RadioCentre
SHAPING COMMERCIAL RADIO'S FUTURE

RADIOCENTRE RESPONSE TO OFCOM REVIEW OF MUSIC IN RADIO FORMATS (CONSULTATION)

EXECUTIVE SUMMARY

1. Changes in technology and consumer behaviour have transformed the way people access music and entertainment. If commercial radio is going to compete in this new environment it needs to be able to respond effectively to consumer demands and evolve its business model. As part of this evolution **local commercial radio stations should be as free as possible to choose the music they play.**

2. The commercial radio industry is investing heavily in digital radio content and infrastructure, alongside Government and the BBC, in order to provide access to greater choice and quality for consumers. As this process accelerates and audiences continue to migrate to digital platforms **it is right to consider whether regulation of analogue radio should start to move closer to that which applies to digital radio**.

3. RadioCentre represents 90% of the commercial radio industry and has consulted widely with its membership and Board members. They expressed unanimous support for moves to simplify the existing format rules. Therefore **the overwhelming view of commercial radio operators is that the rules should be simplified.**

4. RadioCentre has commissioned audience research from Ipsos MORI to aid understanding about whether its approach to music formats is aligned with the way listeners describe the music they hear on commercial radio. **This research found that Ofcom's terminology does not resonate with the majority commercial radio listeners.** The way they perceive or describe music is very different to Ofcom's classifications.
   - The majority of listeners have a broad outlook on the music played, with 72% using *none* of the main terms used by Ofcom when describing music on a station they listen to in their own words.
   - Only 1 in 3 could correctly identify the format description of the station they listen to when asked to select one option from Ofcom's format list.
   - There is also little support from commercial radio listeners for Ofcom determining music output (4%) compared to the radio station or presenter (67%).

5. Ofcom has certain statutory duties relating to the character of service of local commercial radio stations, but it has more flexibility than it chooses to exercise. **Independent legal advice confirms that Ofcom could go further than it is proposing in liberalising format rules.**

6. Ofcom identifies three possible approaches to the future regulation of music formats.
   - Option 1 – <u>no change</u> to the current format regime for local commercial radio.
   - Option 2 – <u>simplifying</u> some existing formats into 'mainstream popular music'.
   - Option 3 – <u>high-level formats</u> defined by specialist music genre or audience profile.

7. **RadioCentre urges Ofcom to consider a variation of Option 2** by adopting a wider definition of what constitutes a 'mainstream popular music' (or perhaps 'broad music') station and shorter specialist formats. This would mean local commercial radio stations would effectively have the choice of three options:
   - Option A – Move to a mainstream popular music/ broad music definition
   - Option B – Provide a simplified specialist music genre
   - Option C – Make no change

BACKGROUND & MARKET CONTEXT

8. There have been significant market changes in the distribution and consumption of music in the UK in the last few years. RadioCentre provided extensive evidence of these trends in its response to the initial 'call for inputs' in 2014[1]. They include:
   - Significant changes in the access to and consumption of music – driven by the expansion of internet access, IP connected devices and growth in digital music services.
   - Growth in the choice and availability of radio stations, and consolidation within the commercial radio market – which has supported the range and diversity of stations on offer to consumers.
   - Expansion in the number of musical genres and sub-genres – making it increasingly difficult to define particular artists or tracks as being clearly one type of music or another.

9. While overall radio listening remains strong there are signs that these trends are starting to have a real impact, particularly on younger audiences. Ofcom research states that for 16-24 year olds, listening to live radio comprises less than a quarter of their time spent on listening activities, while personal digital music and streamed music now account for 60% of their listening time[2]. Nine in ten of those aged 16-24 now use music streaming services[3] and the number of tracks streamed in the UK nearly doubled last year[4].

10. In light of these changes it is reasonable to ask whether the current regulatory regime for commercial radio is delivering for consumers – or whether it should be reformed so it can do so more effectively. Therefore it is appropriate that the thrust of Government policy (and the will of Parliament through recent reforms such as the Digital Economy Act) in recent years has been to enable radio stations to evolve and meet changing consumer demands. This has led to a welcome drive to reduce red-tape and provide stability for the radio sector during a period of digital transition and expansion, with initiatives such as licence rollovers and joint funding for digital radio infrastructure.

