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# Introduction

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# Background

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:

National treatment (i.e., the principle of giving citizens of another country the same copyright protection as the home territory’s citizens) is a feature of both the Rome Convention (art. 2) and the WPPT (art. 4). However, both treaties allow for an exception in respect of PPR (Rome Convention: art.

16(1)(a)(iv); WPPT: art: 4(2)), whereby countries can instead apply ‘material reciprocity’ (i.e., if the law in another country is different, the home country does not have to provide citizens of that country with the same treatment as its local citizens).

In respect of PPR, the UK’s Copyright, Designs and Patents Act (CDPA) applies material reciprocity to performers (CDPA: §206; §208) and national treatment to the ‘producers’ who own the rights in sound recordings (CDPA: §159). The CDPA defines ‘producer’ as ‘the person by whom the arrangements necessary for the making of the sound recording […] are undertaken’ (CDPA: §170). This has commonly been interpreted as meaning the record companies that finance and organise recording sessions (Osborne Owning the Masters 2023: 128-131).

The different treatment of these two parties is not consistent with the obligations in the WPPT to protect ‘the rights of performers and producers of phonograms in a manner as effective and uniform as possible’ and to ‘maintain a balance between the rights of performers and producers of phonograms and the larger public interest’ (WPPT: preamble).

Moreover, rather than resulting in a situation whereby record companies have their share of PPR revenue and performers do not, it is the policy of PPL to distribute the entirety of this revenue to record companies. Its distribution rules state that, where performers ‘have no right to equitable remuneration […] all such monies shall be allocated to the relevant Record Company (or Companies) (PPL Distribution Rules: 10.2). There is no stipulation that the record companies share this money with their performers.

# 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:

The impact assessment calculates that if Option 1 had been in operation in 2022, it would have resulted in gains to US performers and costs to US labels of £16.1m (¶ 119). It also makes a projected estimate that between 2024 and 2033, this option will result in gains for US performers and costs to US labels of £230.2m (if standard discounting is not employed) and £170.5m (if a standard discounting rate of 3.5% is employed) (¶ 121).

These calculations rest on two main assumptions. The first is that 40% of PPL UK revenues relate to music of US origin (¶ 15, ¶ 88). The second is that US performers are paid ‘an average royalty rate of 20%’ for this repertoire (¶ 118). These assumptions are questionable and will be assessed in turn.

1. US repertoire represents 40% of PPL’s UK revenue

In the absence of any reported information from PPL on the percentage of its broadcast and public performance revenues that relate to music of US origin (¶ 88), the impact assessment uses a proxy figure from the British Phonographic Industry (BPI), which shows that 40% of the streams and sales of

albums in the UK in 2017 related to music from this territory (¶ 15, ¶ 88).

The use of the proxy figure is problematic on two grounds. First, the impact assessment assumes this figure will remain stable and therefore US music will continue ‘to represent approximately 40% of music consumption and revenues in the UK’ (¶ 120). A look at BPI data suggests this will not be the case. Tables 1 and 2 below show the organisation’s figures for ‘music consumption by artist nationality’ for albums and singles in the period 2013 to 2022.

Rather than remaining stable, there is considerable change. Moreover, the general pattern is that the share of US music had increased and the share of UK music has declined. By 2022, US repertoire represented 48.3% of album consumption (8.3 percentage points higher than the impact assessment figure). In the same year, US repertoire represented 42.7% of singles consumption (2.7 percentage points higher than the impact assessment figure).

Table 1: Music Consumption by Artist Nationality: Albums (%) 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022

UK 51.9 53.5 54.7 46.7 48.2 41.8 44 40.9 40.9 38.9

US 33.8 34.3 32.2 39.2 40.1 44.7 44 46.6 46.2 48.3

Other 14.3 12.2 13.1 14.1 11.7 13.5 12 12.5 12.9 12.8

Total 100 100 100 100 100 100 100 100 100 100

Source: BPI analysis/Official Charts Company. Base: Top 10,000 artist albums

Table 2: Music Consumption by Artist Nationality: Singles (%) 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022

UK 41.2 43.4 41.3 36.7 41 39 41.8 38.8 38.5 39.3

US 40.9 37.7 35.1 37.8 40.4 44.3 43.2 44.7 43.6 42.7

Other 17.9 18.9 23.6 25.5 18.6 16.7 15 16.5 27.9 18

Total 100 100 100 100 100 100 100 100 100 100

Source: BPI analysis/Official Charts Company. Base: Top 5,000 singles

The second problem with the impact assessment’s proxy figure is that it is utilised on the grounds that ‘similar consumption patterns apply to broadcasting and public playing as to streams and sales’ (¶ 15). This assumption provides the basis for the assessment’s financial data even though it admits ‘it is unlikely that consumption patterns across radio broadcasting, public performance, and album sales/streams precisely align’ (¶ 90),

The impact assessment does not indicate whether it thinks the 40% proxy figure is too high or too low. There are, however, several reasons to suggest the former is more likely than the latter.

First, although the impact assessment uses album sales and streams as a proxy, the sales and streams of singles probably provide a closer comparison with broadcast and public performance. This is because the consumption of music via radio, television and public venues more commonly takes the form of individual tracks. BPI figures show that the US share of the singles market from 2018 to 2022 was lower than its share of the albums market. However, at 42.7% in the final year, this is still higher than the 2017 albums figure that the impact assessment employs.

Second, there is evidence that streaming (which now dominates both albums and singles consumption) has a particular bias towards US repertoire. The BPI has noted that: 'The global strength of North American music is enhanced by its large population size. With younger music fans using streaming platforms as their principal means of music discovery, the importance of algorithmically programmed playlists on streaming platforms is growing. That gives a competitive advantage to music from countries or shared cultures with a large population. While the UK is seeing revenue growth from exports, our market share is declining as we compete more directly on streaming platforms' (BPI All Around the World 2021: 5). The rate of the UK’s decline has been substantial, falling from a 17% share of the global market in 2015 to around 10% in 2023 (Paine 'Music Export Growth Scheme Reveals Biggest Round to Date', Music Week, 8 February 2024).

Third, while there is no available information about public performance, the impact assessment correctly indicates that broadcasting can have a more local bias than streaming. It notes that ‘the BBC (one of the most significant broadcasters of music) commits under its Charter to play certain proportions of UK music’ (¶ 95). In 2017 the BBC made a commitment that 45% of the music played in daytime radio should be of British origin. This is higher than the BPI figures for album sales and streams (which show UK repertoire representing 38.9% of consumption in 2022) or for singles sales and streams (which show UK repertoire representing 39.3% of consumption in 2022).

