

## **RadioCentre's response to the DCMS Communications Review**

### **Executive Summary**

1. Commercial radio has a significant economic and cultural impact on the UK, and makes a positive contribution to the energy, happiness and wellbeing of its listeners. In addition to its core music and entertainment programming commercial stations also produce a range of public service content; support local economies; develop new talent; and play a critical role in building and promoting the success of the music industry.
2. Despite its enduring popularity and the importance of its role, commercial radio faced a uniquely difficult financial situation in recent years due to a combination of cyclical and structural change. Therefore RadioCentre welcomes the Government's desire to consider whether the regulatory framework is fit for the digital age, and consider a radical rethink of the current system. This must be the right approach given the continued convergence of content from traditional media and online delivery.
3. Against this background we believe that it is important to consider several crucial elements of the current legislative and regulatory framework that impact on radio, which were developed and implemented in a pre-digital era.
  - **Content regulation** – Specifically restrictions on how and where output is produced (localness rules) and the inconsistent and prescriptive nature of centrally managed music formats.
  - **Radio licensing process** – Whether the current method of maintaining stability and providing incentives for current operators through the analogue licensing framework should continue to be the only (or optimal) way to renew broadcast licences.
  - **Advertising regulation** – Simplifying aspects of the current framework.
  - **Regulation of the BBC** – Whether the BBC's regulation and governance should be simplified and brought under the remit of Ofcom.

### **Background**

4. Radio is a much-loved part of daily life in Britain, listened to by over 90% of the adult population for an average of 20 hours a week. Radio's coverage is universal and mobile; radio listening is free; sets are inexpensive, and consumption requires no literacy skills. These fundamental traits mean radio can remain strong, delivering information and entertainment in a convenient and complementary way, as part of our rich media ecology. As well as these tangible benefits recent research<sup>1</sup> has also indicated that radio can play a positive role in people's lives, making them feel happier and more energetic.
5. Commercial radio is a crucial part of this sector, with over 300 licensed stations broadcasting a diverse range of output alongside national and local BBC services and community radio. It continues to attract high proportions of younger and local audiences, gaining 51% of all listening of those aged under 55, 76% of all local radio listening<sup>2</sup>. **Commercial radio has a significant economic and cultural impact across a number of areas.**

---

<sup>1</sup> Radio Advertising Bureau, 'Media and the Mood of the Nation', June 2011

<sup>2</sup> All figures from RAJAR, Q1 2011

- **Creating public value** - It performs a valuable function by providing local content and contributing to the plurality that is fundamental to our democracy. This is demonstrated by the fact that stations broadcast an average of around 8½ hours of public service content each week<sup>3</sup>. We estimate that, at current rates, the value of this public service activity is equivalent to more than £2.5m per week across the whole commercial radio industry – or around £130m in total per annum.
- **Supporting local economies** – It also plays an important economic role both as a local employer (with around 8,000 people working in the industry, with hundreds more involved in a voluntary capacity) and as an affordable source of advertising for local businesses.
- **Providing a platform for new talent** – It performs a crucial role in discovering and nurturing new talent in both broadcasting and journalism. As well as being a valuable and widely distributed employer in the creative industries, commercial stations provide a fantastic environment in which broadcasting talent can be trained and developed.
- **Building and promoting music** – It is a key driver of economic growth of other creative industries, particularly the music industry. It is estimated that the UK music industry is worth around £3.86bn<sup>4</sup> and despite the availability of new services to purchase and access content, radio remains the most powerful promotional tool for music. It is essential to each stage of a musician's career, from building an initial following, to establishing mass market interest, promoting successful artists and playing back catalogue.

This role is understood and appreciated by the music industry, which is only too aware of radio's impact on consumers. This was confirmed in a recent RadioCentre survey<sup>5</sup>, which found:

- 64% of people say that radio is the most important source for to find out about new music (twice as important as any other source).
- 36% of consumers report radio as the most important influence on their recorded music purchases (compared to 16% for TV and 12% for internet).
- On average radio listeners spend 36% more on music than non-radio listeners.

6. **Despite its continuing popularity and important role commercial radio has faced a uniquely difficult financial situation in recent years due to a combination of cyclical and structural change.** Total industry revenue for 2010 was £523m, down 18% from the peak in 2004 calendar year (when revenues were £641m)<sup>6</sup>. This downturn in revenues has translated to an extremely serious position in terms of profitability, with small analogue stations being hardest hit. Indeed RadioCentre has found that half of commercial radio stations are loss making, and 80% either loss making or only generating profits less than £100k pa<sup>7</sup>.

