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Submitted to Consultation on extension of rights in sound recordings and performances to foreign nationals Submitted on 2024-03-22 08:37:04

# Introduction

## What is your name?

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## What is your organisation?

Organisation:

Music Artists Coalition (US)

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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:

# 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 IPC’s assessment that U.S.-based record labels are likely to see the highest impact under Option 1 – by virtue of the redistribution of a portion of monies currently received for radio play from labels and producers to artists and creators – is correct. U.S.-based labels can count on these existing payments as free-money: with little-to-no effort they can reap hundreds of millions of dollars. Indeed, this century has seen the gutting of radio promotion departments within record label companies as they reduced workforces to drive profits.[1] Where such labels may have once made the argument that they steered their artist’s music into DJ’s hands – and thus deserved a bigger piece of the pie tied to radio play – today, that money and those teams, if they exist at all, are directed at the new shiny toy: digital streaming.[2]

The IPC also wisely recognizes that there would be some costs to U.K.-based artists and labels who work with foreign performers not currently eligible for PPR should Option 1 be implemented. However, one must also ask who, if anyone, selects their collaborators based on whether or not they would receive a portion of this particular pie. Our members, including many U.K. nationals, choose who they work with based on who can help them achieve their vision, create works they can be proud of, and showcase it to the entire world. While some artists may not be able to work with a desired collaborator because of the cost of the fee to engage that person, the PPR monies at question here are generally negotiated based on the level of involvement of that person, and not on their clout, fame, or fee. By way of example, if an artist engaged two persons who were eligible for PPR, and one was paid a large fee and one was not paid a fee at all, those individuals would be eligible to receive the same percentage of PPR monies if they have provided the same level of services.

While our organization agrees with the IPC and do not foresee a cost to U.K. consumers and users should Option 1 be implemented, we believe that U.K. based fans and creators would see great benefit. Artists invest in themselves – more money means they can make more music, can go abroad to tour, and bring in their desired collaborators. Focusing on touring in particular, artists across the world have rung the alarm regarding the increased costs of touring[3] – which is one of, if not the primary source of income for musicians. Like radio promotion, the well of support offered by record labels with regards to touring – particularly for new and emerging artists – has, by and large, dried up. This has left musical artists – who already receive paltry rates for streaming and have been decimated by the one-two punch of music piracy and the slow response to it by labels and lawmakers alike – unable to afford international (and even extensive U.S. national) touring.[4]

It is not a stretch to see that, under Option 1, foreign artists would have greater means to come to the U.K. to tour, delighting fans and boosting the entertainment sector of the U.K. economy. The musical bond between the U.S. and the U.K. is one American musicians relish the opportunity to participate in — having the resources to visit the U.K. and showcase their work is a large part of what will continue to drive that bond.

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1. See Elias Leight, Universal Music Group Trims Radio Expenses as Format’s Influence Wanes, BILLBOARD, 3 March 2023,

[https://www.billboard.com/pro/radio-promotion-costs-cut-universal-music-group/;](http://www.billboard.com/pro/radio-promotion-costs-cut-universal-music-group/%3B) see also Donovan Watkis, Radio No Longer Breaking Artists, Major Labels Switching From “On Air” Promotions To Streams, March 2023, WORLD MUSIC VIEWS,

https://worldmusicviews.com/radio-no-longer-breaking-artists-major-labels-drawing-back-from-on-air-promotions.

1. See Glenn Peoples, Will Ad Revenue Improve in 2024? A New Survey Predicts a Rebound – But Not for Everyone, BILLBOARD, 5 January 2024, [https://www.billboard.com/pro/ad-revenue-2024-social-media-digital-rise-radio-flat/;](http://www.billboard.com/pro/ad-revenue-2024-social-media-digital-rise-radio-flat/%3B) see also Geoff Mayfield, As Streaming Dominates the Music World, Is Radio’s Signal Fading?, VARIETY, 10 February 2021, https://variety.com/2021/music/news/radio-signal-fading-streaming-1234904387/
2. See James Tapper, ‘I can’t keep making a loss’: bands shun UK festivals as touring costs rise, THE GUARDIAN, 2 July 2023, [https://www.theguardian.com/music/2023/jul/02/bands-shun-uk-festivals-touring-costs-rise-musicians;](http://www.theguardian.com/music/2023/jul/02/bands-shun-uk-festivals-touring-costs-rise-musicians%3B) see also, Sam Kemp, Lorde on economic realities of touring: “a demented struggle to break even or face debt”, FAR OUT MAGAZINE, 11 November 2022,