11. This was also the context of the announcement by DCMS in December 2013 that Ofcom would undertake a review of commercial radio formats '*to see if these (rules) can be relaxed to give the industry greater freedom to adapt to changing consumer tastes'* and *'look more closely at other rules and regulations that exist around radio, to ensure they are fit for purpose in a digital age'*[5].

12. The launch of this review was encouraging. The fact that this would be against the backdrop of an agreement to provide significant shared investment in digital radio (by the BBC, Government and commercial radio) also provided a further cause for optimism, as it appeared to demonstrate genuine progress on what had appeared to be intractable issues facing the industry and limiting consumer choice.

13. However the consultation process on music formats has been slower than anticipated, with formal proposals only being published as part of the current consultation in January 2015, more than a year after the review was announced by the Minister. In addition there has been no formal review or public consultation to look at the rules and regulations that exist around radio to see if they are fit for the digital age.

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[1] http://www.radiocentre.org/files/rc_response_to_ofcom_call_for_inputs___formats_review_final.pdf
[2] Ofcom, Communications Market Report 2014, p.214
[3] Ofcom, Communications Market Report 2014, p. 242
[4] http://www.theguardian.com/technology/2014/oct/09/british-music-streamed-songs-2014-bpi-spotify
[5] https://www.gov.uk/government/speeches/go-digital-conference-16-december-2013-check-against-delivery

RESPONSE TO 'CALL FOR INPUTS'

14. Part of the reason for the delay in bringing forward proposals on music formats was due to Ofcom taking the unusual step of issuing a call for inputs in May 2014 (closing 23 July 2014). It received 13 responses to this initial phase and has said that these submissions expressed *'sharply diverging opinions on the effect of market changes; the need for services to have greater flexibility in music selection; and whether a change to the current regulatory approach was feasible or desirable'* (para 1.8).

15. The way in which Ofcom represents these arguments implies that the commercial radio industry and other respondents are evenly split in their approach to this issue. RadioCentre is concerned that this assessment (and the way these opinions are represented in the document) fails to reflect fully the views of commercial radio operators and the role of an industry body in collating and submitting these views.

16. RadioCentre members represent around 90% of the commercial radio industry measured by listening and by revenue. Before submitting any policy paper or consultation response it will make every effort to ensure that it is being as representative as possible of the views of those members, in order to present a collective view. Therefore it is disappointing that Ofcom does not appear to acknowledge this when weighing up the respective responses. The view of the vast majority of commercial radio operators in response to the call for inputs was (and remains) that radio stations should be as free as possible to choose the music they play.

AUDIENCE RESEARCH

17. Most consultations conducted by Ofcom are likely to have some impact upon consumers and citizens (either directly or indirectly). As such Ofcom will usually take steps to ensure that the views of audiences are taken into account within its consultation so that this can inform its decision making. Indeed Ofcom has specific statutory duties regarding consumer research and consumer consultation outlined in the Communications Act[6].

18. Given the absence of any audience research in this instance RadioCentre decided to commission Ipsos MORI in order to try and understand more about the way in which commercial radio listeners perceive the concepts and terminology used to determine radio station formats under the existing regime. A summary of the research findings are attached as **Appendix 1** to this response. The main findings from this research were:

    - **The terms used by Ofcom to describe the music on commercial radio do not reflect the way that the majority of listeners perceive or describe the music they hear.** When asked to describe the types of music played on the station they listen to in their own words 72% respondents used none of the same main terms as the Ofcom music formats.

    - **Listeners have a broad and varied outlook on the music radio stations are playing.** When asked to choose which type or types of music genre formats describe the music played on a station they listen to, 67% selected more than one of the Ofcom music descriptions.

    - **For the majority of listeners the Ofcom format is not how they would describe the music played on the station.** Just 1 in 3 commercial radio listeners (33%) chose the correct Ofcom description as the one that *most* accurately describes a station they listen to.

[6] S.14, S.15, S.16 Communication Act 2003

19. It is clear from this research that the current system makes little sense to audiences. The terminology used by Ofcom does not match up with listener perception of these radio stations. The use of stock phrases and words to describe music has always been problematic and open to interpretation, but it is now becoming questionable whether this can remain a sensible way to regulate increasingly complex musical styles with multiple influences.