Fourth, data is available that could indicate the amount of PPL revenue that is derived from US repertoire. In 2022, PPL distributed £238.7m in rights revenue (this figure combines UK revenue of £146.3m; international revenue of £75.8m; and payment adjustments of £16.7m) (PPL 2022 Transparency Report: 10). If this figure is divided in two to reflect a 50:50 remuneration between rightsholders and performers, we would expect both parties to have received £119.35m. This does not appear to have happened. BPI’s yearbook shows that in 2022, £143.4m of the PPL revenue was distributed to rightsholders (BPI All About the Music 2023: 17). If we subtract this from the PPL distribution figure of £238.7m, it leaves £95.3m for the performers’ share and results in an overall difference between rightsholders and performers of £48.1m. The latter figure might constitute the money for which the rightsholders are receiving the performers’ share as well as their own, and would therefore be largely comprised of money that has been distributed in respect of US repertoire. It amounts to 32.9% of the £146.3m in UK revenue that PPL distributed in 2022.

There is some likelihood that this 32.9% figure comes closer to representing the US repertoire figure for broadcast and public performance than the 40% proxy the impact assessment employs. Moreover, if we divide it in half to represent the performers’ share, it matches a figure quoted by Mark Kelly in 2009, when he became the first featured artist to become a member of the PPL board. On election, he noted 'About 16% of PPL’s revenues are generated by non-qualifying performers, but that money at the moment goes to the rights holders – record labels […]. As far as I know that money is generated by mostly American artists, but because there is no reciprocal agreement with America it cannot be repatriated to those performers. But it should not automatically be going towards the bottom line of the record companies, so I’ll be challenging that and perhaps advocating the establishment of some kind of trust fund for that money' (Masson ‘Kelly Promises to Ask the Tough Questions’, Music Week, 28 November 2009: 2)

Nevertheless, the only way to get accurate figures, and to show differences in the popularity of US repertoire in relation to public performance and

broadcast, would be to gain territorial distribution data from PPL.

1. US artists are paid a 20% royalty rate

Using the 40% proxy and information about PPL’s operational costs, the impact assessment calculates that PPL paid £62.7m to rights holders for the broadcast and public performance of US music in 2022 (¶ 114). Its second questionable assumption is that US featured artists would therefore have ‘received £12.5 million in UK PPR revenues under their contracts with their record labels’ (¶ 118).

This figure is based on a belief that US labels pay their artists ‘an average royalty rate of 20%’ for this use of their music (¶ 118). The impact assessment derives this royalty rate by combing the current 26.6% average royalty offered by UK major labels with the ‘lower royalty rates’ that are typically featured in older UK contracts to produce an overall average royalty of 20% (¶ 118).

There are several issues with this calculation:

First, it includes an error. The 26.3% figure is drawn from a report by the Competitions and Markets Authority, where it relates to ‘all UK artists signed to majors’ (CMA Music and Streaming 2022: ¶ 2.69). It therefore applies to both contemporary and legacy contracts and should not be reduced to account for the royalty rates in older deals.

Second, the calculation includes the assumption that US deals mirror UK deals. This has not historically been the case: royalties in US deals have usually been lower (Monopolies and Mergers Commission The Supply of Recorded Music 1994: ¶ 2.85, ¶ 12.66). In the latest edition of his guidebook, All You Need to Know About the Music Business, Donald S. Passman indicates that current averages in the US deals are 15%-18% for artists with ‘minor heat’, 18%-21% for artists with ‘moderate to heavy heat’, and ‘22% plus’ for superstars (2023: 94).

Third, record deals tend to have two royalty rates: one for ‘sales’ and one for ‘licences’. The US licence rate is commonly 50%. According to Passman, it should encompass the broadcast and public performance payments from PPL (2023: 152).

Fourth, US contracts have ‘foreign royalties’ clauses, whereby the basic royalty is reduced for revenue from abroad. In respect of UK revenue, the reduction ranges from 70% to 85% of the basic rate (Passman 2023: 138). Thus, if a 75% reduction was applied, a 20% royalty would be reduced to 15%, and a 50% royalty would be reduced to 37.5%.

Fifth, and most fundamentally, the impact assessment assumes that PPL revenue for US repertoire is distributed directly to US labels and then split with their artists according to contract. However, in the case of the major labels, it is possible that this revenue is being distributed to the UK affiliate label instead (this might also be the case with some of the larger independent labels). In these instances, it needs to be determined whether these affiliates are then distributing the money to their US partners (and whether they are deducting an intra-company rate before doing so) or if they are retaining it. In addition, if the US labels are in receipt of the money (whether directly from PPL or distributed by a UK affiliate), it needs to be determined whether they are passing a share of it on to their recording artists, and, if so, how much?

This leaves several possible financial scenarios for UK labels, US labels and US artists if Option 1 is introduced.

UK labels could go from receiving 100% of the PPL revenue for US repertoire under to receiving 0% with variables depending on: a) whether or not they have previously been in receipt of the PPL revenue for US repertoire; b) if they have been in receipt of this revenue, whether or not they have passed the revenue on to their US partner label; c) if they have passed the revenue on to the US partner, what percentage of it (if any) they have deducted as an intra-company rate before doing so; e) whether the introduction of Option 1 affects the intra-company agreement between the UK and US label partners.

US labels could go from receiving 100% of the PPL revenue for US repertoire to receiving approximately 50% with variables depending on: a) whether they have been in direct receipt of the PPL revenue for US repertoire or if it is has been distributed to their UK partner label; b) if the UK partner label has been in receipt of this revenue and has distributed it to them, what percentage of the revenue (if any) the UK label has deducted before doing so; c) if the US label has received the revenue, whether or not they have paid a share of it to their artists; d) if they have paid a share to their artists, whether they have paid a licence rate or a sales rate (and, if the latter, what percentage the sales rate has been); e) if they have paid out a licence rate or sales rate to their artists, whether the basic rate has been reduced because it relates to revenue from abroad; f) whether the introduction of Option 1 affects the

intra-company agreement between the UK and US label partners.

US performers could go from receiving 0% of the PPL revenue to around 50% with variables depending on: a) whether they have previously been in receipt of royalties for PPL revenue; b) if they have been in receipt of royalties, whether they have been paid a licence rate or a sales rate (and, if the latter, what percentage the sales rate has been); c) if they have been paid a licence or sales rate, whether the basic rate has been reduced because it relates to revenue from abroad; d) whether the basic rate is based on revenue after a UK label partner has deducted an intra-company rate; e) what percentage rate administration charge is applied by a US collecting society for distributing the performer revenues when Option 1 is implemented.

Two further complexities would also need to be considered.