https://faroutmagazine.co.uk/lorde-on-economic-realities-of-touring/

1. See Michael Hann, ‘You’re doing it purely for the exposure’: why many musicians can no longer afford to tour, THE GUARDIAN, 28 October 2022, [https://www.theguardian.com/music/2022/oct/28/youre-doing-it-purely-for-the-exposure-why-many-musicians-can-no-longer-afford-to-tour/;](http://www.theguardian.com/music/2022/oct/28/youre-doing-it-purely-for-the-exposure-why-many-musicians-can-no-longer-afford-to-tour/%3B) see also Jenna Benchetrit, Can musicians keep their shows on the road? Heavy costs make touring unrealistic for many acts, CANADIAN BROADCASTING CORPORATION, 12 November 2022, [https://www.cbc.ca/news/entertainment/concert-tours-inflation-covid-1.6649617](http://www.cbc.ca/news/entertainment/concert-tours-inflation-covid-1.6649617) and Arun Starkey, The Price of Music: Artists explain how the monumental expenses of touring make it an unfeasible reality, FAR OUT MAGAZINE, 15 March 2023, https://faroutmagazine.co.uk/the-price-of-music-artists-touring.

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

Provide answer here:

As advocates for recording artists whose music finds its way to millions of listeners via terrestrial radio, we have observed up-close the continued power of this broadcasting form, even as technological advances have shifted a large percentage of listening to digital formats. Radio has, since its invention and earliest days as a platform, been one of the primary sources from which consumers hear new music, engage in new sounds, and begin their fandom of artists. It is, in essence, a crucial first step in the economic waterfall that begins with an inspired musician and ends with the billions of dollars at stake across the entire music industry.

American artists have always been denied remuneration for the performance of their creations on radio – sitting by as others reap the financial benefits alone.[1] But organizations like ours and American musicians throughout time have long recognized the unfair nature of this arrangement.[2] It is, tragically, a remaining vestige of a previous era, when the power imbalance between artists and record labels was so stark, even the largest artists in the world struggled to make ends meet. Many of these shackles have been broken by great effort and advocacy, across nations, driven by artists and fans alike – matters such as copyright reversion, onerous management agreements, unachievable recoupment accounts, and unconscionable recording agreements have seen great advances in the direction of fairness over the last half-century. And still, one of the original forms of music discovery – radio – remains stuck in a bygone era.

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1. See Karl Evers-Hillstrom, Musicians, broadcasters battle in Congress over radio royalties, THE HILL, 29 June 2021, https://thehill.com/business-a-lobbying/business-a-lobbying/560639-musicians-broadcasters-battle-in-congress-over-radio.
2. Senator Alex Padilla (D-California) and Marsha Blackburn (R-Tennessee), AM and FM Radio Do Not Pay Royalties to Artists — That’s Un-American: Guest Post by Senators Alex Padilla and Marsha Blackburn, VARIETY, 21 June 2023,

https://variety.com/2023/music/opinion/radio-royalties-un-american-senators-alex-padilla-marsha-blackburn-1235650283/; see also SoundExchange, Statement on AM/FM Radio Royalty Loophole, SOUNDEXCHANGE.COM,

[https://www.soundexchange.com/advocacy/closing-the-amfm-radio-royalty-loophole.](http://www.soundexchange.com/advocacy/closing-the-amfm-radio-royalty-loophole)

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:

## 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:

## 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:

## 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:

## 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:

## 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 IPC raises a particular concern here: that reductions in revenue for U.S. labels could restrict their ability to invest in new artists, stating, “[w]hile this will primarily affect US musicians (rather than UK musicians), it may in time affect the quality and quantity of music available to the UK public.” There are two aspects to this concern our organization wishes to raise.

First, U.S labels have long shifted their investment strategy, including by taking equity positions in digital streaming platforms,[1] not for the artists, but for their shareholders.[2] These labels have concentrated their resources in two places: established artists and pumping their own corporate profits.[3]

Second, U.S. labels invest great resources in U.K. artists, developing them as part of the recognition of the global reach of talent and music. Were Option 2 implemented and this concern come to fruition, U.S. musicians would be “primarily affect[ed]” only in the sense that U.S. labels sign more U.S. than U.K. artists, but make no mistake – U.K. based artists, whose music regularly sits at the top of the U.S. charts,[4] would be severely impacted as well.

