**Open consultation on the extension of rights in sound recordings and performances to foreign nationals**

**Response of Phonographic Performance Limited (“PPL”) Table of definitions:**

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| **Treaties** | |
| **Rome**  **Convention** | Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations 1961 |
| **WPPT** | The WIPO Performances and Phonograms Treaty |
| **CPTPP** | The Comprehensive and Progressive Agreement for Trans-Pacific Partnership |
| **Legislation** | |
| **The 1988 Act** | The Copyright, Designs and Patents Act 1988 (as amended and in force on 22 March 2024) |
| **The 2016 Order** | The Copyright and Performances (Application to Other Countries) Order 2016 SI No 1219 (as amended and in force on 22 March 2024) |
| **The 2024 Order** | The Copyright and Performances (Application to Other Countries) (Amendment) Order 2024 SI No 193 |
| **The CPTPP Act** | The Trade (Comprehensive and Progressive Agreement for Trans- Pacific Partnership) Act 2024 |
| **Rights and revenues** | |
| **PPR** | the right to play a sound recording in public and the right to include a sound recording in a broadcast (referred to as public performance rights in the Consultation Paper) |
| **PPR Revenue** | PPL’s revenue from the licensing of UK PPR for any particular period (and, for the avoidance of doubt, excluding any dubbing or “making available" revenues) |
| **Relevant PPR Revenue** | PPR Revenue excluding digital simulcasts and linear webcasts (that is, excluding revenues for the acts which in respect of the US pass the “mirror test” for performance rights under Article 11 of the 2016 Order) |
| **Relevant PPR Distribution Revenue** | the Relevant PPR Revenue available for distribution to recording rightsholders and performers for any particular period |

**SUMMARY: OPENING COMMENTS**

1. PPL licenses the use of sound recordings and distributes its net licence fees to its recording rightsholder members and to the performers on those recordings. As such, PPL welcomes the opportunity to respond to the Consultation Paper. PPL also acknowledges the detailed Impact Assessment accompanying the Consultation Paper.
2. PPL is also grateful for having had the opportunity to meet with the IPO/DCMS since the publication of the Consultation Paper.
3. PPL’s position on the four Options in the Consultation Paper is as follows:
   1. As PPL’s stakeholders have different views on the advantages and disadvantages of Options 0 and 1, PPL expresses no preference for either option.
   2. PPL is strongly against the adoption of either Option 2 or Option 3.
4. Option 0 and Option 1 would have no impact on PPL’s licensees. Option 0, representing the status quo, requires no effort to implement and Option 1 would be simple to implement without significant additional cost for PPL or for other parties.
5. PPL notes that the IPO does not favour Option 2. PPL agrees that its adoption would have substantial risk for the UK music industry. This option would have financial repercussions for rightsholders. Such repercussions would affect not just foreign rightsholders, but performers from the UK and elsewhere who would be deprived of equitable remuneration because the sound recordings on which they performed would no longer be protected for PPR. It would also be damaging to the perception of the value of copyright as material that has been protected for many years would suddenly be available for free.
6. The initial impact on PPL’s licensing of Option 3 may appear less damaging (to rightsholders as a whole) than Option 2 in that the exclusion of US repertoire only relates to US sound recordings post-dating the change in the law. However, the disruption from implementing and then operating Option 3 would be considerable and would involve greater costs and risk than Option 2.
7. The adoption of Option 3 would change the qualification rules for performances in respect of existing recordings (and PPL's stakeholders will address the effect of that change in their responses to the Consultation Paper). It also would remove new US repertoire and this would prejudice UK stakeholders in the following ways:
   1. PPL’s costs would be increased by:
      1. the additional administration of operating Option 3; and
      2. the negotiations and disputes that would be caused by the exclusion of new US repertoire.

PPL’s stakeholders would have to bear those additional costs to the extent that any increases could not be passed on to licensees.

* 1. Option 3 would also inevitably increase the relative costs of PPL’s services to its stakeholders (with the costs for public performances and “traditional broadcasts” being applied to a smaller repertoire).
  2. UK performers on new US repertoire would be deprived of equitable remuneration.
  3. There would be a risk to PPL’s licence fees (for example, by way of licensees using exclusively the excluded repertoire). Any reduction in the fees recovered for UK rightsholders would impair their ability to invest in new UK talent.