First, in respect of the performers’ revenue, the introduction of Option 1would mean that, rather than it being distributed by their record company (as may have been the case in the past), it would instead be distributed by a US collecting society, having first been collected by PPL and subject to PPL’s equitable remuneration rules. This would mean that, in contrast to the current situation whereby featured artists might have been in receipt of the entirety of the performers’ share, it would instead be split so that 65% goes to the featured artists and 35% to the non-featured performers (PPL Performer Allocation Rules: 6.1). Moreover, as indicated in the paragraph above, the revenue would be subject to an administration charge from a US collecting society, which would be in the region of around 5% if the current SoundExchange rate is employed. For US featured artists, this would result in their overall share of PPL revenue being 30.9%, while US non-featured performers would receive 16.6%. This represents a benefit for the non-featured performers but would provide a lower share for featured performers who have previously been in receipt of a 50% licence rate, even if that rate has been reduced to 37.5% because it relates to revenue from abroad.

Second, regardless of whether they have previously received a lower or higher share of revenue, all featured artists might feel materially better off under Option 1. This is because royalty payments from record companies are recouped from artists’ personal and recording advances, whereas the remuneration from collecting societies goes directly into artists’ accounts. Correspondingly, record companies would feel worse off under Option 1 even if they have previously paid their artists a 50% licence rate. This is because they would no longer be able to recoup their featured artists’ share of the PPL revenue.

Ultimately, given the high number of variables involved, individual artists and record companies could be affected in considerably different ways by the introduction of Option 1. These variables also make it difficult to posit the overall redistribution of revenue.

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

Provide answer here:

No

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:

Regarding the extent to which licence prices will change, the impact assessment states that its confidence in its calculations for Option 2 is ‘low’ (Table: 12). Its figures rest on the assumption discussed under question 2 that 40% of the music that is broadcast and played in the UK is of US origin. Following on from this, the assessment predicts that, if this music is no longer in receipt of PPL distributions, the fees negotiated by UK licensees will reduce by 20%.

The 20% figure is employed because the impact assessment estimates that licence prices will decrease ‘only by half as much as would be expected if they scaled linearly with the size of the repertoire covered by the licence’ (¶ 43). As evidence against a linear reduction, it points towards decisions of the Copyright Tribunal, which indicate that ‘changes in the size of the music repertoire being licensed’ are not the only matter to be considered when determining licence payments (CT127/14: ¶ 14). Other factors include ‘the relevant administration costs of the licensing body’, ‘changes in the retail price index’, ‘changes in the general standard of living’ and, in the case of broadcasting, ‘the number of channels involved’ and ‘the broadcaster’s share of the total audience’ (CT127/14: ¶ 14).

The impact assessment nevertheless notes that its calculation of the scale of the reduction is speculative, stating ‘there is little basis’ for its assumption that prices will reduce by half the scaled linear amount (¶ 145). This figure is drawn from an ‘inverse’ case (¶ 84). Until recently, the Netherlands did not make payments for its broadcast and public performance use of US music, but this changed in January 2021, resulting in a 60% increase in the amount of repertoire that required payment. The Dutch collecting society SENA was only able to negotiate for a 26.6% increase in license fees, which was ‘less than half as much as would be the case if licence fees scaled linearly with repertoire’ (¶ 84).

Although this example provides evidence that changes in licence fees do not have to scale linearly with changes in the size of licensable repertoire, there are several reasons why it is unlikely that the scale of the increase in the Netherlands will be mirrored by the decrease in the UK.

First, there are different impetuses for the change in licensing rates. In the Netherlands, there was a need to increase the rates to ensure that local performers and record companies had the near equivalent to previous payments. In contrast, if Option 2 were introduced in the UK and there were no change in licence fees, British record labels and performers would benefit, as they would gain a higher share of the licensing revenue. The need to change the rates would instead be driven by licensees, who might request a reduction in their rates to reflect the fact that US repertoire is no longer in receipt of PPL payments.

Second, the nature of the licensing negotiations will probably be different. In the Netherlands, SENA negotiated for a uniform surcharge that could be applied to all users of its repertoire. In contrast, if Option 2 were implemented in the UK, it would more likely result in the need for each licensee to negotiate individually with PPL if they desire discounts to their fees. As well as resulting in a more difficult environment for licence changes to take place, any reductions would occur in a piecemeal fashion. Consequently, it is difficult to posit an overall reduction figure and project it into the future. The only way this might be possible is if PPL takes the unusual step of offering a blanket discount to all licensees.

Third, there are reasons to believe that the reduction in UK licence rates could be smaller than the increase in the Netherlands. One factor here is that, while there are many precedents for licence fees going upwards, the reduction of tariffs is less common. Moreover, because Option 2 would not result in an increase in rates for UK licensees, there is a chance that they might not demand a significant decrease in those rates at the point of negotiation. It is also possible that some licensees (and the Copyright Tribunal) might accept that this option can provide a way of supporting the interests of UK record companies and performers, and would therefore not press for a reduction of rates that is scaled linearly with the reduction in the amount of repertoire covered by the PPL licence. However, this is probably more likely with broadcasters such as the BBC (which has a remit to support UK music) than it is with licensees who have a greater focus on their financial margins.

Fourth, there are factors that could provide the opposite scenario, meaning that the reduction in UK licence rates would be larger than the Netherlands increase. In fact, there is more likelihood that the UK option would scale linearly with the amount of repertoire covered by the licence. The reason for this (as discussed further in response to question 8) is because, by making US music ineligible for PPL payments, some UK users of music may wish to avoid licence fees by playing US music only. This could have knock-on effects regarding licence negotiations with users who play music from other territories as well. They could threaten to pay US music only and thus prompt a situation whereby there is a general tendency towards a linearly scaled reduction in license fees.

Regarding the extent to which licence prices should change, the music industry has a strong argument for saying this should not be proportionate to the size of the repertoire covered by the licence. If this happened, it would result in Option 2 providing costs rather than benefits to British labels and performers. One reason for this is cited in the impact assessment. Even though PPL would be distributing licence revenue ‘to a smaller pool of rightsholders’ (¶ 99), this proposal would not ‘result in significant savings in PPL’s operational costs’ (¶ 100). As such, a linear reduction would result in UK rights holders and performers receiving the same payment per recording but there would be an increase in the costs payable to PPL and therefore their revenues would decline. Moreover, PPL devotes a proportional share of its revenue to industry and charitable causes, the majority of which is channelled domestically. Therefore, it would be beneficial to temper the scale of this reduction by avoiding a decrease in licence fees that is scaled to the reduction in the size of the licensable repertoire. Finally, if the licence price was scaled linearly, this could provide greater encouragement to users to increase the amount of US music they play. This would not only result in a decrease in the amount of PPL revenue for UK music, but it would also reduce the opportunities for this music to be promoted.

