# RADIOCENTRE SUBMISSION TO IPO CONSULTATION ON EXTENSION OF RIGHTS IN SOUND RECORDINGS AND PERFORMANCES TO FOREIGN NATIONALS

**SUMMARY**

1. Radiocentre is the industry body for commercial radio in the UK. We work on behalf of more than 50 stakeholders who represent over 90 per cent of commercial radio in terms of listening and revenue. Radiocentre welcomes the opportunity to respond to this consultation, which addresses important issues for our members.
2. The most important guiding principle relating to the issues covered by the consultation is that fees should only be collected in respect of rights that are protected in law, and distribution of resulting royalties should be made only to the corresponding holders of those rights. Beyond this fundamental principle, this review of the rights extended to foreign nationals in respect of sound recordings and performances represents an important opportunity to realise significant benefits for UK performers, record labels and users, as well as removing unjust benefits currently enjoyed by nationals of countries that do not afford UK nationals the same rights. This review also represents an opportunity for the UK government to fix an anomalous situation where UK radio stations currently bear the burden of paying for sound recordings created in the US and other non-qualifying countries when US commercial radio stations are not paying for non-qualifying UK repertoire, especially in light of the fact that the US radio industry has larger revenues, negotiating power, listener reach and political influence.
3. For this reason, Radiocentre supports the application of material reciprocity rules to sound recordings in the same way as currently applies to performances, representing Option 2 in the consultation document. We agree with many points made in the consultation document demonstrating that this option maximises the benefits to both users of music and to UK record labels and performers. Our consultation response sets out further evidence to support the prediction of such benefits and also outlines some additional benefits not previously identified, including:
   * Assisting the survival of smaller broadcasters while helping to ensure a broader range of choice for consumers;
   * Encouraging investment in new or improved services;
   * Encouraging unique programming thereby supporting the development of new music; and
   * Encouraging the recording of more music recordings in the UK.
4. We also respond to some of the areas of potential concern raised in the consultation document and provide evidence that many or all of these are very unlikely to come to pass. In particular, we are extremely confident, based on an assessment of the competitive nature of the broadcast sector and advertising market, the experience and practice of our broadcaster members, and learnings from markets that already implement material reciprocity, that Option 2 would not lead to a reduction in the proportion of UK-originated music played on UK radio stations. Indeed there are reasons to believe it may even increase.
5. Option 3, while delivering some of the benefits that would be delivered under Option 2, results in lower gains, as well as introducing additional complexity which will result in confusion,

additional administrative costs and potential disputes, particularly in light of the common practice of remastering older recordings.

1. Option 1 delivers none of the benefits of Option 2 and will risk putting UK users, record labels and performers at a significant competitive disadvantage as compared to their counterparts in the EU and elsewhere. This is particularly important in the context of similar questions currently under consideration by EU law makers.
2. We agree that Option 1, Option 2 and Option 3 are in compliance with the UK’s international obligations. We make no comment on the compatibility of UK law as it stands with such obligations.

# OPTION 0

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

1. We offer no opinion on whether UK law as it stands is fully in line with the UK’s international obligations. However, we agree that all of Option 1, Option 2 and Option 3 would be compliant with the UK’s international obligations. We note that:
   * Article 4(b) of the Rome Convention states that performers should receive national treatment if the performance is included in a protected phonogram.
   * The UK has the option of choosing to apply either one or both of the criteria of the country of fixation or the country of publication for the purpose of qualification of sound recordings, pursuant to Article 5(1) and Article 5(3) of the Rome Convention. That freedom is also retained under the CPTPP (the Comprehensive and Progressive Agreement for Trans-Pacific Partnership) by virtue of the footnote to Article 18.62 of the CPTPP.
   * The rules on qualification set out in the Rome Convention also apply to the WPPT by virtue of Article 3(2) of the WPPT.
   * The UK has the option of restricting PPR (as defined in the consultation document) for nationals of certain states to the same extent that the law of those states restricts rights of PPR, pursuant to Article 16(1)(a) of the Rome Convention, Article 15(3) of the WPPT and Article 18.8(2) of the CPTPP.
2. The UK Government is therefore free to implement Option 2 (and Option 3 in respect of new sound recordings) by adopting the criterion of the country of fixation (and not the criterion of the country of publication) and applying material reciprocity in respect of sound recordings fixed in non-qualifying countries and produced by nationals in non-qualifying countries.