20. Another important finding from the research was that only 4% of commercial radio listeners think that Ofcom should determine the types of music played on a commercial (non-BBC) music radio station, compared to 51% who think that it should be the radio station that determines these decisions (or 67% who think it should be the radio station or presenter). This would also suggest that a regulatory system that has Ofcom as the key arbiter of music output has a very low level of support and requires significant reform.

OFCOM'S STATUTORY DUTIES

21. Ofcom continues to emphasise that it has specific statutory duties relating to character of service of local commercial radio stations. In particular, these duties stem from the Broadcasting Act 1990 (as amended by the Communications Act 2003). Broadly speaking these provide for a combination of general obligations and licence requirements. For example, Ofcom's statutory duties include general obligations to ensure radio services *'appeal to a variety of tastes and interests*'[7] and provide '*a range and diversity of local services*'[8].

22. In addition, there are specific requirements for Ofcom to take into account '*the selection of spoken material and music in programmes included in the service*'[9] when considering licence applications, and for applicants for a local service to '*broaden the range of programmes available by way of local services available to persons living in that area or locality'*[10].

23. Ofcom identifies these requirements as the basis of its current approach to the regulation of commercial radio formats. However this is only one interpretation of Ofcom's duties. RadioCentre has sought additional expert legal opinion on this issue (attached at **Appendix 2** to this submission) and has taken this advice into account in developing an alternative approach.

24. In summary this advice states that there are in fact at least three possible approaches that could enable Ofcom to proceed with greater liberalisation.
    i) **Discretion over music genre descriptions** – The format categories and their meaning are not defined in legislation, so Ofcom can decide what these genres mean or include. As such Ofcom could consent to widened definitions, without this being a substantial departure.
    ii) **Reasonable view that range and diversity would be retained** – Ofcom could also move to a broader music definition on the grounds that there was reasonable evidence that a range and diversity of music would be retained.
    iii) **Maintaining fair and effective competition** – Ofcom could change formats to broader music definition if they reasonably considered there to be a long-term threat to radio from unregulated services.

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[7] Section 3(2) of the Communications Act 2003
[8] Section 85 (2) (b) of the Broadcasting Act 1990
[9] s.312 Communications Act 2003 (amending s.106 of 1990 Act)
[10] Section 104(2) (b) of the Broadcasting Act 1990

25. In recent years Ofcom appears to have recognised that it has *some* discretion in this area (although apparently not to the extent that is possible under the legislation) and that formats needs to evolve. Prior to 2008 they included detailed speech and music quotas, which would specify the proportion of music of a particular genre, era or appeal. However Ofcom agreed to remove these detailed requirements in February 2008 following consultation.

26. This was a welcome move and Ofcom is correct to highlight that broadcasters are now required to play music under much more general descriptions as summarised in para 2.10 of the current consultation document. It is also true that specific quotas of music and speech no longer appear on the face of a radio station format or within its character of service description.

27. However, as we have stated previously, the way that Ofcom manages compliance with formats means that many stations are still, in effect, required to meet de-facto quotas of certain types of content. For example, a *'contemporary'* or *'chart music'* station must ensure 66% of its output is from the past 2 years. In addition, a station that is described as *'full service'* would appear to be required to provide speech output of between 30-50%. Stations failing to meet these requirements could be in breach of their licence.

28. While we appreciate that Ofcom does not accept this interpretation, due to the fact that formal quotas have been removed, the current system does continue to judge and enforce compliance based on the proportion of certain types of content. Therefore we continue to believe that it is reasonable to describe this approach as the use of de-facto quotas.

OPTIONS PROPOSED

29. Ofcom has outlined three possible approaches to the regulation of music formats based on its interpretation of the legislation.
    - Option 1 proposes <u>no change</u> to the current format regime for local commercial radio
    - Option 2 proposes <u>simplifying</u> some of the non-specialist music genre descriptions into a single 'mainstream popular music' format.
    - Option 3 proposes <u>high-level formats</u> defined by specialist music genre or audience profile.