1. The possibility that UK rightsholders would benefit from Option 3, by way of PPL’s revenues being shared among the owners of non-US repertoire with the result that those owners see their revenues increase, is based on an assumption that the percentage decrease in licence fees would be less than the percentage decrease in repertoire (by value). The IPO accepts that there is “little basis” for that assumption.1 Furthermore, while PPL would seek to achieve such a result, the extent to which it could do so would depend upon:
   1. the outcome of consultations, negotiations and/or Copyright Tribunal references;
   2. the extent to which PPL’s licensees switch to the excluded repertoire; and / or
   3. the extent to which those licensees’ business models are adversely or unfairly impacted by competitors using the excluded repertoire.
2. The effect on licensees would be complex and ever-changing due to various factors, including the following:
   1. Based on PPL’s experience, the amount of new repertoire excluded in any one year is very likely to vary from year to year.
   2. The total amount of excluded repertoire would increase from year to year (but due to (1) above the increase would be variable).
   3. The effect of the exclusion would vary over time given:
      1. the increasing shift in broadcast revenues to digital simulcasts and linear webcasts, in respect of which new US sound recordings would remain within PPL’s repertoire; and
      2. the increasing shift to on-demand services, which are licensed under the “making available” right and so would not be affected by any change in the qualification rules for sound recordings.
3. Not only would the adoption of Options 2 and 3 be disadvantageous to PPL’s stakeholders and cause significant disruption, but they would fail to meet the Government's aims, as follows:
   1. While it may be that the first aim (of ensuring that UK law is consistent with the international treaties on copyright and related rights to which the UK is party) could be met by Options 2 and 3, this is only at the cost of expanding upon the UK’s reservations to those treaties.
   2. As for the second aim (of reducing costs to UK broadcasters and other users of foreign music), the Government’s caveat was that such costs should only be reduced if this could be done without significant costs to the UK creative industries or UK consumers. However, there would be significant costs to UK recording rightsholders and performers. The change would also be very disruptive to the UK music industry.

1 See, in respect of the analysis for Option 2, Impact Assessment page 30 paragraph 145.

* 1. Finally, the third aim is an increase in revenues for the UK creative industries, if this can be done without significant costs to UK users and consumers. The changes in Option 3 would be very disruptive to both creators and users in the UK industry – not as much in immediate financial terms as Option 2 but probably more in operational terms over the years.

1. In responding to the Consultation Paper, PPL’s approach is to set out the key information and assumptions in Part One of this document before addressing in Part Two the individual questions raised in the Consultation Paper. On the basis of PPL’s distributions, and as anticipated in the Consultation Paper, the main impact of the possible changes to the current qualification rules relate to US sound recordings and/or performances relying upon the US for qualification for equitable remuneration under Section 182D of the 1988 Act. Accordingly, PPL has focussed on such recordings and performances, but it is important to note that the US will not be the only country affected by the changes.
2. PPL is keen to assist the IPO with a proper evaluation of the effect of the Options in the Consultation Paper. With that aim in mind PPL is providing detailed information in this response. However, some of this information is confidential and is provided for the IPO’s internal use only. This information is highlighted in yellow below. This information should be redacted from any copy of this response that is published by the IPO. Permission from PPL should be sought before any of this information is cited by the IPO in public.
3. PPL looks forward to commenting further once the IPO has considered the responses to the Consultation Paper, whether by addressing any follow-up issues or by commenting on any draft legislation seeking to implement the outcome of the consultation process.

**PART ONE: KEY INFORMATION**

1. This section of PPL’s response sets out the key data (principally distribution data) and assumptions that are relevant to PPL’s responses to the specific questions raised in the Consultation Paper.

# PPL’s licence fee income

1. PPL’s published accounts treat dubbing revenue as part of the public performance and broadcast revenues. Such revenue is not directly affected by the changes in the Consultation Paper. However, an important point is that licensees who may no longer need a licence to broadcast US repertoire under Options 2 and 3 will still need a licence from PPL when dubbing US repertoire for the purpose of broadcasting that repertoire (and, as explained below, such licensees may also still need a licence for digital transmissions of such repertoire).
2. The published figures also do not provide a breakdown of broadcast revenues (and so do not provide specific figures as to the revenue streams that are relevant to the “mirror test” for US performances under Option 0 and for US sound recordings under Options 2 and 3).

# The growth of digital simulcasts and linear webcast revenues

1. ***The growth of “on demand” digital revenues***
2. As noted in paragraph 17 above, the broadcast revenue and distribution figures have excluded “making available” services. A further important point on the broadcast revenues that are relevant to this consultation is the increasing trend of listeners and viewers using on-demand services (including, to give just one example, “catch-up” services). Such services involve the exercise of the “making available” rights in sound recordings and performances. To the extent that such services are licensed by PPL,

all the net revenues will be paid to recording rightsholders (and will not be PPR Distribution Revenue).

1. PPL’s understanding is that Options 2 and 3 would not affect qualification for the “making available” right. This has two important consequences.
2. First of all, the use of US sound recordings in on-demand services would continue to require a licence. This, in turn, could reduce the extent to which broadcasters could benefit from the excluded US repertoire (as a licence would still be required for the use of that repertoire in on-demand services – and in digital simulcasts and linear webcasts).
3. Secondly, as on-demand services gain in popularity, it may be that the PPL’s revenues for linear broadcasts decrease (but that this is offset or exceeded by increased revenues for the licensing of the “making available” right). This would then reduce the extent to which broadcasters would benefit from the exclusion of US repertoire from linear broadcasts under Option 2 or Option 3.