# OPTION 1

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

1. The impact assessment assumes (at paragraph 126 of the Evidence Base) that it is unlikely that granting rights to more performers will result in increased licensing fees for UK users. While it is certainly true that the introduction of such rights should not lead to increases in licensing fees for UK users, for the reasons set out in the impact assessment, it is by no means a certainty that it will not. It is quite possible that PPL and its member record labels will argue that they need to increase licence fees in order to balance the increased costs and administrative burden associated with paying US (and other currently non-qualifying) performers. To provide some points of comparison:
2. Moving from material reciprocity to national treatment in respect of label and performer rights to PPR in each of Denmark and the Netherlands has led to Gramex and Sena (the relevant CMOs) seeking increased payments. While in Denmark the change in the law increased the number of protected recordings, which is different from the changes to UK law under Option 1, such moves by European Collective Management Organisations (**CMOs**) in response to similar legislative changes may lead to pressure from rightholders to raise prices in the UK.
3. The recent changes in Europe concerning “direct injection” under the EU SatCab II Directive (2019/789), while not changing the scope of protected repertoire, or the licensable act, has nevertheless led to CMOs seeking to increase the fees they receive.
4. When section 72 of the Copyright, Designs and Patents Act 1988 (the **CDPA**) was amended, enabling PPL to license public performance of sound recordings received via broadcast, PPL sought to increase licence fees for all public performance licensees, regardless of whether they exercised the new right (increases that were, for the most part, rejected by the Copyright Tribunal - see *BHA, BRC and other interested parties CT91/05, 92/05 and 93/05*).
5. There is therefore a realistic risk of PPL at least seeking to increase fees due to Option 1 resulting in negotiation, and potentially copyright tribunal costs. If the Government continues to consider implementing Option 1 we recommend seeking assurances from PPL that they will not seek to increase licensing fees as a result.
6. The impact assessment assumes no impact of Option 1 on UK performers. However, the introduction of rights for US and other foreign performers may lead to an increase in registration of performances of US origin and other performers at PPL in order for those performers to claim the monies now due to them. Up till now such performers have had little reason to register their performances. This may lead to a (probably quite small) decrease in the monies allocated to any UK performers who also performed on those sound recordings because the performers’ allocation is divided between all performances registered on the track. If there are more performances registered then the allocation to each performer is less. The pie does not become bigger.
7. Many of the sums set out in the impact assessment, including those relating to Option 1, are built on two assumptions regarding PPL revenues for broadcast and public performance rights:
8. Firstly that these revenues were £188.4 million in 2022. This is taken from the PPL Annual Transparency Report 2022. However, those figures appear to be a simplification and refer to sectors of licensing (broadly conforming to the different PPL member mandates), rather than the rights in fact licensed. It is likely that a significant portion of the £188.4 million referenced in that report relates to exercise of reproduction rights by PPL, rather than broadcast or public performance rights. Licences to broadcasters typically include both broadcast rights and associated reproduction rights (where required). Some of the revenue in the public performance category also likely relates to reproduction for the purposes of public performance (known as “dubbing”). This is important because:
   1. the right to equitable remuneration under Article 182D of the Copyright, Designs and Patents Act 1988 does not apply to the reproduction right and PPL distributes all monies for the exploitation of such rights to record labels and none to performers, and that would not change regardless of whether Option 1 would be implemented; and
   2. US sound recordings already enjoy the reproduction right in the UK and the adoption of material reciprocity would not change that, so neither Option 2 nor Option 3 would impact the monies distributed by PPL in respect of the reproduction right.
9. Secondly, that PPL radio broadcasting and public playing revenue will grow at its pre- pandemic (2016-2019) average rate of 5.5%. The current difficult economic conditions should be considered when assessing this assumption.

# OPTION 2

## Question 3. How will/should licence prices for the broadcasting and public playing of recorded music change under this option?

1. According to applicable legal principles and standards, licence prices should decrease under the legal changes proposed under Option 2, for the reasons explained in the consultation and the impact assessment. Fees should only be collected in respect of rights that are protected in law, and distribution of resulting royalties should be made only to the corresponding holders of those rights.

## Question 4. What would be the benefits of savings for UK broadcasters or those that play music in public under this option?