## 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:

This question rests on the assumption this option would result in savings for broadcasters and licensees, as they would need to pay less money to PPL. However, that scenario would be dependent on the negotiation of licence fees discussed in response to the question above. The impact assessment notes that its calculations ‘are based on two assumptions that may not hold true’ (¶ 141). The first is that the amount of US music played on the radio and in the public will remain steady ‘at approximately 40%’ (¶ 143). The second is that licence fees will reduce by 20% (¶ 145).

In respect of the public performance licensees, the impact assessment is nevertheless probably correct in stating that any potential reduction in the PPL fees payable by each venue owner would ‘in many cases be on the order of hundreds or thousands of pounds per year or less’ and therefore the potential for this to result in ‘lower prices for consumers, higher profits for businesses, or higher wages for staff seems likely to be small’ (¶ 140). The assessment does, however, indicate that the ‘impacts could be significant at the aggregate level’, albeit that it does not provide much analysis of the savings that could accrue to and be passed on from businesses that have multiple establishments (¶ 140). These savings could amount to the hundreds of thousands if there were large scale reductions in license fee tariffs. Moreover, if venues elected to play US music only, they would probably not have to pay any PPL fees and so their savings would be substantial. Whether any savings in licence fees would result in lower prices for consumers would need to be monitored. However, some price reduction could take place if it gives licensees an affordable competitive advantage over their rivals.

In respect of broadcasting, the assessment uses its estimate of licence fee reductions to calculate that this sector could make savings of ‘around £20 million per year’ (¶ 141). It adds that in context of revenues that amounted to £638m in 2021, these savings ‘are notable but relatively small’ (¶ 141). The savings would nevertheless be greater if the reduction in licence fees was scaled linearly with the amount of music exempt from PPL payments. When it comes to the BBC, these savings could help it to satisfy its charter if they were utilised in the promotion of UK music. When it comes to commercial broadcasters, the introduction of this option could have the opposite effect. There is no stipulation that they devote a proportion of their airtime to UK music. Therefore, they could increase their savings by substituting UK repertoire for US repertoire. This might result in increased profits for the broadcasters and decreased profits for their advertisers (¶ 141), but it would be to the detriment of the UK music industry.

## 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:

The answer to this question depends on several factors. In respect of UK labels, it is not clear whether some of them have been receipt of the PPL money that is allocated to US repertoire and, if so, how much of it has been passed on to their US counterparts. If they have been in the practice of retaining a significant portion of it, the introduction of this option would result in costs, as 50% of the PPL money would now have to go to the US performers who made the recordings.

In situations where UK labels have not been in receipt of PPL revenue for US repertoire (or alternatively have been passing most of it on), these labels and their performers could experience some of the benefits outlined in the impact assessment. They could receive higher direct payments from PPL if the reduction in licence fees is not scaled linearly with the reduction in the amount of licensable repertoire. This is because the remaining repertoire of licensable music would be in receipt of higher payments per recording from PPL. Using its calculations relating to the popularity of US repertoire and reductions in licensing rates, the impact assessment calculates that UK labels and artists would get equal shares of an extra £269.9m that would accrue over the period 2024-2033 (¶ 138).

However, if the reduction the licence fee is scaled linearly, this would result in a direct loss for the UK labels and performers. As noted in response to question 4, this is because PPL’s costs would either remain fixed or increase, and labels and artists would therefore be accountable for a higher proportion of them (¶ 100). The impact assessment calculates that if licence prices do adjust proportionately to the change in music repertoire, it would result in UK labels having to pay an extra £106.1m over the 2023-2033 period (¶ 149). If this were to happen, it posits that this would result in ‘less investment in new UK artists, which could make UK music less competitive internationally’ (¶ 150). In addition, UK labels and performers would lose out from the proportional reduction in PPL revenue devoted to industry and charitable causes.

Looking at the more positive scenario for the British music industry, the impact assessment argues that if UK labels gain increased remuneration from PPL they ‘might invest this into new music (e.g., increased marketing or touring for their artists to reach new audiences or increased spend on the production of new recordings)’ (¶ 147). This would need to be monitored as the links between revenue and investment are not clear. For example, the growth of streaming has resulted in increased recorded music revenue in the UK, rising from a total of £969m in 2017 to £1.3bn in 2022 (BPI All About the Music 2023: 17). This revenue has been accompanied by lower costs for record labels because streaming entails no expenses on manufacture or physical distribution. However, while there is evidence of the labels enjoying increased profits (Page Economics of Music Streaming Inquiry 2020: 10), their spend on A&R has fluctuated and their spend on marketing has gone down (Hesmondhalgh et al. Music Creators’ Earnings in the Digital Era 2021: 126).

Another factor that would need to be monitored is whether any gains in PPL revenue would be outweighed by the indirect effects of this option, which

could result in overall costs to UK labels and performers (see question 9). This is because the public performance and broadcast of recordings serve a promotional purpose: they drive the streaming and sales of music and therefore can matter as much in their ability to increase these other revenue streams as they do in their own financial terms. Here, it should be noted that, although PPL payments have increased considerably in the current century they remain below these other income sources. At £238.7m in 2022, they made up 17% of UK record industry revenue, whereas sales and streams made up 80% (BPI All About the Music 2023: 17; PPL 2022 Transparency Report: 10). If the introduction of Option 2 encourages licensees to play more US music and less UK music, the former will also be more successful when it comes to streams and sales.

## 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:

The impact assessment assumes that, even though PPL would be distributing licensing revenue ‘to a smaller pool of rightsholders’ (¶ 99), this proposal would not ‘result in significant savings in PPL’s operational costs’ (¶ 100). This is probably correct given that PPL would ‘continue to license music to the same number of users’ and would ‘need to maintain the physical and digital infrastructure to support its activities’ (¶ 100). There is also a possibility that PPL’s costs would increase rather than stay the same. This is because, as the assessment notes, it would be involved in ‘more complex licensing negotiations […], which will impose additional operational (legal) costs on PPL (¶ 100). The assessment also indicates that ‘Those costs are likely to be significant, especially if the matter is referred to the Copyright Tribunal’ (¶ 146).

## 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:

The impact assessment prevaricates on this point. On the one hand, it ‘implicitly’ assumes that British and American music ‘are not substitutes, so demand for UK music is unresponsive to a fall in the relative price of US music’ (¶ 93). On the other hand, it says, ‘We have chosen not to model this effect because of a lack of data on which to base any modelling, rather than because we expect that substitution effects will not arise’ (¶ 94). Overall, it underestimates the impact on four fronts.