Recognizing the unique combination of marketing, promotion, and support needed to “break” U.K. artists in the U.S., U.S. labels would be more likely to withdraw from investing in the U.K. talent pool and concentrate their efforts on less-costly investments in the U.S..

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1. See Tim Inham, Who Really Owns Spotify?, ROLLING STONE, 23 February 2020,

[https://www.rollingstone.com/pro/news/who-really-owns-spotify-955388/;](http://www.rollingstone.com/pro/news/who-really-owns-spotify-955388/%3B) see also Ben Sisario, New Service Offers Music In Quantity, Not by Song, THE NEW YORK TIMES, 13 July 2011, [https://www.nytimes.com/2011/07/14/technology/spotify-music-streaming-service-comes-to-us.html.](http://www.nytimes.com/2011/07/14/technology/spotify-music-streaming-service-comes-to-us.html)

1. Peter Kafka, The big music labels are selling big chunks of their Spotify stakes, VOX, 7 May 2018, [https://www.vox.com/2018/5/7/17326590/spotify-warner-sony-equity-sales](http://www.vox.com/2018/5/7/17326590/spotify-warner-sony-equity-sales)
2. See Amy X. Wang, Music’s Big Three Labels Make $19 Million a Day From Streaming, ROLLING STONE, 25 February 2019, [https://www.rollingstone.com/pro/news/musics-big-three-labels-19-million-a-day-from-streaming-798749.](http://www.rollingstone.com/pro/news/musics-big-three-labels-19-million-a-day-from-streaming-798749)
3. See Spotify, The Top Songs, Artists, Podcasts, and Listening Trends of 2023 Revealed, SPOTIFY 2023 WRAPPED, 29 November 2023, https://newsroom.spotify.com/2023-11-29/top-songs-artists-podcasts-albums-trends-2023; see also, International Federation of the Phonographic Industry, IFPI Global Charts, IFPI, [https://www.ifpi.org/our-industry/global-charts;](http://www.ifpi.org/our-industry/global-charts%3B) see also, George Griffiths, Billboard hails new UK invasion of USA by Ed Sheeran, Adele and more as "strongest in 30 years", OFFICIAL CHARTS, 11 November,

[https://www.officialcharts.com/chart-news/billboard-hails-new-uk-invasion-of-usa-by-ed-sheeran-adele-and-more-as-strongest-in-30-years34413 and Gary Trust, Official Charts Company CEO Martin Talbot on Adele, Ed Sheeran & the Importance of the U.S. Market, BILLBOARD, 9 November 2021, [https://www.billboard.com/music/music-news/martin-talbot-official-charts-company-ceo-interview-9657111.](http://www.billboard.com/music/music-news/martin-talbot-official-charts-company-ceo-interview-9657111)](http://www.officialcharts.com/chart-news/billboard-hails-new-uk-invasion-of-usa-by-ed-sheeran-adele-and-more-as-strongest-in-30-years)

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

Provide answer here:

The Music Artists Coalition appreciates that the IPC recognizes that Option 2 is unadvisable. Indeed, the risks and associated confusion caused by a patchwork approach to the PPR are too great to proceed with Option 2. The downward pressure on license costs and associated dip in investor confidence are just two of the reasons that Option 2 would be untenable.

We do wish to press a particular aspect raised by the IPC throughout the consultation: that the U.S. does not provide similar PPR rights (or reciprocity) for the rights contemplated under this consultation (though, we do note, that regarding digital performance rights, SoundExchange has distributed over $20 Billion U.S. Dollars since 2003 and was on pace to distribute over $1 Billion U.S. Dollars in 2023 alone[1] – money that includes distributions to U.K. artists, who receive fifty percent of the monies generated by their performances on digital and satellite radio directly and without regard to recoupment or national origin). This is something our organization seeks to change in the U.S. through new legislation.[2] We applaud and encourage the IPC’s consultation in part because we believe the U.S. must follow suit and provide this type of PPR to U.S. and international musicians alike. We face an uphill battle, against multi-national corporations. We see Option 1 as a template for this change in the U.S. Our members, who again include U.K. nationals, deserve this renumeration across the globe.