1. Savings to the UK radio broadcast sector (should it indeed materialise) would:
2. **Assist the survival of smaller broadcasters while helping to ensure a broader range of choice for consumers**. Revenues nationally are strong, but local revenues – upon which many smaller broadcasters rely – were hit hard by Covid and have not recovered to their pre-Covid peak (the Radiocentre website has a summary of annual ad revenues and forecasts[1](#_bookmark0)). For smaller broadcasters, there are long-term challenges from digital competitors, which have squeezed advertising revenue from

1 <https://www.radiocentre.org/the-audio-market/ad-revenues-and-forecasts/>

smaller businesses that might have traditionally chosen to advertise on local radio stations but now increasingly focus marketing budgets on digital advertising. Any savings on the licence fees would support the viability of smaller broadcasters in an increasingly challenging market.

1. **Lead to more investment in new or improved services.** Following previous changes in regulation that provided significant cost savings, commercial radio groups began networking across their brands using shared breakfast programming. The changes allowed commercial stations to build a national profile for presenters and to compete more effectively with the main BBC radio stations, while retaining vital local news and information. This has resulted in the successful growth of national commercial brands like Capital, Heart, Hits Radio and Greatest Hits Radio, complementing local and niche services. Any further savings on licence fees would enable broadcasters to continue to invest and innovate in new radio and audio products.
2. **Lead to more unique programming thereby supporting the development of new music.** Potential savings would enable broadcasters to invest in a greater breadth of programming. Research has shown that larger commercial markets are able to support a greater diversity of music genres.[2](#_bookmark1) Radio continues to be a key driver of sales of recorded music. It has been estimated that between 14-23% of music sales are driven by a song first being heard on the radio, and that £103m of music sales can be sourced back to commercial radio.[3](#_bookmark2)
3. **Assist UK broadcasters to compete more effectively in what is an increasingly competitive market**. It is unfair that UK radio stations bear the burden of paying for sound recordings created in the US and other non-qualifying countries when US commercial radio stations are not paying for non-qualifying UK repertoire, especially in light of the fact that the US radio industry has larger revenues, negotiating power, listener reach and political influence.

## Question 5. What would be the benefits or costs in terms of increased or reduced remuneration to UK record labels and performers under this option?

1. As explained above in response to Question 3, it is likely that licence fees will be reduced in a significantly lower proportion than the reduction in PPL distributions to US labels (and some other foreign labels). This will lead to significant increases in revenue for UK record labels and performers.

## Question 6. What upfront and ongoing administration and legal costs (such as the costs of renegotiating licences) might arise under this option? Can you quantify these?

1. In common with many other sectors, the commercial radio industry negotiates licence fees through a representative body, the goal being to streamline legal and other costs involved in negotiation of licences. Standard terms arrived at through such negotiations provides for

2 <https://econpapers.repec.org/paper/nbrnberwo/6057.htm>

3 <https://www.radiocentre.org/wp-content/uploads/2016/06/The-economic-impact-of-commercial-radio.pdf>

uniform reporting and calculation of fees, reducing ongoing administration costs. Any renegotiation of the PPL commercial radio licence would take place via Radiocentre.

1. The last major renegotiation of the PPL commercial radio licence took place in 2006. This shows that, once terms are agreed, it is likely that it will not be necessary to engage in lengthy negotiations repeatedly. Accordingly, renegotiation of the commercial radio licence should in principle be a one-off cost.
2. We understand that the licences for each commercial television broadcaster and the BBC are already individually renegotiated every few years and the negotiation of fees already takes into account the proportion of music used by each broadcaster, so the proposed change to the law would not change the frequency or process of such negotiations.
3. Generally, the costs of negotiating licences are not significant compared to the potential benefits of Option 2. PPL employs a team of in-house lawyers, we understand typically between five and ten individuals who manage all such negotiations, along with all other legal issues involved with the operation of PPL, including governance, agreements and relationships with members, technology development and relationships with other CMOs. We believe it is unlikely that renegotiations associated with the proposed change in the law, across all user sectors, would necessitate PPL employing additional resource, and even if it did, it would likely amount to no-more than one-year’s salary for an in-house lawyer.
4. Radiocentre may engage outside counsel to renegotiate the licence. Costs are very difficult to estimate, but in most scenarios the costs would be unlikely to exceed the range of low tens of thousands of pounds.
5. As regards administration costs, all commercial radio stations and TV channels already submit full details of music played to PPL to enable distribution of royalties, and PPL already holds and processes details of the country of recording of each sound recording. It would therefore be quite simple to assess the proportion of music used on each service that is no longer qualifying for the purposes of UK copyright. Licences under which fees vary according to the volume or proportion of music used already exist in many countries across Europe with no significant difficulty in administration.

