studio albums by new British artists which may not sound like much on its own but would in turn would impact incomes for the artists, producers, engineers and studios, as well as music publishers, songwriters, managers, and more. As this loss of revenue would be spread across the independent music sector, the impact on investment would affect artist development across the UK, as well as our members’ ongoing recovery from the impact of Covid on the sector the additional costs of music production, exports and artist touring they are facing following Brexit, and ongoing economic and cost of living challenges affecting their businesses relating to recent global market conditions.

In addition to this, as AIM is significantly funded by member contributions based on their PPR revenue, our activities in supporting them would also suffer due to the reduction in our own operating budget. This would adversely affect AIM’s ability to assist the independent music community to manage the financial impact of such a change and help them to grow their revenues and businesses activities in other areas, where they are already at a disadvantage in the market due to scale and other inequities. Inevitably, any financial constraints on UK artists and businesses will particularly negatively impact those already suffering inequities in our society, due to their gender, ethnicity, socio-economic background, regional location and other factors.

In addition, any such change to the law would have wide ramifications beyond the direct financial impact for producers within the independent music community, not least that it would interfere with contractual arrangements, both already in place and for new agreements, between producers and performers, between producers and overseas partners, and between producers and third party consultants who carry out activities related to music creation and route to market. Economic expectations are carefully considered and often mapped out ahead of entering into sometimes long- term agreements, to ensure the viability of the agreement in relation to money paid or guarantees in advances against future income, marketing, tour support and so on. This would not affect only agreements with non-qualifying performers but a reduction in income overall would affect all contractual arrangements for impacted independent producers.

We reject utterly the assertion made in point 19 of the consultation document, that there are no clear benefits to the UK creative industries, to UK [music] users, or to UK consumers, of the payment of licensing moneys by UK music users for music featuring non-qualifying performers. As set out above, this money is currently invested back into music creation and release as well as into jobs in the UK music sector and in other sectors, to the clear benefit of UK creative industries, UK music users, and UK consumers. If the revenue set out above is lost, on an ongoing basis, to the UK independent sector, there will in fact be a corresponding loss to UK creative industries, to UK music users and to UK consumers, as well as to the creation of more music, including more British music.

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

Additional information and comments are given in our introductory wording, and questions 1 and 2 above.

## Questions 4. *How will/should licence prices for the broadcasting and public playing of recorded* music change under this option? AND Question 5. *What would be the benefits of savings for UK* broadcasters or those that play music in public under this option?

The replies here relate primarily to Option 2 but we consider Option 3 to have the many of the same negative impacts on the UK independent sector and on AIM albeit in some cases to a lesser extent and without benefits to counteract these negative impacts.

Should Option 2 or 3 be implemented, we call on government to ensure that the value of UK music in broadcast and public performance is not damaged by any reduction in licensing income available to the UK’s independent music sector, nor by creating a situation where there is a financial benefit to licensees to make music selections for radio and television programming which would not qualify for licensing or payment under option 2. This could create a situation where British music loses value and opportunity against the music of other countries which don’t offer as broad protections for British artists and music.

For the longer term we call on government to ensure that it uses all available efforts to lobby on behalf of British music businesses and performers in its trade negotiations and using all other influence with any country which does not extend the same rights as are extended in the UK to its own producers and performers. We would welcome engagement with and support for the independent music sector to achieve these ends.

Further, government should support initiatives to increase the value of music across all music use, in terrestrial and digital broadcasting and public performance but also in the broader digital consumption space and use of music within AI systems.

Our understanding is that such a change would result in significant cost increases for the music sector in the setup needed for administration of this licensing structure which may in any case need to be passed on to UK broadcasters and other music users, particularly in light of the likely financial deficit caused to UK producers making them less able to absorb such additional costs.

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?

We believe Option 2 to have significant negative impact on the UK independent music sector but, at present, there is too much uncertainty to give an accurate assessment. Much will depend on drafting, costs of administration, market response in licensing fees and any potential for additional government support to the music sector. As such, significant further consideration, analysis and consultation would be needed before it is considered and we do not think this is justified. We refer this consultation further to the responses of AIM board member companies, Beggars Group and Domino Recording Co as well as to that of UK Music in relation to Options 2 and 3.

It should be noted that the impact assessment has some inconsistencies in approach with itself for this option (and the relevant part of option 3) and the way it is set out would result in UK performers going unpaid for rights extended to their compatriots due to performing on a recording for a producer in the US (or other non-reciprocating country). Conversely, UK producers would lose revenues both from US performers becoming qualifying due to the country of the producer despite lack of reciprocated rights for UK performers within the US. We consider that this expands the losses set out in the impact assessment and demonstrates the inconsistencies and uncertainties around responding at this time without necessary further work and engagement with industry.

## 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?

AIM is not in a position to answer this question and refers the consultation to PPL’s response with the caveat that we have not had sight of their response ahead of submission of this paper and would appreciate the opportunity to give a more informed response on this point once it becomes available.

**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?*** We refer you to our answer to questions 4 and 5, above.

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

AIM represents the UK-based independent music sector and does not at this time have access to data required to answer this question with any certainty. The impact assessment document section under option 2 headed “Description and scale of key monetised costs by ‘main affected groups’, does not set out any costs to foreign (including US) record labels though there would be a reduction of revenues to some foreign record labels and performers which are currently passed monies by the record producers from the UK and other qualifying countries under contractual arrangements. The impact would likely be felt more by rightsholder businesses which are US-headquartered than UK independents but we believe the damage to the value of music in licensing as well as direct reductions to UK independent producers and performers would overwhelm 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?***

We have responded with additional information and comments in our introductory wording, and questions 4 to 9 above.

**Option 3: *(Questions 11 – 17)***

Please refer to the answers for option 2, under questions 4-10 above as well as our introductory wording. This hybrid option unfortunately combines all of the complexity, cost and uncertainty of option 2 with the financial impacts of both option 2 and option 1 on UK producers and the knock-on effects on UK performers and music in general as well as on AIM’s ability to support the UK independent music sector and broader community. This is not a halfway position for each of those options but presents the most commercially damaging and administratively disruptive option in our analysis. This is particularly the case as option 2 would be the ongoing position under this option which, as we have set out before, is the most problematic for the UK’s independent music sector.

**Question 18. *What is your preferred option and why?***

AIM is supporting Option 0 but, if it is found following this consultation and further legal advice to be contradictory with the UK’s legal position, we would support Option 1 as an alternative. The overarching reason for this is that Option 0 does not result in negative financial impacts for the UK’s diverse independent music sector as a whole, while encouraging other nations to extend broad rights for producers and performers of music without any damage to the value of music. It allows UK producers to invest in artists, music and provide jobs. Option 1 is the least damaging of the other options for the UK music sector and arguably takes a principled approach to encourage other nations to broaden their own protection of foreign national producers and performers, though it would result in negative financial impacts for the US independent music sector and would not therefore be AIM’s preferred option.