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1. SoundExchange, SoundExchange Distributes $257M In Digital Royalties To Creators In Q3 2023, SOUNDEXCHANGE.COM, 13 October 2023, [https://www.soundexchange.com/2023/10/13/soundexchange-distributes-257m-in-digital-royalties-to-creators-in-q3-2023.](http://www.soundexchange.com/2023/10/13/soundexchange-distributes-257m-in-digital-royalties-to-creators-in-q3-2023)
2. American Music Fairness Act of 2022, H.R.4130, 117th Congress (2021-2022)

# 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:

## 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:

## 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:

## 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:

## 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:

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

Provide answer here:

Option 3 presents a solution apt to cause extensive confusion and disharmony in the music space. Retroactively applying PPR to U.S. based artists would be a welcome gesture, but implementation would likely be difficult and come at great cost to the U.K. government. U.S. recording contracts remain remaining heavily tilted in favor of labels.[1] While there have seen some advances in fairness, particularly when it comes to artists access to (non-radio) PPR monies and regaining their copyrights from their labels after a period of time, many artists (indeed, many of the greatest artists of all time[2]) have not, do not, and will never benefit from those advances. A retroactive implementation will not suddenly divert money from labels into artist's hands – it is those very labels who could, contractually, be entitled to those PPR payments. Such an implementation will undoubtedly lead to an increase in litigation and great costs around those relevant works, both in the U.K. and across the globe.

Under Options 2 and 3, as the IPC notes, U.K. broadcasters would be incentivized to play more music created by U.S. nationals because of the costs savings. While this may boost the popularity of those U.S. musicians whose music is played, U.K. artists would suffer immensely, not only driving down sales, but impacting touring as well, creating a situation in which U.K. artists will continue to struggle to afford international touring and cause them miss out on their largest revenue source. We also note here that the incentive to play music that broadcasters need not license is not likely to increase the diversity of recordings played or musicians presented, as such broadcasters would be more likely to rely on hits and established artists. U.K. consumers would hear a smaller pool of works, from a smaller pool of artists, depressing music discovery and fandom alike.

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1. See Drew Schwartz, Bad Deals Are Baked Into the Way the Music Industry Operates, VICE.COM, 21 October 2020, [https://www.vice.com/en/article/y3gmjw/bad-deals-are-baked-into-the-way-the-music-industry-operates.](http://www.vice.com/en/article/y3gmjw/bad-deals-are-baked-into-the-way-the-music-industry-operates)
2. See Mark Savage, Black artists 'may have received unfair record contracts', says BMG report, BRITISH BROADCASTING CORPORATION, 18 December 2020, [https://www.bbc.com/news/entertainment-arts-55366694.](http://www.bbc.com/news/entertainment-arts-55366694)

# Preferred Option

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

Option 1

Provide answer here:

It is important to note that U.S. artists do not receive any of the U.K. PPR monies discussed here on a customary basis from their labels. Some superstar artists have been able to negotiate a share, but these monies are not put in their pockets: they are applied to those artists unrecouped balances by the labels, who otherwise retain all of these monies. The vast majority of artists, everyone but the top superstars, derive no financial benefit from U.K. airplay.

We have seen U.S. based labels argue that granting national treatment will undermine legislative efforts to obtain a performance right for recordings on the radio in the U.S.. This excuse serves only one purpose: to allow those labels to retain the entirety of the monies generated in the U.S. The Music Artists Coalition will continue to push for this right because it is the moral and ethical solution, where creators are paid directly for their work. For too long, American artists, from the greats of Motown, to the inventors of jazz and hip hop, to today’s largest stars, have been denied equitable renumeration, despite creating some of the world’s greatest music and forging an indelible creative bond with artists from the United Kingdom. These artists simply want what is fair and just.

Musicians do not see national boundaries in their creative endeavors. They recognize that talent can come from every corner of the earth, and most, if not all, seek a global audience. U.S. based artists would not, as fellow creatives and themselves lovers of music, see a solution in which their music is played more in the U.K. at the expense of U.K. artists as a victory. Musicians are a global community, and that community does not benefit when one of its sectors suffers. This is why organizations such as ours seek a solution such as Option 1 in all nations.

We urge the IPC to adopt Option 1 and, again, wish to express our gratitude to the IPC for pursuing this consultation, and for its work in preparing and presenting the Options for review.