7. The main cyclical cause of these challenging trading conditions has been the severe advertising recession, which has been compounded by one off factors such as falls in

<sup>3</sup> RadioCentre, audit of member stations, October 2010

<sup>4</sup> PRS for Music, 'Adding up the Music Industry 2009', August 2010, RadioCentre analysis

<sup>5</sup> RadioCentre/ Communications Chambers consumer research, May 2011

<sup>6</sup> Radio Advertising Bureau, February 2010

<sup>7</sup> RadioCentre, 'Profitability and localness survey of local Commercial Radio', March 2009

spend by the COI (the single biggest advertiser on commercial radio). However, the industry also faces multiple structural challenges arising from the growth of on-line advertising at the expense of traditional media; the need to make many millions of pounds worth of investment in dual transmission costs, for both FM and digital, with little if any additional revenue generated as a result; and (crucially for this process) consistently high costs due to regulation.

8. Against this background recent regulatory changes have been important in supporting the viability of commercial stations. In particular the updating of localness rules that dictate how and where content is produced have helped to sustain stations and improve efficiency, whereas the revision of the Broadcasting Code to enable integrated commercial references on radio has opened up additional revenue opportunities. Moreover the recent passage of the Media Ownership (Radio and Cross Media) Order 2011 has finally removed the disproportionate sector specific restrictions on local radio and cross media ownership.
9. While these changes have been welcome, commercial radio is still heavily regulated given the relatively small turnover of the sector. In particular it operates under a framework of content regulation and licensing designed for another era, one of spectrum scarcity and public service output achieved through regulation and direction from Government.
10. This is in contrast to the current (and future) environment for broadcast media companies in an age of infinite choice, where they must compete against unregulated online content providers on the one hand and a significantly better funded BBC with considerable spectrum advantages on the other. Consequently RadioCentre believes that it is entirely appropriate for Government to consider whether the regulatory framework is fit for the digital age, and consider a radical rethink of the current system. As the Secretary of State has said it is time to 'take a fresh look at what we regulate, whether we regulate and how we regulate. To consider whether there are areas we might move out of regulation altogether'<sup>8</sup>.

### **Content regulation**

11. A crucial factor in enabling commercial radio to provide strong economic and cultural benefits in the future, will be the framework of content regulation that applies to the sector. Government will be well aware of the sharp differences that exist in content regulation for traditional broadcast media, such as radio, and new media and online services, which have become increasingly apparent in recent years. As a result we would argue that contrasting approaches on issues ranging from harm and offence to impartiality, along with regulation that is still based on device, are not sustainable in the long term. Nor is it sensible to continue indefinitely with one system for broadcasting because it is delivered through a radio or television set, but with another system for the internet because it is delivered on a computer or smartphone. Therefore greater regulatory convergence is inevitable at some point.
12. At present there are two broad areas of content regulation that affect radio specifically, which limit its flexibility to react to the challenges provided by its new media competitors. These restrictions can be broadly grouped as regulation on how and where

---

<sup>8</sup> Jeremy Hunt, Oxford Media Convention, 19 January 2011

output is produced (localness rules) and the inconsistent and prescriptive nature of centrally managed and regulated music formats.

- **Localness rules**

13. Localness is fundamental to commercial radio's business model and the sector will remain committed to local content regardless of regulation, economic conditions and public funding. Surveys of RadioCentre members have found that even with no regulation whatsoever 86% of stations would retain the same local news output<sup>9</sup>. Moreover 80% already produce more locally-made programming than required by their format<sup>10</sup>.
14. Nevertheless section 314 of the Communications Act 2003 (as revised by the Digital Economy Act 2010) requires Ofcom to decide whether a local radio station should broadcast local material and locally-made programming. Crucially the legislation states such content should be required 'only if and to the extent (if any) that Ofcom consider is appropriate in that case'<sup>11</sup>. Therefore Ofcom has considerable discretion in this area to set the levels of both local material and locally-made programming.
15. In this context 'local' is defined as being within the station's approved area and Ofcom performs this function through a range of quotas and requirements in its localness guidelines. For local radio stations offering local news is at peak times only this means a minimum quota of 10hrs of locally-made programming on weekdays (including breakfast) and 4hrs during weekend daytime. Where local news is at least hourly in weekday daytime and weekend peak, 7hrs of locally-made programming is required during weekday daytimes (incl. breakfast) and 4hrs during weekend daytime.
16. However, these prescriptive rules only measure and define the 'input' required to produce content rather than the local 'output' heard by listeners. It requires a presenter to sit in a studio so that a programme may be classed as locally-made, but does not guarantee a station will produce local output. This focus on how and where content is made limits the flexibility for stations to improve efficiency and quality of output.
17. There should be a radical overhaul of the way in which commercial radio is regulated in future, removing the emphasis on how or where content is produced. Stations were producing valuable local material of this type prior to 2003 (when this obligation was introduced) and the introduction of section 314 has not been to the benefit of citizens or consumers. Instead it has just added to waste and bureaucracy in both public and private sectors, through numerous consultations. Our current view is that section 314 should be removed as part of a significant overhaul of content regulation on traditional media.