First, contrary to the impact assessment (¶ 85), US music can provide a substitute for UK music. This can be evidenced through proportionate growth and decline. Although it should be reiterated that the streaming and sales of albums does not provide an accurate proxy for broadcast and public performance (¶ 90), the BPI figures referenced in the impact assessment do help to demonstrate changing tastes. The assessment refers to the year 2017, when album sales were split 40% to US repertoire and 48% to UK repertoire, and single sales were split 40% to US repertoire and 41% to UK repertoire. Tables 1 and 2 show that, over the longer term, US music is displacing UK music. In 2012, album sales were 34% to US repertoire and 52% UK repertoire. By 2022, they were 48% to US repertoire and 39% to UK repertoire. The transformation for single sales and streams, which perhaps offers a better comparison with broadcast and public performance, was less stark, but still shows US music progressing at the expense of UK music. In 2013, they were oriented 37% to US repertoire and 44% UK repertoire; by 2022 they were 43% to US repertoire and 39% to UK repertoire. The substitutional quality of repertoire can also be evidenced through the policy work of UK Music and the BPI. These institutions are campaigning for support for the UK export trade because other countries are now having greater success with their own exports. Along with the threat of growing markets for Latin American, African and Asian music, there is a continuing focus on the US, given its dominance of the global music business (BPI All Around the World 2021: 5; UK Music This is Music 2022: 16). Moreover, the nature of this music should also be considered. UK and US labels prioritise their artists for global success and consequently stylistic differences in the countries’ outputs can be insignificant. This is reflected in the practice of collecting societies, which refer to a single ‘Anglo-American repertoire’. There are, of course, exceptions to this homogeneity, particularly in more localised genres. Nevertheless, it would probably be possible for some UK broadcasters and venues to restrict themselves to playing US-originated music only without their patrons realising they have been deprived of British repertoire.

Second, the desire of users to reduce or escape licensing fees is stronger than outlined in the impact assessment. Notably, although many uses of recorded music involve payments for both the copyright in the musical composition and the copyright in the sound recording, there are attempts to halve this by paying for the composition only. This includes the use of interpolations in place of digital samples, whereby an original recording is recreated and thus does not incur licensing payments. Similarly, there are advertisers who use a recreation of a recording to avoid paying out on the copyright for the original version. This practice also happens in public performance and broadcast contexts, whereby some retailers utilise radio companies that play licence-free cover versions so they do not have to pay PPL fees. Given this history, it is not hard to envision that Option 2 would provide an environment in which some establishments and broadcasters seek to avoid PPL payments by playing US music only. As with the other examples noted above, they would still have to pay for the use of compositions, but their license payments would be approximately halved.

Third, the ability of licensees to reduce or escape licensing fees is stronger than presented. In respect of broadcasting, the impact assessment is correct in noting that the BBC is committed to playing a certain proportion of UK music. Commercial radio has a larger share of the overall audience, however, and it does not have the same broadcasting commitments. In respect of public performance, the assessment argues that the ability of users to avoid PPL fees by playing US music only will be ‘constrained’ as repertoire is licensed through a joint PPL-PRS licence. However, this licence does not entail a 50:50 split of revenues between the rights in the composition and the rights in the recording. Moreover, each licence is calculated according to a number of variable factors. It would be expected that these tariffs could include complete avoidance of payment for the recording and performance if the music employed does not come under the remit of PPL.

Fourth, the impact assessment does not give enough consideration to knock-on effects. As noted in response to question 4, if licensees can avoid paying license fees by playing US music only, this could have ramifications regarding the licence negotiations for users who play music from other countries as well. They could threaten to pay US music only and thus prompt a situation whereby the reduction in license fees scales linearly with the reduction in the size of licensable revenue. Moreover, as noted in response to question 6 above and question 9 below, if licensees increase the amount of US repertoire they use, this will not only have an effect in respect of the PPL payments for UK music; it will also have knock-on effects regarding the promotion of US sales and streams. The result could be a downward trend for UK repertoire across all sources of revenue.

## 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:

As noted in response to question 6, the impact assessment suggests that the termination of licensing money for US repertoire could lead to less investment by US labels in new music (¶ 149). This would appear unlikely. First, in some instances the PPL money for US repertoire might be being retained by their UK label partners; in these instances, the introduction of Option 2 will have little impact on the US labels. Second, for those US labels who are in receipt of PPL money, the loss of these payments would be insignificant when compared with their overall revenue (¶ 128). Third, the main reason why there are no performing rights for recordings in the US is because American broadcasters have successfully argued that their services promote the record labels’ primary activities of record sales and streams (Osborne Owning the Masters 2023: 55-6, 91-2, 113-15). Thus, given that Option 2 could lead to more US music being played, it could drive sales and streams and therefore result in an increase in the revenue that US labels have available to invest in new domestic repertoire. Correspondingly, if US music is played at the expense of UK music, it is British labels who could suffer and there would be less money to invest in new UK music.

A second issue to consider is that PPL is not solely concerned with the collection and distribution of broadcast and public performance royalties. It also makes anti-piracy protection and industry contributions that are proportionate to its revenue. These contributions amounted to £3.5m in 2022 (PPL 2022 Transparency Report: 9). £942,000 of this went to international and multinational trade bodies, but the remaining £2.5m was distributed between the UK institutions BPI, UK Music and AIM. Similarly, PPL makes charitable donations proportionate to its revenue, the majority of which relate to British music projects (PPL 2022 Transparency Report: 9). Therefore, one of the indirect costs of the reduction in licence revenues would be a diminution of the funding of UK music organisations and charities.

The impact assessment considers whether the withdrawal of payments for US repertoire might ‘incentivise the US to introduce rights of broadcasting and public playing in its domestic law, in order to allow its record labels and performers to qualify for these rights in the UK’ (¶ 154). If this happened, it would also result in UK labels and artists gaining payment for the broadcast or public performance of their recordings in the US. However, as the assessment also notes, this outcome seems unlikely (¶ 76). The US broadcasting industry has successfully rebuffed any such proposals since the 1930s and the financial implications of PPL payments are marginal in relation to overall US recording industry revenues. Moreover, as indicated above, the profits that the US recoding industry could make from the increased promotion of its repertoire could balance or outweigh the direct losses from the withdrawal of PPL revenue. In addition, it appears likely that Option 2’s methodology of denying payments to the US would be counteracted by developments in the European Union, where a European Court of Justice ruling could result in several countries having to transform their copyright methodology so they distribute public performance and broadcast revenues for US repertoire on a national treatment basis.

Ultimately, although the main costs of this option appear to lie with the US music industry, the negative ramifications may weigh more heavily on the music business in the UK.

From the perspective of UK consumers, the implementation of Option 2 would not necessarily result in them receiving ‘less music, or music of a lesser quality’ (¶ 107(c)). It could, however, result in them receiving less music from their home country.