# UK and US market share

***(6) The allocations of PPL’s distribution revenues***

1. PPL’s allocations of its net revenues are carried out in accordance with PPL’s Distribution Rules, which in turn are based on the current UK laws. As such:
   1. US performers will qualify for all equitable remuneration from PPR:
      1. if they gave their performance in a qualifying country (such as the UK);
      2. if at the time of their performance they were a national of, or a resident in, a qualifying country,

and in both cases the question of whether a country is a qualifying country is assessed at the time of the use of the recorded performance.

* 1. US performers will qualify for equitable remuneration in respect of the PPR allocated to digital simulcasts and linear webcasts.

1. Of the remaining sums, some will be for performances linked to those CPTPP countries that are currently non-qualifying countries for the purposes of PPR but will be qualifying countries under the new rules in the 2024 Order (such as Australia and New Zealand).
2. The figures do not necessarily provide a precise indication as to the effect of any change in the qualification rules, due to where assumptions are made in respect of the distribution process. For example, there may not be full line-up data for a track and PPL will in such cases rely upon a notional number of performers (applying “genre default” rules). Where the track is a US recording, a further assumption is that those notional performers will be US performers (and so not qualifying for equitable remuneration, save for digital simulcasts and linear webcasts).

# New repertoire

1. The use of “new” repertoire by value in 2022 in respect of distribution revenues excluding digital simulcasts and linear webcasts is as follows:
2. There are two important points to note in respect of the figures above. The first is that there is a clear trend of revenues for new repertoire forming a lower proportion of distribution revenues each year,
3. The second important point is that the proportion by value of new repertoire that is US repertoire is not consistent , indicating that the effect of Option 3 from year to year could vary.
4. The consequences of the variations in the table above include the following:
   1. While PPL has attempted to provide an illustration of the effect of Option 3 over time, that illustration would be materially different if a year other than 2022 was taken as the first year of Option 3.
   2. In any one year, there are risks in assuming that the amount of new US repertoire (by value) in the following year will be the same as in the previous year.
5. The next table, again based on the distribution of 2022 revenue, shows the proportion of US repertoire from the current and past years as a proportion of the Relevant PPR Distribution Revenue for 2022

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# Increases in licence fee revenue

1. In respect of the IPO’s assumption that the Relevant PPR Revenue and/or the Relevant PPR Distribution Revenue would rise at an average rate of 5.5% per annum,2 PPL is unable to provide any firm guidance on that change.
2. There are a number of variables that can affect the growth of licensing revenues, including by way of example:
   1. Licence fees may be affected by economic factors or other changes in the market:
      1. Licence fees based on advertising revenue may rise or fall depending upon changes in those revenues (and, aside from general changes in the advertising market, changes could result from licensees facing competition from rivals using excluded repertoire).
      2. Economic conditions may affect whether users take up a licence.
      3. Consumer habits may change and affect the take up and use of licensed services.
   2. Licence fees may vary following tariff or licence changes. For example, PPL is in the second year of implementing its new public performance tariff for Specially Featured Entertainment (“SFE”) in hospitality venues.

# PPL’s operational costs

1. The IPO’s assumption is that PPL’s operational costs are fixed, and therefore that they do not change under the policy options.3 As explained further below, there would be significant changes in PPL’s operational costs if either Option 2 or Option 3 were to be adopted.

# Initial distribution change

2 Impact Assessment page 19 paragraph 79. PPL acknowledges that the IPO notes that there are risks in this approach as consumption habits may change (for example, users switching from radio to streaming): Impact Assessment page 25 footnote 30.

3 Impact Assessment page 21 paragraph 99.

1. Both Option 2 and Option 3 would require significant changes to PPL’s operating systems and processes, including altering the distribution logic in PPL’s main distribution system, Alliant, to exclude repertoire on the basis of the nationality of its author.
2. In respect of Option 3 it would be necessary to take account of the publication date of the sound recording. At present the use by PPL’s licensees of repertoire that pre-dates 1963 (and so is out of copyright) represents a relatively small proportion of the total licensed usage and value, particularly as many recordings from before 1963 are likely to have been remastered for digital release (and so be a new sound recording).

# Ongoing distributions

1. A key point is that any reduction in PPL’s repertoire is unlikely to result in any reduction in the costs to licensees of reporting repertoire usage to PPL:
   1. Licensees would still have to include US repertoire in their reporting if they use that repertoire for services that pass the “mirror test” (or for the use of the dubbing and/or “making available” rights).
   2. If the licence fee payable by the licensee is calculated by any reference to the proportion of their usage that is attributable to excluded repertoire, licensees would need to report all of their usage for that proportion to be monitored and/or verified.
   3. To the extent that US repertoire may not need to be reported to PPL for some of the use by licensees, any attempt by licensees to exclude that repertoire from their reports would lead to increased costs and would cause problems for licensees (and potentially lead to disputes) if, as is likely, they were unable to accurately ascertain whether or not repertoire was excluded repertoire given the complexity of the rules and how they apply to different recordings and to different types of services.
2. It also follows that PPL’s costs of processing data are likely to be increased if the size of its licensable repertoire is decreased to the extent envisaged by either Option 2 or Option 3.
3. Similarly, as PPL would need to administer US repertoire for the services that pass the “mirror test”, for “making available” services and for dubbing, there would be no reduction in the volume of data processing required by PPL for its distributions of UK revenues. Instead, the complexity of that process would increase.
4. Even where PPL’s systems were able to generate a list of recordings of “US repertoire” (or “new US repertoire”) prior to a distribution calculation, the changeable nature of repertoire metadata over time means that this would be unlikely to be a static list.
5. PPL anticipates that it would need to manage a greater volume of member queries in relation to payment or non-payment for US repertoire, or new US repertoire, that would be excluded from its distributions. For example:
   1. the producer of a recording from a non-qualifying country making a record in the UK may not appreciate that even with publication in the UK that recording may not qualify for PPR.