- **Music formats**

18. Just as legislation and regulation are an unnecessary means of seeking to ensure localness, much the same can be said of the desire to retain legislation that was designed to ensure a diverse range of music output from commercial radio.

---

<sup>9</sup> RadioCentre, 'Profitability and localness survey of local Commercial Radio', March 2009

<sup>10</sup> RadioCentre, audit of member stations, October 2010

<sup>11</sup> S.34(4) Digital Economy Act 2010

However, Ofcom's current statutory duties include general obligations to ensure radio services to:

- *'appeal to a variety of tastes and interests'*<sup>12</sup>;
- *provide 'a range and diversity of local services'*<sup>13</sup>.

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'*<sup>14</sup>;
- for stations to *'broaden the range of programmes available by way of local services available to persons living in that area or locality'*<sup>15</sup>.

19. Ofcom publishes formats for each commercial radio stations based on this legislation and licensing process, and these formats prevent stations from reacting to the needs and demands of listeners in a fast changing music and entertainment market.

20. It is worth noting however that it is in the interest of commercial stations and groups to provide services that are popular with a wide range of audiences. Consequently plurality and diversity is just as likely to be provided by a vibrant local market, or in areas where consolidation has led to single radio groups owning different stations that provide a range of different services (e.g. Global Radio providing Capital, Xfm, Choice and Heart or Bauer Radio providing Kiss and Magic in London).

21. Changing music styles mean that music genres have become increasingly blurred, which makes it difficult to define a station principally by its music, as Ofcom continues to do. In addition, the greater availability of a broader range of music (smartphones, downloads, streaming) means that listeners have more diverse tastes. Stations should be able to reflect this and have flexibility to play a broader range of music to meet listeners' demands and enhance diversity.

22. There is also an inconsistency in Ofcom's methodology. Some formats include very specific quotas on types of music to be played, whilst others are much more flexible depending on the original licence application. Therefore there is a case for much greater consistency across the board.

23. Obligations on music formats should be removed. Ultimately we do not believe that it is necessary or desirable in the digital age for Ofcom to regulate specific quotas of music output for individual radio stations covering particular geographical areas.

### **Licensing framework**

24. Much of the current regulatory and legislative structure for commercial radio is predicated on the assumption that the industry is moving inexorably towards digital switchover, with DAB as the main broadcast transmission platform. That outcome remains the aspiration of the radio industry and Government, and separate discussions are continuing regarding the future planning and funding of DAB services. Therefore it would be inappropriate to seek to prejudge the outcome of these deliberations.

<sup>12</sup> Section 3(2) of the Communications Act 2003

<sup>13</sup> Section 85(b) of the Broadcasting Act 1990

<sup>14</sup> Section 106(1) (b) of the Broadcasting Act 1990

<sup>15</sup> Section 104(2) (b) of the Broadcasting Act 1990

25. However, estimates suggest that commercial radio as a whole may have invested as much as £200m in DAB since its inception<sup>16</sup>, while also funding analogue transmission. These dual transmission costs have restricted commercial radio's ability to invest in content in recent years, and arguably limited its economic and cultural contribution. We are therefore seeking to avoid a further extended period of dual transmission if possible.
26. The preferred solution of industry and Government has been to seek to reach a satisfactory deal on funding and switchover to DAB for most services, as part of a positive move to digital. Should this not be achievable in a reasonable timeframe it may be necessary to revisit the current licensing regime. In particular, under the current legislation commercial radio stations that also provide their service on DAB, are able to receive licence renewal for their analogue radio service. This renewal is initially for 12 years (8 years plus 4 years)<sup>17</sup>, and then a further 7 years<sup>18</sup>.
27. Depending on the outcome of the current discussions this may or may not continue to be the only (or optimal) method of renewing analogue licences, as it is at present. We know that Government is already well aware of this issue and will continue to be an important part of our considerations under the separate workstream on DAB referred to above.
28. We would also ask Government to consider providing clearer direction on the standard length of analogue radio licences within current legislation, so that radio stations can build a viable and strong business over the maximum period possible. Current legislation allows Ofcom to award such licences for a fixed period of '*no more than 12 years*'<sup>19</sup>. However, Ofcom's policy is to issue analogue licences of 7 years<sup>20</sup>, which limits the viability of these stations and the ability to build a stable and successful business.