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

Provide answer here:

The tensions that result from this option are unavoidable. Although strong arguments can be made against imposing a reduction in licence payments that scales linearly with the reduction in the size of licensable repertoire, it would probably not be possible to impose a licence payment on those who deliberately play US music only. Therefore, at least one form of linearity would be introduced, as those who play no PPL repertoire would pay no PPL fee. Consequently, it would become difficult to calculate what is appropriate in broadcast and public performance situations where both British and American music is being played. British rightsholders and musicians would argue against a linear reduction in payments, as it would worsen their situation; British licensees might argue that linearity needs to be introduced uniformly, otherwise some users of music would be advantaged over others. One way around this impasse could be to introduce a quota system whereby all users of music have to play a certain amount of UK repertoire, but this would probably have little appeal to licensees or to the public and it would be difficult to implement.

# 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:

In respect of the extent to which the prices for the broadcasting and public playing of recorded music will change, the impact assessment’s calculations for Option 3 face the issues outlined in my responses to questions 2 and 4. First, they rest on an assumption that 40% of PPL collections relate to music of US origin (¶ 88). This assumption is questionable because it uses a figure from 2017 that relates to sales and streams and which is unlikely to work as an accurate proxy for broadcasts and public performances (¶ 90). Second, they assume that the relative popularity of US and UK repertoire is fixed (¶ 91, ¶ 93), whereas it fluctuates over time. Third, they assume that the introduction of new eligibility rules will not result in further changes in the demand for US and UK music (¶, 91, ¶ 93, ¶ 95, ¶ 96), but there is a likelihood that licensees will seek the cost-benefits of using more US music (¶ 176, ¶ 177, ¶ 181).

Fourth, they assume that the reduction in licence prices will be equivalent to 50% of the reduction in licensable repertoire (¶ 83). This assumption rests on an inverse example of licensing in the Netherlands, which probably provides an inaccurate proxy (¶ 88).

Option 3 has a cut-off point that further complicates the impact assessment’s calculations. All US repertoire prior to the date of implementation will receive remuneration in the manner of Option 1; all US repertoire following implementation will be ineligible for payments in the manner of Option 2. As

a result, Option 3 will witness the amount of repertoire that is ineligible increasing over time. The impact assessment estimates both the rate and value of this increase, but takes some questionable steps in doing so. It states that it is ‘not aware of any publicly available data on the age distribution of sound recordings that are broadcast on radio or played in public in the UK’ and consequently uses BPI data on the age of the music that was streamed in the UK in 2021 as a proxy (¶¶ 158-165).

This proxy is unlikely to be accurate. On the one hand, due to charter commitments, some BBC stations have a greater orientation to new music than streaming services do. On the other hand, PPL has data showing that, overall, the broadcast and public performance of music has a greater skew towards back catalogue than is occurring via streaming services.

A further issue is that the impact assessment believes that the pattern of consumption ‘can be generalised and applied to future years’ (¶ 159). Table 3 shows this is not the case. It expands beyond the 2021 BPI data that the assessment employs to include corresponding information for the previous five years:

Table 3: Catalogue Streams

Year(s) music was made % of total streams 2016 2017 2018 2019 2020 2021

1940s 0.05 0.06 0.06 0.06 0.07 0.07

1950s 0.27 0.28 0.33 0.36 0.46 0.43

1960s 1.98 1.99 2.28 2.47 2.69 2.66

1970s 3.32 3.54 4.11 4.58 4.85 5.04

1980s 4.23 4.70 5.06 5.55 6.04 6.34

1990s 5.02 5.75 5.95 5.97 6.17 6.48

2000s 14.07 13.49 12.34 11.70 11.61 12.31

2010-2014 23.97 - - - -

2010-2015 - 25.44 - - - -

2010-2016 - - 25.46 - - -

2010-2017 - - - 29.61 - -

2010-2018 33.72 -

2010s 38.66

2015 22.90 - - - - -

2016 23.80 18.00 - - - -

2017 - 26.70 20.20 - - -

2018 - - 23.30 18.60 - -

2019 21.10 18.10 -

2020 16.30 13.4

2021 14.6

Total 100 100 100 100 100 100

Source: BPI Analysis/Official Charts Company Base: Top 15,000 most-streamed audio tracks

The results show that the popularity of music from the most recent year (defined by the recording industry as ‘new releases’) declined from 23.8% of repertoire in 2016 to 14.6% in 2021. The popularity of music from the previous year (defined by the industry as ‘new releases’) declined from 22.9% in 2016 to 13.4% in 2021. In contrast, the popularity of the remaining older repertoire (defined by the industry as ‘back catalogue’) increased from 53.5% in 2016 to 72% in 2021. Although some of the increase in the popularity of back catalogue is due to the particularities of the streaming market, it should not be assumed that patterns of consumption for public performance and broadcast do not fluctuate as well. Moreover, the introduction of Option 3 could have destabilising effects, as it could encourage some licensees to concentrate on US repertoire that is ineligible for PPL payments.

In relation to how much the licence fees will change, the impact assessment is probably correct in calculating that the overall decrease will be smaller than under Option 2. This is because a smaller (but growing) amount of repertoire would be exempt from payment (¶ 53). It could also be argued that there is less threat of licensees attempting to reduce their payments by playing more US music, as they would only be able to play newer US music for free and thus would have a smaller repertoire to choose from. It is, however, difficult to predict what the reduction will be. Licensees under Option 3 face the same complications as under Option 2. Fees will vary in accordance with how much US repertoire is being employed, the scaling of charges in relation to this repertoire, and how to account for its changing popularity over time. In addition, Option 3 introduces further complications. Licensing negotiations will need to accommodate the fact that the proportion of US music that is ineligible for payment will increase with each passing year and the rate of this increase cannot be generalised. As a result of its methodology, the licensing of this option will entail a complex and iterative process. It is likely be more expensive than Option 2 and this could be factored into licensing fees (¶ 174, ¶ 181).

In respect of the extent to which the prices for the broadcasting and public performance of recorded music should change, the response to question 4 is also relevant here. From a UK music industry perspective, it would problematic if the reduction scaled linearly with size of repertoire covered by the licence. Doing so would result in a direct loss to UK labels performers. This is because, while revenues would be scaled similarly in terms of payment per recording, PPL’s operational costs would not go down and therefore the reduced number of eligible labels and performers would pay more of these costs per head (¶ 81, ¶ 99, ¶ 100). In fact, rather than staying stable, this option poses a stronger possibility than Option 2 that costs would increase. This is due to the expense of its more complex licensing negotiations (¶ 181). Moreover, as PPL revenues go down, there would be a proportionate reduction in the amount of money it could distribute to industry and charitable causes. It would therefore be beneficial to temper the scale of this reduction by avoiding a reduction in the licence fee that is scaled to the reduction in the size of the licensable repertoire.