(2 a performer (of any nationality) may provide a performance in a UK recording studio but be deprived of equitable remuneration if the recording itself is deemed to be US repertoire.

There would be a related financial risk for PPL arising from such queries, both in relation to an increased volume of member queries and the possible subsequent financial adjustments to compensate performers or recording rightsholders for non- payment in initial distributions.

1. Even without such queries, PPL would have a greater business risk and volume of member debtor balances where PPL is likely to be adjusting distributions on a greater scale in order to address issues relating to excluded repertoire. This in turn would create a greater administrative burden for PPL in recovering potentially incorrect payments.

# Licensing

1. PPL’s licensing would be affected by Options 2 and 3.

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1. Therefore, PPL may need to consult with licensees and representative associations on changes to its tariffs and licences.
2. PPL may also need to undertake complex negotiations with hundreds of broadcast

licensees to establish new commercial terms

1. Such activities would be likely to take up considerable resources given that the changes could apply across many tariffs and licences (and affect each one in different ways) and it is highly likely that this would generate disputes.
2. If it were not possible to reach agreement on the effect of the changes under Options 2 or 3, there would be references to the Copyright Tribunal (and possible appeals to the High Court or beyond). So this would be an additional ongoing cost for PPL and for its licensees.
3. The costs of licensing would also increase as more time will have to be spent in explaining the effects of Options 2 and 3 to licensees and potential licensees and in managing the ongoing compliance by licensees with the terms of more complex licences. For example, a broadcaster may provide a linear broadcast for which a licence for US repertoire is not required and a digital simulcast for which any US

4 See, in respect of Option 2, Impact Assessment page 20 paragraph 92.

repertoire must be licensed. As noted above, this would complicate the broadcaster’s reporting to PPL.

1. The enforcement of PPL’s rights would also be affected by Options 2 and 3 given the more complex checking required concerning the use of excluded repertoire and the potential for disputes.

# The effect of the starting date of Options 2 or 3

1. PPL’s distributions usually take place in respect of a calendar year. PPL’s Distribution Rules allow performances to be treated as qualifying for a whole year even if they only became qualifying performances during that year. However, the change in respect of US performers would have a significant impact and so PPL may not exercise that discretion.
2. PPL asks the IPO to take account of the costs of any changes to the qualification rules during a calendar year. For example, a distribution in December 2024 of 2024 monies would be based on the qualification rules understood to apply to that year. If those rules changed, then PPL would need to make appropriate adjustments when finalising the allocations for those monies and making any further distributions of 2024 revenue (or, indeed, any further payments which may need to be adjusted to ensure that the final allocations and payments for the 2024 monies are correct).
3. PPL notes the IPO’s intention for the implementation of the outcome of the consultation to take place at the same time as the CPTPP Act and the 2024 Order. However, if that is not the case then PPL could be faced with two changes in a short period of time, or even two changes within a year, the second of which may reverse or amend some of the first changes.

# Government costs

1. PPL notes that the changes in Options 2 and 3 could also lead to increased costs for the UK Government:
   1. The UK Government would be likely to receive more complaints about licensing due to the uncertainty as to whether a licence was required.
   2. There would be a substantial risk of more Copyright Tribunal references as public performance tariffs and broadcasting licences are re-negotiated and may be referred to the Tribunal in the event that such negotiations are unsuccessful. In addition, such references may be repeated as the effect of the changes will vary over time.