## Question 7. 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?

1. We agree with the opinion contained in paragraphs 95 and 96 of the impact assessment and would go further and say that it is unlikely that there will be any reduction in the amount of UK music played by users at all. If there is any such reduction at all, it will be a negligible amount. Our members tell us categorically that they base their music choices on audience preferences rather than incremental cost benefits.
2. Audience preferences drive our members’ choice of music because the UK commercial radio sector is highly competitive – as is the UK music sector. Digital technologies have had a profound effect on the consumption and production of content on commercial radio. First and foremost, it has meant a significant increase in competition for listeners and advertisers.

In broadcast radio alone, the growth of Digital Audio Broadcasting (DAB/ DAB+) has led to major expansion of services available to consumers in the UK. There are now 53 national commercial stations available on DAB (compared to the 3 previously available on FM/ AM), in addition to 12 national BBC services and hundreds of local commercial and community stations.

1. In addition, online services like Spotify and Apple Music – which are not subject to any significant form of content regulation – are starting to account for an increasing proportion of overall listening time (particularly among younger audiences). The latest RAJAR MIDAS[4](#_bookmark3) survey found that on-demand music services now account for 13% of the share of audio listening on average, rising to 33% for those in the 15–24-year-old age group. While this fragmentation has had limited impact on total audience, average time spent listening to radio overall has reduced from 21.3 hours per week in 2013 to 20.5 hours in 2023.[5](#_bookmark4)
2. Commercial radio stations will therefore be unlikely to change the music that they play in order to achieve reductions in licensing costs. PPL generally charges commercial radio stations between two and five percent of total revenue (after deduction of advertising acquisition costs). Even if some movement in the types of music use occurred, it would still be necessary to maintain a large core of UK sound recordings on stations. Assuming an increase in US / other non-qualifying recordings from 40% to 60% of output, and assuming a fall in licence fees in direct proportion to the use of qualifying recordings, this would result in savings of just 20% of current fees, or around 0.4% to 1% of revenues as a result of such reduced usage. Savings of this order would be massively outweighed by the loss of listeners seeking out their preferred music, and consequential reductions in advertising income.
3. Experience from other territories also indicates that playing of non-qualifying recordings is not more prevalent in countries where material reciprocity applies. While there is relatively little data available (which itself indicates that avoiding qualifying recordings is not an objective sought by broadcasters) the proportion of non-EU recordings played on stations operated by Bauer (a Radiocentre member) in some of Bauer’s other markets (in continental Europe) that apply material reciprocity are below the UK IPO’s estimate of 40% of US recordings in the UK.
4. The impact of “radio plugging” - i.e., the practice of record labels and other rightholders introducing new records to commercial radio stations and advocating for them to be played – must also be taken into consideration. While we would expect US labels to continue advocating for their music to be included on UK radio stations, due to the promotional impact of securing such airplay, it may be that there is some reduction in such advocacy for US sound recordings, as they would not stand to receive a direct financial benefit from being played on the radio. This may lead to an increase in playing of UK sound recordings.

## Question 8. How might the costs on foreign (especially US) record labels under this option indirectly affect the UK music industry or UK consumers?