## 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:

As noted in response to question 5, the calculations that the impact assessment makes are based on ‘assumptions that may not hold true’ (¶ 141), yet the savings that broadcasters and venues make ‘could be significant at the aggregate level’ (¶ 140). Moreover, although it might be thought that savings under Option 3 would be smaller than those under Option 2, the impact assessment acknowledges they would grow over time (¶ 73). According to its own calculations, under Option 2 the amount of repertoire that is exempt from PPL payments would remain at 40%. Under Option 3, it would start out much smaller at 0.4% in 2024 (40% of 14.6%), but if the rates of popularity for new releases, current releases and back catalogue continue, it would rise to 25.12% by 2033 (40% of 62.8%) and would continue to increase thereafter (¶ 160).

The ability of licensees to reflect these changes in the reduction of fees would nevertheless be dependent on their negotiating skills and desires. Also, as the impact assessment notes, the complexity of this option could mean any savings ‘might be undermined by costs on users of negotiating new licences […] especially if agreement cannot be reached and references are made to the Copyright Tribunal’ (¶ 174). There is also a possibility that some users of music would seek to make savings by playing newer US music only and thus avoiding PPL licensing fees. Their ability to do so would not be straightforward, given that the repertoire that is exempt from fees would increase (and become progressively less new) over time. It is therefore possible that companies would come into existence who would charge for advice on how to avoid PPL payments.

Whether any savings in licence fees would result in lower prices for consumers would need to be monitored (¶ 73, ¶ 107, ¶ 172). However, some price reduction could be expected to take place if it gives licensees an affordable competitive advantage over their rivals.

## 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:

As noted in response to question 6, this answer depends on several factors. First, in respect of UK labels, it is not clear whether some of them have been receipt of the PPL money that is allocated to US repertoire and, if so, how much of it has been passed on to their US counterparts. If they have been in the practice of retaining a significant portion of the money, both aspects of this option could result in costs. They would lose licence revenue for pre-2024 US repertoire, as it would now go directly to the performers who played on the recordings. In addition, they would lose all revenue for post-2024 US recordings, as it would be exempt from PPL payments.

In situations where UK labels have not been in receipt of PPL revenue for US repertoire (or alternatively have been passing most of it on), these labels and their performers could experience some of the benefits outlined in the impact assessment. They could receive higher direct payments from PPL if the reduction in licence fees is not scaled linearly with the reduction in the amount of licensable repertoire. This is because each use of UK music would gain a higher payment from PPL. Employing the assumptions that 40% of repertoire is of US origin and that payments will reduce by 50% of the reduction in licensable repertoire, the impact assessment calculates that over the period 2024-2033, UK labels and artists would receive equal shares of an extra

£130.1m generated under this option (¶ 79).

It has been argued that if UK labels gain increased remuneration from PPL, it would result in greater investment in new British music (¶ 180). However, as noted in response to question 6, this would need to be monitored, as the links between revenue and investment are not straightforward.

There is also the chance that the reduction in licence fees would be scaled linearly. If this were the case, there would be a direct loss for UK labels and performers, as PPL’s costs would either remain fixed or increase, and they would be accountable for paying a higher proportion of them (¶ 100, ¶ 181). UK labels and performers would also lose out from the overall reduction in PPL licence receipts because this would impact on the proportional share of these receipts that could be devoted to industry and charitable causes.

If we turn to the indirect effects of Option 3, there could be further costs to UK labels and performers, which could be to the detriment of new UK music. As previously noted, the public performance and broadcast of recordings serve a promotional purpose: they drive the streaming and sales of music and can therefore matter as much in their ability to increase these other revenue sources as they do in their own material terms. Therefore, if this option encourages licensees to play more US music and less UK music, the resultant promotion of US repertoire could result in it being more successful when it comes to streams and sales. Moreover, because Option 3 drives the promotion of contemporary US music, this could provide opposite scenarios to those presented in the impact assessment. First, it could lead US labels to invest more in new US music (¶ 107, ¶ 186). Second, it could reduce the ability of UK labels to promote new UK music (¶ 180).

## 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:

As noted in response to question 11, the complexity of Option 3 could result in considerable licensing costs, as the conditions of each licence would change every year in relation to the amount of US repertoire each licensee plays that is exempt from PPL licensing (¶ 174). They could also change in relation to whether the reduction is scaled linearly with the amount of exempt repertoire and, if it is not scaled linearly, whether the proportional reduction is the same for all licensees and if it fluctuates over time. Given these variables, it is unlikely that PPL could introduce a uniform change that would apply to all licensees. Instead, each licence would need to be negotiated individually and repeatedly. Moreover, if there is conflict over the scale of the reduction, this could result in negotiations being referred to the Copyright Tribunal (¶ 174).

Although it is difficult to quantify the costs, they would probably be significant on both an upfront and ongoing basis. They would also be expensive for both PPL and licensees. In addition, as noted in response to question 12, while some licensees could avoid costs by opting to play PPL-exempt US music only, they could have a new administrative expense of paying for advice about the PPL-status of US repertoire.

## 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:

Option 3 could prompt users to adjust the amount of UK music they play. The response to question 8 above indicated several factors that run counter to the analysis in the impact assessment: US music can provide a substitute for UK music (¶ 91, ¶ 108); there is a strong desire among licensees to reduce or escape their PPL payments (¶ 93, ¶ 177); licensees have the ability to reduce or escape their PPL payments (¶ 95, ¶ 96); and, if licensees can threaten to play PPL-exempt music only, this could prompt a situation whereby the reduction in license fees does scale linearly with the reduction in the size of licensable revenue.

It could be argued there is less danger of any of this happening with Option 3 than with Option 2. This is because it is only newer US music that is exempt from payments and therefore it offers reduced savings (¶ 172). However, as time progresses Option 3 will come close to matching Option 2 in the amount of repertoire that is exempt. Moreover, some broadcasters and venues could make a virtue of concentrating on new music only. The fact that this music is of US origin might be lost on many UK listeners. This scenario would, however, have negative effects for the UK music industry. It would result in new US music gaining greater broadcast and public performance exposure than UK music, which in turn could result in it attaining more streams and sales (¶ 177).

## 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:

As noted in response to question 9, the impact assessment suggests that the reduction in licensing money for US repertoire could lead to less investment by US labels in new music (¶ 186), which in turn could ‘result in less music, or music of a lesser quality, to be enjoyed by UK consumers’ (¶ 107(c)). This would appear unlikely. On the one hand, if there are currently instances where UK labels are retaining the money for US repertoire, the introduction of this option would make no financial difference to their US label partners. On the other hand, if US labels are being paid this money, any direct loss of payment would be insignificant when compared with their overall revenues (¶ 153). Moreover, as noted in response to question 15, it could be argued that Option 3 will have fewer ramifications than Option 2. This is because in its initial stages a smaller amount of repertoire will become ineligible for PPL payments (¶ 63).