# The legal changes

1. PPL has based its response to the questions in the Consultation Paper on the following understanding of the changes to be made by the CPTPP Act and 2024 Order and in respect of the chosen outcome of the consultation.
2. The CPTPP Act introduces a new route to qualification for recorded performances, based on the country of authorship for the sound recording and/or the country of first publication (including simultaneous publication). If Option 0 was adopted, further legislation would be required so that the new qualification route in the CPTPP Act did not apply to the right to equitable remuneration.
3. Option 0 would be no change from the law as it currently stands, but that due to the 2024 Order the position of performers relying on CPTPP countries for qualification for the right to equitable remuneration for PPR may be different regardless of the outcome of the consultation (see further below). Currently Australia, New Zealand and Singapore are non-qualifying countries for performances, but that will change under the 2024 Order.
4. PPL’s understanding of Option 1 is that wherever a performer has a link to a relevant country (a party to the Rome Convention or the WPPT) they would be entitled to the right to equitable remuneration and that there would be no “mirror test” (as is currently the case under Articles 9 and 11 of the 2016 Order).
5. Given the changes under the 2024 Order, the principal beneficiaries of Option 1 would be performers relying on the US for qualification.
6. PPL’s understanding is that under Option 2 there would be a “mirror test” for authors of sound recordings from countries not providing full PPR (for UK recordings) and that the publication route to qualification would not be available for such recordings. This “mirror test” would work in the same way as the test applied to performances linked to a WPPT country (that has made a relevant reservation) under Article 11 of the 2016 Order.
7. This approach would result in sound recordings from WPPT countries such as the US and China being subject to a “mirror test”. Unlike the position under the current law, such recordings would not be able to rely on first publication (including simultaneous publication) in the UK, a Rome Convention country or (following the amendments to be made by the 2024 Order) a WPPT country, to qualify for PPR.
8. Furthermore, while countries that are party to the Berne Convention and/or WTO members currently are not qualifying countries for PPR (under Article 4 of the 2016 Order), sound recordings with authors from such countries also would lose the ability to qualify for PPR by reference to first publication (including simultaneous publication) in a relevant country.
9. Option 3 would make the changes in Option 1 for pre-existing sound recordings and the changes in Option 2 for new sound recordings.
10. Both Options 2 and 3 would require the UK to revise its declarations under Article 16(1) of the Rome Convention.
11. Arguably the adoption of either of those two Options also would require the UK to make a reservation under Article 15 WPPT given that the “communication to the public” right under Article 15 WPPT is wider than that under Article 12 of the Rome Convention.

# CPTPP countries

1. The impact of each of the Options in the Consultation Paper may be affected by the legislation accompanying the UK’s ratification of the CPTPP.
2. Under the CPTPP Act, there will be a new route for the qualification of recorded performances (by reference to the country of authorship of the sound recording or the country of first publication, including simultaneous publication, of the sound recording).
3. PPL’s understanding is that this new route would be subject to a “mirror test”, at least insofar as the right to equitable remuneration is concerned, if the outcome of the consultation is that countries such as the US would not be fully qualifying countries for that right. This would require further legislation given that otherwise the new route comes into force automatically upon the CPTPP coming into force.
4. Under the 2024 Order, which also comes into force upon the CPTPP Act coming into force, CPTPP countries that are not already fully qualifying countries for the right to equitable remuneration will become such countries.
5. Insofar as PPL’s distributions are concerned, the effect of the 2024 Order is that Australia, New Zealand and Singapore will become qualifying countries and so performers relying upon those countries for qualification will be allocated and paid equitable remuneration.
6. PPL’s understanding is that this position would not be affected by the outcome of the consultation.

# US law

1. PPL notes the assumption that there would be no change in US law (and so the “mirror test” for WPPT performer qualification under the current law and the equivalent test for sound recording qualification under Options 2 and 3 would be applied on the basis of the current US law).

# Further assumptions

1. PPL has calculated the performer allocations and reallocations on the basis that there is no change in PPL’s distribution policies.

**PART TWO: RESPONSES TO QUESTIONS**

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| **General** |
| **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. This is a matter for PPL’s stakeholders rather than for PPL itself.   2. As addressed in more detail in the answers to the questions on Options 2 and 3, any change pursuant to those Options is likely to require an amendment to the UK’s reservation under the Rome Convention, given that it appears to take the UK beyond the current reservation in relation to Article 16(1)(a)(iii) (reservations to Article 12 for phonograms with producers not from Rome Convention countries). |
| **Option 1** |
| **Question 2.** Do you agree with the assessment of the impacts of Option 1? If you disagree, why? |

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| 2.1.  ***Impact on PPL administration***   * 1. PPL anticipates that the impact on its administration would be minimal.   2. First of all, PPL does not anticipate that there would be any change in its licence fees as a result of the adoption of Option 1. There would be no changes in the repertoire licensed by PPL (and the effect of the annual addition of new recordings to PPL’s repertoire would be a matter to be taken into account in licence fee reviews in the usual way).   3. Secondly, as performers relying upon the US as a qualifying country are entitled to equitable remuneration for digital simulcasts and linear webcasts, PPL currently pays those performers (or their representatives) those allocations of equitable remuneration and seeks data in respect of those performances as part of its current operations.   ***Impact on PPL’s licensing***   * 1. As noted above, PPL does not anticipate that there would be any impact on its licensing, nor on its licensees.   ***Impact on PPL’s members***   * 1. It will be for PPL’s stakeholders to comment on the effect of paying foreign performers a greater share of PPL’s net distribution revenues. |
| **Question 3.** Do you have any other comments on Option 1? |
| * 1. PPL notes that the adoption of Option 1 would not require the UK to make any reservations, or amend existing reservations, to its obligations under the international copyright treaties. |
| **Option 2** |
| **Question 4. How will/should licence prices for the broadcasting and public playing of recorded music change under this option?** |
| * 1. Option 2 would result in a substantial change to the repertoire that could be licensed by PPL for public performances and broadcasts with the removal of recordings with a US author, but this would not affect the requirement for a licence for this repertoire for “making available” services, for digital simulcasts and linear webcasts, or for dubbing.   2. PPL’s position is that if there were resulting changes in its licence fees, those changes would be complex and would not go so far as to result in a reduction of those fees on a strict *pro rata* basis. PPL reserves its position as to the arguments that it would deploy in any negotiations or litigation on that issue but sets out in this response possible examples of the points that could be   raised. |