Option 1 – No change

30. Option 1 proposes no change to the current format regime for local commercial radio. We do not believe that this option would be consistent with the original basis of this review (as outlined by the Minister in December 2013), which was '*to see if these (rules) can be relaxed to give the industry greater freedom to adapt to changing consumer tastes'*. At the heart of this announcement we understood that there was a clear presumption that following a review these rules would relaxed.

31. In addition Ofcom's own statements on this issue have recognised the strength of the argument for a relaxation of music formats. In July 2013 when the matter was raised with the Chief Executive of Ofcom by the Chairman of the Culture, Media and Sport Select Committee he stated very clearly that *'we can see a very credible argument for further relaxation in terms of format and music choice'*[11]. Ofcom has also stated previously that it requested this issue be reviewed and included in the Minister's speech in December 2013.

[11] http://www.publications.parliament.uk/pa/cm201314/cmselect/cmcumeds/508-i/508i.pdf, EV18

32. This background is compounded by the evidence of market changes affecting the radio industry. As RadioCentre identified in its response to the call for inputs these fall broadly into three areas – access to music due to the growth of digital music services; expansion of choice due to changes in the radio market; and the blurring of musical genres making artists or tracks harder to define.

33. These changes have created an environment where it no longer makes sense to categorise radio stations principally by the music as described in their format and provided the impetus for reform. Given this background – as well as the lack of evidence of listener benefits from the current regime – it would be and odd outcome if the conclusion was to make no change.

Option 2 – Simplification

34. Option 2 proposes simplifying the various non-specialist music genre descriptions into a single 'mainstream popular music' format. This would appear to be Ofcom's preferred option for change. It states that there are currently 26% of formats for licensed services that have one of the non-specialist music genres that it considers to be synonymous with mainstream popular music, which could see their formats simplified. While it is not explicit in the consultation document we take these to be the stations broadly categorised as Contemporary/ Chart (18%) and Adult Contemporary (8%) in para 2.10.

35. In order to understand the implications of Ofcom's proposal it would be helpful if it clarified exactly which licensed stations it is proposing to come under the new definition (and published an accompanying list of stations that it considers falls under each category). For example it is not clear from the document whether the proposal will also affect those 37% of stations categorised as 'broad music' or if these will remain unchanged. In addition it should outline the precise wording that it is proposing to use as part of this new character of service for 'mainstream popular music'.

36. These detailed points are important in understanding how this option would be implemented, but our main observation is that this approach would provide limited change or flexibility to meet consumer demands. Ofcom appears to acknowledge this when it states that *'we do not consider that the rationalisation of the music formats we have identified into a single mainstream popular music format would change the character of service for any of the services affected'* (para 4.41).

37. Given that the changes proposed will make no impact on the character of service of these stations they will not even need to make format change requests as required under the legislation. While this may simplify the administrative process of making such a change it also adds to the impression that these changes are very limited. This is re-enforced by the fact that a further 37% of stations that have some sort of requirement to broadcast a particular genre of music would seem to be completely unaffected.

38. In summary it is possible that (with some further modifications) this administrative process may lead to fewer format change requests and greater certainty for some of those stations affected, but in our view it does not go far enough.

Option 3 – High level formats

39. Option 3 proposes high-level formats defined either by a specialist genre of music or audience profile. Such an approach may well be theoretically possible under the current statutory

framework but it is difficult to make a convincing case for such a change. Indeed to the best of our knowledge no one supported this option during Ofcom's call for inputs or since that time.

40. RadioCentre has said previously that it would not be appropriate for Ofcom to segment the demographics of each commercial radio market, in order to try and provide a separate service for each age group. To do so would represent a significant level of intervention and central planning, at odds with the proposed remit of this review outlined by the Minister, which was to see if the current rules can be relaxed in order to respond to consumer tastes.

41. While we can see the justification for such an approach within a single publicly-funded organisation like the BBC, it is hard to see how such an approach would work for the commercial radio sector. BBC radio services are provided with large amounts of public funding, a specific cultural or social mission and a requirement to limit their competitive impact. Therefore it is right for Radio 1 to be required to focus on a young audience (currently 15-29 year olds).