### **Advertising regulation/ self regulation**

29. There are two broad issues relating to advertising regulation and co-regulation that we would also ask the Government to consider as part of its move to seek greater deregulation and convergence in rules across media.
30. Under the 2003 Act Ofcom remains the 'back stop', statutory regulator for radio (and television) advertising, although it contracted out the day-to-day advertising regulation to the ASA in November 2004. The current system is therefore 'co-regulatory' rather than purely self-regulatory as for non-broadcast media. As part of its move towards greater deregulation the Government may consider removing Ofcom's statutory responsibility in broadcast advertising regulation, and the system could be aligned to that of the non-broadcast media that is entirely self-regulated. This model could rely similarly on the competition authorities as the ultimate arbiter.

<sup>16</sup> Estimate based on Value Partners analysis of aggregated industry data (2009)

<sup>17</sup> s.104 Broadcasting Act 1990 – as amended by s.94 1996 Act and s253 Communications Act 2003 – subject to some exceptions depending on the date of grant of the analogue licence

<sup>18</sup> s.104A Broadcasting Act 1990 – amended by the s.32 Digital Economy Act 2010

<sup>19</sup> s.86(3) Broadcasting Act 1990 – amended by s.252 of Communications Act 2003

<sup>20</sup> Ofcom statement of local commercial analogue radio licence duration, 15 November 2010



31. In addition the section 321 of the 2003 Act (and the BCAP Advertising Code) prohibits political parties, lobbying organisations and political aims, objectives and statements from being advertised in the broadcast media, with statutory responsibility in this area remaining with Ofcom. This prohibition is at odds with the non-broadcast media and it could potentially be removed, either totally or partially (for example, political parties might still be prohibited but greater flexibility for lobbying organisations and campaigning could be considered).

### **Public service broadcasting and the regulation of the BBC**

32. The next Communications Act would also appear to be the most likely vehicle to enact any necessary changes to the regulatory framework of public service broadcasters and specifically the BBC, which represents a significant public intervention in radio (more so than in any media).

33. In the long-term, we believe that the regulatory and governance framework within which the BBC operates must change. It is not appropriate to provide details comments on the role of the BBC in response to this consultation, however we would emphasise that we believe that improved governance and regulation of the BBC could help increase its public value significantly. Consequently we would state three broad points of principle:

- It must be absolutely clear which organisation is responsible for the regulation of the BBC
- All regulation of the BBC must fall within the remit of one organisation. This body's regulatory duties must include:
  - Regulation of accuracy and impartiality, in addition to all other programme standards (in accordance with the Broadcasting Code)
  - Regulation of the BBC's market impact and fair trading activity (including regular reviews of the market impact of BBC services)
  - Service licence reviews
  - Public Value Tests (including public value assessments, in addition to market impact assessments)
- The organisation responsible for the regulation of the BBC must be absolutely independent of the BBC Executive - both functionally and organisationally.

34. We acknowledge that, at the time of the last Charter renewal, it was decided that significant responsibility for regulating the BBC should not fall within Ofcom's remit. However, we believe Ofcom has achieved a largely successful track record since then, and is now firmly established and widely respected with the media industry. Should Ofcom regulate BBC output, this would also ensure consistency across the whole media industry. This approach would be similar to that outlined in the recent report from the Lords Communications Committee<sup>21</sup>.

---

<sup>21</sup> Lords Communications Committee, 'Governance and Regulation of the BBC', June 2011

### **Background to RadioCentre**

35. RadioCentre is the industry body for UK commercial radio. It exists to maintain and build a strong and successful commercial radio industry, and to help promote the value and diversity of commercial radio.
36. Founded in 2006 after the merger of the Radio Advertising Bureau (RAB) and the Commercial Radio Companies Association (CRCA), RadioCentre represents radio groups and stations from rural, small scale ventures, to household names serving major metropolitan areas. Its member stations together represent 90% of commercial radio listening.
37. Working with a range of stakeholders, RadioCentre works for the greater benefit of commercial radio, from lobbying on the industry's behalf with government, Ofcom and policy makers, to raising the profile of commercial radio with advertisers and their agencies, and of course, working with radio stations themselves, helping them maximise the potential of their businesses.