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| 4.3. PPL’s remaining repertoire will remain valuable for any licensee wanting to play a broad selection of recordings. For example, any radio broadcaster wanting to play chart hits would still need a licence from PPL. | | | |
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| 4.6. PPL anticipates that there could be some copyright users that could switch to the use of excluded repertoire for their services, or start new services, with that repertoire. For example, a radio station or a background music service could provide a service using only US repertoire. Such changes could reduce the licence fees that could be collected by PPL and this in turn could prejudice the ability of the UK rightsholders that are paid to invest in new talent – and to promote new and existing UK talent abroad.  4.7.   * 1. Any analysis of the effect of excluded repertoire in the marketplace is complicated by the fact that in many cases copyright users will not have a binary choice as to whether or not to limit their service to excluded repertoire. Broadcasters using US repertoire will still need a licence from PPL for the use of that repertoire in digital simulcasts and linear webcasts, for on-demand services and for dubbing. As noted in Part One above, the proportion of PPR Distribution Revenue attributable to such services is likely to increase over time.   2. Another important point is that the additional costs incurred by PPL (whether in collecting or distributing fees) may be passed on to licensees.   3. Any changes to PPL’s tariffs or licences as a result of the adoption of Option 2 would be the subject of consultation and/or potentially complex negotiations with licensees and/or trade associations.   4. ​   5. Any revised licence or tariff would be subject to the possibility of a reference to the Copyright Tribunal. Given that the effect of the exclusion of repertoire | | | |

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| could raise an issue of principle, it is likely that any decision on that effect could involve a decision on a point of law and so result in an appeal from the Copyright Tribunal to the High Court (and beyond).  4.13. The outcome of any consultations, negotiations or reference would not necessarily provide a long-term answer to the question as to the effect of the exclusion of US repertoire. For example, given the trends in the format of broadcasts (that is, the trend towards the use of digital transmissions), the impact of that exclusion may vary over time. |
| **Question 5.** What would be the benefits of savings for UK broadcasters or those that play music in public under this option? |
| * 1. The benefits for UK broadcasters and/or persons playing music in public will depend in part on the outcome of the changes addressed in Question 4. As noted in the response to Question 4, the effect of those changes is uncertain.   2. Even if users saw a reduction in their PPL licence fees, those licensees who continue to use PPL repertoire could see detriments as well as any benefit (to them) of any licence fee reduction.   3. First of all, there would be the time and costs of taking part in any consultation, negotiations or disputes. As indicated in respect of the response to Question 4, such processes could take a long time to resolve and may only be relevant for a limited period of time.   4. Secondly, licensees dependent upon, or choosing to use, PPL’s repertoire may face competition from copyright users able to limit their music use to excluded repertoire. This may reduce the earnings of such licensees or even threaten their business.   5. Thirdly, in many cases the negotiation of, and compliance with, licences would become more complex to negotiate and comply with as broadcasters using US repertoire would still need a licence from PPL for the use of that repertoire in digital simulcasts and linear webcasts, for “making available” services (such as “catch-up” services) and for dubbing. This online use is growing and in many cases is substitutional for traditional broadcast uses, which are in decline.   6. In any event, licensees using US repertoire or users using only US repertoire will require a licence from PRS for Music.   7. Fourthly, any increase in PPL’s costs may be passed on to licensees, reducing the benefit of any reductions in PPL’s licence fees. |
| **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? |
| * 1. The assumption in the Consultation Paper and Impact Assessment is that the percentage reduction in the licence fee income would be less than the percentage reduction in the value of PPL’s repertoire. However, while this would be PPL’s objective, it may not be possible to achieve such an outcome. |