42. Our initial submission to the call for inputs also identified the way in which market changes are driving more eclectic tastes for listeners of all ages. The fact that audiences now listen to a wider range of music genres means that music itself is becoming less predictable as a means of identifying the audience profile that a radio station will reach. Ofcom cites these and other examples in the consultation document and appears to accept the evidence of this trend (para 3.52) before acknowledging explicitly that this evidence and the changes identified *'calls into question whether music tastes and listening can be reliably segmented by age group'* (para 3.54).

43. Therefore moving to a regime based on high-level format descriptions in the manner described would not appear to be a credible option. Implementation and compliance would be problematic and the benefits to audiences are unclear and difficult to quantify.

ALTERNATIVE APPROACH

44. Our analysis of the options for change put forward by Ofcom is that they are only likely to offer relatively modest adjustments to the existing regime due to the way that they are currently framed. Some of these changes could provide limited administrative benefits, but the options proposed are not likely to lead to a major relaxation of the rules or give the radio industry the freedom it needs to adapt to changing consumer tastes in a digital age.

45. In the long term there may be a need to amend the legislation that governs the regulation and licensing of commercial radio as part of a broader review of the future of the sector. This would need to strike an appropriate balance between providing greater flexibility for commercial radio to compete (by removing formats and other content regulation as it currently exists) and sustaining a licensing system based on beauty parades, which we continue to support. But for the time being any change will need to comply with the current legislative framework.

46. However, as noted above (and in the legal advice included as part of this submission) there are a multitude of ways in which Ofcom can meet its current statutory requirements regarding the content and character of local commercial radio. That is why **<u>we would urge Ofcom to consider a variation of its Option 2</u>** as a means of balancing its statutory duties and obligations to listeners, alongside the need to reduce the regulatory burden that exists for local radio stations.

47. This could be as simple as Ofcom adopting a wider definition of what constitutes a 'mainstream popular music' station (or as we have previously argued a 'broad music' station). As noted

above, Ofcom proposes incorporating 'Contemporary/ Chart' and 'Adult Contemporary' into this definition. We would like Ofcom to consider providing the option for a broader range of stations to be included within the definition of mainstream popular music – including those that are currently categorised as 'rhythmic/ dance', 'classic/ gold' and 'rock'. This would seem a logical approach given the extent to which music on these stations is (or has been) mainstream and synonymous with UK charts for the sale, download or streaming of music.

48. However this ability to re-categorise stations as mainstream popular music should not be mandatory. Those stations that wish to retain a specialist music format (or make no change) should of course be able to do so, although they should also have the option to simplify their format and have greater flexibility in how they deliver their character of service. This could be achieved by Ofcom enabling specialist music stations to remove any excessive detail from their formats, but continuing to refer to a specific music genre and target audiences.

49. In summary this would mean local commercial radio stations would effectively have the choice of three options:
    - Option A – Move to a mainstream popular music/ broad music definition
    - Option B – Provide a simplified specialist music genre (with a shorter description of genre and target audience)
    - Option C – Make no change to their existing format

50. The legal advice we have taken suggests that this approach would be sufficient to fulfil the statutory requirements, as long as it takes the reasonable view that a range and diversity of music output would be retained. As Ofcom points out even a category such as broad music (or in Option 2 'mainstream popular music') does involve certain stipulations in relation to the music content of a service, in that it requires that the service includes a variety of music. The addition of specialist stations continuing to provide particular music genres for certain target audiences would only supplement this.

51. If Ofcom requires additional reassurance regarding its compliance with its statutory duties (and the range and diversity of output across the sector) it may be helpful for it to conduct a further consultation to ascertain which local commercial radio stations intend to provide a) mainstream popular music/ broad music; b) specialist music; or c) make no change.

RadioCentre, April 2015

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Technical Note: On behalf of RadioCentre, Ipsos MORI interviewed a representative quota sample of 1,000 commercial radio listeners across Great Britain (England, Scotland and Wales) aged 16 to 65. Interviews were conducted online via the Ipsos Online Access Panel between 10th and 16th March 2015. Survey data was weighted by age and gender, region and social grade to the known offline population proportions of commercial radio listeners.