The impact assessment assumes this option would provide lower costs to US labels with older repertoire (which would still receive PPL money, although in many instances a higher proportion would go to the performers and these payments would be non-recoupable from the performers’ advances) than it would to US labels that concentrate on new releases (which would receive no PPL money). It calculates that over the period 2024-33, the introduction of this option would result in US owners of pre-implementation recordings facing a reduction of £119.3m in PPL payments when compared with the current methodology (¶ 52(a)). Meanwhile, the owners of US music made after the changes come into force would be £395.3m worse off than if the system remained unchanged (¶ 52(b)).

If we consider the indirect effects of this option, the owners of new US repertoire could nevertheless enjoy some advantages. It is only contemporary music that is exempt from PPL payments. Therefore, some UK licensees might attempt to avoid fees by concentrating on this music and consequently it could gain greater promotion.

The impact assessment believes Option 3 would result in more money for the UK music industry, which might be invested in new music (¶ 180). However, because this option could result in new US music gaining more promotion than new UK music, it might indirectly affect the UK industry in the opposite manner. Moreover, because it is new music that is in question, the results could be particularly acute. The future of any recording industry in the global environment is secured through the successes of its most recent repertoire.

From the perspective of UK consumers, the implementation of Option 3 would not necessarily result in them receiving ‘less music, or music of a lesser quality’ (¶ 107(c)). It could, however, result in them receiving less new music from their home country.

Finally, given that the reduction in PPL payments would initially be significantly smaller than under Option 3, this option would be less likely to ‘incentivise the US to introduce rights of broadcasting and public playing in its domestic law, in order to allow its record labels and performers to qualify for these rights in the UK’ (¶ 154). Therefore, there would be little chance of it resulting in UK labels and artists gaining new payments for the broadcast or public performance of their recordings in America.

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

Provide answer here:

Option 3 parallels Option 2 in that there are inherent tensions in the proposal. It will probably not be possible to impose licence payments on those who play new US music only. Therefore, at least one reduction in licence payments would be introduced that scales linearly with the size of licensable repertoire. Once this precedent is set, it could encourage other licensees to campaign for a reduction in license fees that it is scaled linearly with the amount of non-PPL music that they play.

# Preferred Option

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

Option 1

Provide answer here:

The impact assessment has indicated that the protection for foreign sound recordings must change. Therefore, it is not possible to select Option 0 as it preserves the status quo. The assessment discounts this option on the following grounds: 'There would be no reduction to the costs of UK users to license foreign music and no increase to the revenues of UK creators. UK law would also continue to not be clearly aligned with the international treaties on copyright' (¶ 55).

The impact assessment also discounts Option 2. Although it ‘would result in substantial savings for UK users of foreign music’ and ‘could also increase revenues for the UK industry, by providing UK record labels and artists a greater share of UK broadcasting and public paying revenues’ (¶ 58), it might also ‘lead to significant reductions in UK music industry revenues, […] depending on how music licence prices and consumption of music adjust’ (¶ 59). The assessment also warns that changing the rules for recordings that had previously gained remuneration ‘might damage investor confidence and lead to reduced investment in the UK music industry (¶ 60).

The impact assessment therefore notes that the IPO is ‘currently considering Options 1 and 3’ and indicates it is leaning towards the latter option because it ‘appears to satisfy our objectives’ (¶ 66). The assessment notes, however, that ‘Option 3 also carries risks to the UK Industry’ for which it is seeking evidence via this consultation.

I believe the risks of Option 3 are too great. As noted in response to questions 12 and 17, there is a possibility that the reduction in PPL licence fees will scale linearly in reduction to the decrease in the size of licensable repertoire. PPL’s operational costs would meanwhile remain fixed or increase, and the result could be an overall reduction in the revenue for UK repertoire. Moreover, any reduction in PPL revenue would reduce the funds it can provide for industry and charitable causes. In addition, as noted in response to question 15, the impact assessment underestimates the extent to which licensees will substitute US music for UK music. As well as resulting in a direct loss in PPL revenues for UK repertoire, this substitution could lead to US repertoire gaining greater promotion via broadcast and public performance, which in turn could result in it gaining greater sales and streams. The impact assessment assumes these risks are ‘smaller’ than under Option 2 (¶ 66), but it does not fully consider the fact that Option 3 would eventually come close to matching Option 2 in the amount of US repertoire that exempted from PPL payments. Additionally, it does not consider the fact that Option 3 could result in UK licensees increasing the amount of new US music they use as they attempt to reduce or avoid PPL licence payments. Consequently, this music would gain promotional benefits at the expense of UK repertoire.

Option 1 is my preferred option. This is not only because it ‘poses lower risks’ than Option 3 (¶ 66), while also ensuring ‘consistency between UK copyright law and the international treaties on copyright’ (¶ 57). This option also resolves an inequitable situation. As noted in response to question 1, not only have the current measures in the CDPA resulted in record company owners of sound recording copyright receiving national treatment while performers only have material reciprocity, but PPL’s rules also stipulate that in situations where performers ‘have no right to equitable remuneration […] all such monies shall be allocated to the relevant Record Company (or Companies)’. There has been no guarantee that the record companies pay this money on to their performers and, if they do, whether it is paid at a 50% licence rate. Option 1 would ensure a more even division of the money between labels and recording artists.

One argument against Option 1 is that it could be inequitable in a different way. US labels and performers would gain equitable remuneration for the public performance and broadcast uses of their music in the UK, but there would be no encouragement for US legislators to provide equivalent rights to UK labels and performers. However, it should be noted that there is an exchange of payments under the current system. The US accords sound recording-related performing rights for non-interactive streaming and satellite radio. These uses of music are licensed via the collecting society SoundExchange and there is international exchange of revenues with partner collecting societies such as PPL. Although the UK market for non-interactive streaming and satellite radio is insignificant, these services generate considerable amounts of revenue in the US. In 2022, SoundExchange and US performer unions distributed £16.9m to PPL for this use of UK repertoire. This represented the largest amount of money PPL received from any international territory. In return, PPL distributed £2.9m to these US organisations for the same use of music. Not only does Option 1 allow for this exchange of payments to continue, but it also avoids damaging investor confidence and risking a reduction of investment in UK music.

Lastly, there is the subject of financial data. On the one hand, I believe Option 1 is worth pursuing regardless of some doubts I have expressed about the impact assessment’s calculations. On the other hand, there remains a need to undertake further research to assess current practice and how it will be transformed by this option’s implementation. Most notably, there is need for accurate figures about the amount of PPL revenue that is distributed for the broadcast and public use of US repertoire in the UK and how this has changed over time. There is also a need to determine how much of this revenue has been distributed to UK labels, how much to US labels, and how much to US performers. It is only on gaining this information that the full impact of this option can be gauged.

# Confidentiality and data protection

## Confidentiality request:

Provide answer here:

I am happy for my details to be made public.