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| * 1. In terms of costs, the cost of PPL’s services would rise:      1. Unless the assumption in paragraph 6.1 above is correct, PPL’s existing costs would be shared among a smaller repertoire (and, as explained in Part One, those costs would not be reduced).      2. PPL’s costs would increase due to the implementation of Option 2 and the ongoing administration that would be required (also as explained in Part One). By removing US repertoire, there would be a substantial loss to UK performers whose performances appear on that repertoire.   2. The outcome of any consultations, negotiations or reference would not necessarily provide a long-term answer to the question as to the effect of the exclusion of US repertoire. For example, given the trends in the format of broadcasts (that is, the trend towards the use of digital transmissions), the impact of that exclusion may vary over time.   3. As the adoption of Option 2 may reduce the fees allocated to UK repertoire (and would increase the actual and relative costs of collecting and distributing those fees), this would reduce the ability of UK rightsholders to invest in new UK talent and promote new and existing UK talent abroad. |
| **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? |
| * 1. These costs are addressed in Part One of this response.   2. While it is not possible to quantify such costs at this stage, it is clear that they will be of sufficient magnitude to have a material effect on PPL’s distributions (and/or to affect the licence fees charged by PPL). |
| **Question 8.** Do you think this option will cause users to reduce the amount of UK music they play? If so, why, and to what extent will this effect take place? How will this affect the UK music industry? |
| * 1. There could be an incentive for users to do so if there is an effect on their licence fees (for example, if the fee payable to PPL varied according to the amount of excluded repertoire” used by a PPL licensee).   2. Users also may switch to the exclusive use of excluded repertoire. For example, a radio station or background music service could use US repertoire (and any public performance users that could evidence that they are solely using such services may no longer need to pay PPL public performance licence fees).   3. At the very least this could affect the UK music industry by reducing the amounts that PPL is able to collect (due to reduced licence fees and fewer licensees) and increase the associated collection and distribution costs. This in turn could affect the prejudicial impact identified in paragraph 6.4 above. |
| **Question 9.** How might the costs on foreign (especially US) record labels under this option indirectly affect the UK music industry or UK consumers? |
| * 1. This is a question that is more appropriately addressed by PPL’s stakeholders. |

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| **Question 10.** Do you have any other comments on Option 2? |
| * 1. In implementing Option 2, users would in some (but not all) cases be entitled to use the excluded repertoire for free (if that is the only repertoire that they use). Users who continue to use PPL repertoire may seek reduced licence fees to take account of the reduction in PPL’s repertoire. Given that such users have been prepared to pay for this repertoire, the change in the law is damaging to the perception of value, particularly as users may not fully understand – or even be aware of - any policy reasons behind the change (issues of reciprocity).   2. The UK would need to amend its Rome Convention declaration and this could not take effect for 6 months from its filing.   3. It follows that any implementation of Option 2 would be unlikely to take place at the same time as the CPTPP legislation coming into force. Therefore performances relying upon the US for qualification would become eligible for equitable remuneration for public performances and non-digital broadcasts for a short period of time before losing such revenues in respect of their performances on US sound recordings.   4. There may also be an issue as to whether a reservation under the Rome Convention would be sufficient given that the scope of the “communication to the public” right under Article 12 of the Rome Convention is narrower than that under Article 15 WPPT (for example, not covering “indirect” public performances).   5. At a time when the UK is engaging in trade discussions and seeking to promote the improvement of copyright standards around the world, it would be a retrograde step for the UK to be extending its reservations to international copyright treaties. |
| **Option 3** |
| **Question 11.** How will/should licence prices for the broadcasting and public playing of recorded music change under this option? |
| * 1. Similar issues arise here as with Option 2. PPL again reserves its position as to the arguments that it would deploy in any negotiations or litigation on the effect of the exclusion of US repertoire (here, for Option 3, new US repertoire).   2. Initially there may be no change in licence fees:      1. At the start of the first year there will be no excluded repertoire.      2. Even with looking at the first year as a whole, any perceived reduction in value of PPL’s repertoire would be limited (particularly with the growth of services for which a licence for US repertoire would still be required).   11.3. |

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| * 1. Over time the cumulative effect of the exclusion of new US repertoire would increase. However, PPL does not accept that the notional percentage reduction in the value of its repertoire would result in a corresponding decrease in the level of its licence fees. The arguments as to the effect of the change would be even stronger than under Option 2 due to the small amount of repertoire that is excluded (and the reduced opportunities for substitutional services).   2. Whether or not any variation applies across the board or only to the extent that the user can demonstrate that their usage of excluded repertoire has increased will be an issue for the consultations and negotiations on PPL’s tariffs and licences.   3. Any assessment of the notional loss of value in PPL’s repertoire also would complicated by consideration of the following factors:      1. The reduced proportion of the value of PPL’s repertoire that is attributable to new repertoire      2. The variations in the proportion of new repertoire that is US repertoire   4. Additional costs may be passed on to licensees. For the reasons given in Part One, those costs may be greater for Option 3 due to the complexities of administering the exclusion of “new” US repertoire. | | | | |
| **Question 12.** What would be the benefits of savings for UK broadcasters or those  that play music in public under this option? | | | | |
| * 1. The extent of any saving for copyright users would be subject to the issues   addressed in the response to Question 11 and therefore would be likely to be limited.   * 1. Just as PPL’s revenues may be affected by copyright users switching to excluded repertoire, copyright users that use PPL music may face additional competition at a commercial disadvantage from such users.   2. While in general the points made in respect of Option 2 apply here, there are several material differences.   3. First of all, the impact of Option 3 will be less (as not all US repertoire is excluded) and may be minimal at first.   4. Secondly, the costs of licensees may increase as they address the question of whether or not particular tracks are new US repertoire.   5. Thirdly, there may be more disputes – for example, whether a track played was from a pre-change album or was a remaster version of that track.   6. Fourthly, the costs of dealing with licence fees may be greater due to the change in the impact of Option 3 over time. | | | | |