4 RAJAR MIDAS Autum 2023

5 RAJAR Q4 2023

1. The projected impacts of Option 2, while relatively significant for UK labels, and even more so for some UK performers, would be very small relative to the size of the US recorded music sector, as the impact assessment notes at paragraph 153. We therefore believe that the changes in the law under Option 2 would have very little, if any, impact on the investment by US labels in new content, and will not therefore reduce the range of music available to UK consumers.
2. However, the impacts to US labels from Option 2 are proportionately much larger to the income generated by those US sound recordings from exploitation in the UK. This may therefore lead to less investment by US labels in promotion of US sound recordings in the UK, which may benefit UK labels and performers as they will be able to better compete for the listening time of UK consumers.
3. It is also likely that the changes in the law proposed in Option 2 will lead to some recordings that would otherwise have been recorded in the US being recorded in the UK instead, in order to secure qualifying status. If the UK were to move away from the country of publication as a qualifying factor, the alternative point of fixation under the Rome Convention is the country of fixation. It would therefore be beneficial for US labels, and indeed US performers to record their music in a qualifying country. This option is particularly attractive for highly successful artists where the costs of recording may be offset more easily by PPR payments. The UK is a highly attractive location for US recording artists and labels to record their music, due to a shared language, highly skilled session musicians and the presence of leading recording facilities. It could expect to be the location of choice for US artists and labels wishing to record their music in a qualifying country. This phenomenon already occurs in order to secure performers’ rights for US performers. It is not unusual for the main artist to come to the UK or another qualifying country to deliver their vocal performance in order to secure eligibility for PPR. Under the legal changes proposed in Option 2, it is likely that the entire production of music will take place in the UK for the same reason.

## Question 9. Do you have any other comments on Option 2?

1. The UK Government should be cognisant of and monitor closely developments in the EU where similar issues have been the subject of a recent consultation, and where legal changes may soon follow. If the EU were to implement a position of material reciprocity, or permit EU member states to do so, as strongly advocated for by associations representing independent music companies, such as IMPALA as well as performer CMOs, and the UK Government were to implement national treatment, then the UK’s music users, record labels and performers would be put at a competitive disadvantage to their counterparts in Europe who would enjoy boosts to their financial position that UK businesses and creators would not.
2. We also believe that the risk of lack of investment confidence from changing the rights attaching to existing recordings, as expressed in the impact assessment and consultation, is unlikely to be significant. The changes proposed under Option 2 are in line with the UK’s international obligations and apply only to sound recordings not made in the UK in any event (so did not involve significant investment in the UK.

## Option 3

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

1. Please see our response to Question 3. The level of impacts under Option 3 may be proportionately lower than under Option 2.

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

1. Please see our response to Question 4. The level of impacts under Option 3 may be proportionately lower than under Option 2.

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

1. Please see our response to Question 5. The level of impacts under Option 3 may be proportionately lower than under Option 2.

## 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?

1. Please see our response to Question 6. The level of impacts under Option 3 may be proportionately lower than under Option 2. Option 3 may create some additional administrative difficulties and legal costs as there can be uncertainty or a lack of data regarding the year of production of sound recording. In particular, there may be disputes over the status of remasters of older recordings. Such remasters are typically registered with PPL as new recordings and may carry the date of the remastering as the date of production. In short, option 3 poses a number of complex challenges.

## 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?

1. Please see our response to Question 7. We do not anticipate any meaningful change to the amount of UK music played by radio stations.

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

1. Please see our response to Question 8. The level of impacts under Option 3 may be proportionately lower than under Option 2.

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

1. Our preferred option is Option 2. This option maximises the benefits to both users of music and to UK record labels and performers. The risk expressed in the impact assessment that reductions in fees to users will be so extensive that the benefits to UK record labels and

performers will be outweighed by PPL costs being spread across lower overall distributions is not realistic, for the reasons explained above.

1. Option 3, while delivering some of the benefits that would be delivered under Option 2, results in lower gains, as well as introducing additional complexity which will result in confusion, additional administrative costs and potential disputes.
2. Option 1 delivers none of the benefits of Option 2 and will risk putting UK users, record labels and performers at a significant competitive disadvantage as compared to the counterparts in the EU and elsewhere.
3. Some European commercial radio broadcasters advocated in the recent similar EU consultation for EU member states to be allowed to preserve their previous position as this acknowledges the importance of each territory making their own decisions to best meet the needs of their territory – and in fact this was formulated as a compromise solution to the complex problem facing the European Commission where there is significant pressure to switch to full material reciprocity at the EU level in a context where in some Member States varying levels of national treatment are in place. The position of the UK as an independent sovereign nation is different and no need for such maintenance of status quo is present.

# ABOUT RADIOCENTRE

Radiocentre is the industry body for commercial radio. We work on behalf of more than 50 stakeholders who represent over 90% of commercial radio in both listening and revenue.

[www.radiocentre.org](http://www.radiocentre.org/)

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