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| 12.8. As with Option 2, any increase in PPL’s costs may be passed on to licensees, reducing the benefit of any reduced licence fees. |
| **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. Any benefit in the form of increased revenues would only be obtained if the percentage decrease in the licence fees charged and recovered by PPL was less than the percentage decrease in the notional value of the repertoire.   2. As with Option 2, the cost of PPL’s services would rise:      1. PPL’s existing costs would be shared among a smaller repertoire (in terms of the tracks allocated revenues).      2. As set out in Part One above, PPL’s costs would increase.   3. Any reduction in the fees allocated to UK repertoire (and increases in the actual and relative costs of collecting and distributing those fees) would reduce the ability of UK rightsholders to invest in new UK talent and promote new and existing UK talent abroad.   4. ​ |
| **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. As identified in Part One, there are likely to be significant costs for PPL in administering Option 3. In respect of licence fees, there would likely be complex and repeated consultations, negotiations and/or litigation as to the terms of PPL’s tariffs and licences. There would also be increased compliance costs, as well as increased costs in enforcing PPL’s rights as there are likely to be disputes as to whether or not a particular sound recording is covered by the exclusion.   2. As for distributing PPL’s revenues, the costs would increase (even without taking into account the costs above). In particular, excluding repertoire (for some services but not for others) on the basis of the age of the repertoire would introduce a new factor given that there is very little use of pre-1963 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? |
| * 1. There is likely to be a reduction in the amount of UK music played by users due to the availability of excluded repertoire. However, the effect of Option 3 would vary over time, complicating the analysis of that change (and its management by PPL and licensees).   2. Initially the advantage (to users) of using excluded repertoire may be minimal. There may be no, or no significant reduction, in PPL’s licence fees.   3. Over time, the ability of users to use excluded repertoire would increase. |

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| 15.4. The extent to which users would switch, in whole or in part to such repertoire is difficult to predict:   1. The attraction of reducing the amount of UK usage would depend in part upon the extent to which PPL’s fees were altered. Nevertheless over time it is likely that there will be a variation of some kind – although whether or not that variation applies across the board or only to the extent that the user can demonstrate that their usage of excluded repertoire has increased will be an issue for the consultations and negotiations on PPL’s tariffs and licences. 2. Broadcasters would need a licence from PPL for the use of such repertoire in digital simulcasts, linear webcasts and making available services (and, as noted above, there is a growing trend towards the use of such digital transmissions) and for dubbing.   15.5. To the extent that users did increase their use of new US repertoire, that could increase the prejudicial effects on UK rightsholders as identified in paragraph  13.3 above. |
| **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. This is a matter for PPL’s stakeholders rather than for PPL itself. |
| **Question 17.** Do you have any other comments on Option 3 |
| * 1. In implementing Option 3, users would in some (but by no means all) cases be entitled to use the excluded repertoire for free (if that is the only repertoire that they use). They also may seek reduced licence fees, referencing the reduction in PPL’s repertoire. Given that such users have been prepared to pay for this repertoire, the change in the law is damaging to the perception of value, particularly as users may not fully understand – or even be aware of - any policy reasons behind the change (issues of reciprocity).   2. Option 3 sends a confusing message to the market, in that existing US recordings and performances on those recordings are deemed worthy of protection whereas new US recordings, and hence the performances on them, are denied protection.   3. As with Option 2, the UK would need to amend its Rome Convention declaration, and this could not take effect for 6 months from its filing.   4. It follows that implementation of Option 3 would be unlikely to take place at the same time as the CPTPP legislation coming into force. Therefore performances relying upon the US for qualification would become eligible for equitable remuneration for public performances and non-digital broadcasts for a short period of time before losing such revenues in respect of their performances on new US sound recordings.   5. There also may be an issue as to whether a reservation under the Rome Convention would be sufficient given that the scope of the “communication to   the public” right under Article 12 of the Rome Convention is narrower than that |

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| under Article 15 WPPT (for example, not covering “indirect” public performances).  17.6. At a time when the UK is engaging in trade discussions and seeking to promote the improvement of copyright standards around the world, it would be a retrograde step for the UK to be extending its reservations to international copyright treaties. |
| **Overall** |
| **Question 18.** What is your preferred option and why? |
| * 1. Options 0 and 1 would affect PPL’s stakeholders in different ways. Accordingly, PPL refrains from expressing an opinion as to which of those Options is preferable.   2. However, PPL’s clear preference is that neither Option 2 nor Option 3 should be adopted. As summarised in paragraphs 5 to 10 of this response, they are disadvantageous to PPL’s stakeholders, would cause significant disruption and would fail to meet the Government's aims. |