

RADIOCENTRE SUBMISSION TO THE PUBLIC BILL COMMITTEE CALL FOR EVIDENCE ON THE MEDIA BILL – 1st DECEMBER 2023

SUMMARY

Radiocentre is the industry body for commercial radio, representing a broad range of radio stations from across the UK. There is strong support for the radio measures in the Media Bill from across the whole commercial radio sector, as well as from community radio and the BBC. We welcome the opportunity to input into the Public Bill Committee's call for written evidence on the Media Bill, which is crucial for radio. It includes sensible and proportionate measures that will help safeguard the future of radio, along with the valuable and trusted content that it provides, in the face of changes in technology and shifts in listening habits.

These proposals have been subject to extensive consultation and scrutiny over several years. During the summer 2023 the cross-party Culture, Media and Sport Select Committee completed its pre-legislative scrutiny of the draft Media Bill, and its report on radio strongly backed these important measures.

The Media Bill is the first major piece of media legislation since the 2003 Communications Act and is urgently needed to support UK broadcasters in the streaming age. Given the pace of change and limited opportunities for legislation, there is a risk that any further delays would leave this area unregulated for many more years, ultimately to the detriment of your constituents. This would create unacceptable risks for radio and is likely to lead to further examples of platforms using regulatory gaps to exploit their market position by imposing unfair terms of service, as seen in other markets.

RADIO'S PUBLIC VALUE

Radio listeners in the UK benefit from access to a diverse mix of national, regional and local output, from commercial radio and the BBC, with 9 out of 10 of the adult population tuning in every week. Broadcasters make a substantial contribution to the economy and creative industries, with BBC radio and commercial radio combined generating over £1.5bn in gross value added to the UK economy.

Commercial radio stations, which reach over 39 million listeners, are an important source of trusted, reliable news and make a significant investment in journalism across all parts of the UK, broadcasting over 10,000 bulletins every week and employing hundreds of journalists.

In common with other media and content businesses, the radio and audio industry is facing a significant technological shift, with audiences moving from traditional broadcast transmission (via FM, AM and DAB) to IP distribution. A rapidly increasing share of listening is forecast to take place online and on smart speakers powered by voice assistant platforms. While this digital transformation has provided many opportunities for the sector, there are significant risks if the ability of radio broadcasters to reach their listeners is increasingly dependent on the terms set out by large tech platforms. This is why new legislation guaranteeing unfettered access to UK radio services on smart speakers is necessary to protect the broad range of public value that radio delivers to listeners.

The UK radio industry (BBC, commercial and community radio) is united in its support for the Media Bill as a timely vehicle for enshrining in legislation support that is necessary to secure the future of radio for listener, ensuring a more level playing field between the tech platforms and UK

broadcasters who continue to deliver significant public value. Radiocentre also welcomes the inclusion, in the Bill, of long-awaited changes designed to update the regulatory framework for commercial radio, focusing on local news and information output rather than production and format requirements developed in the 1980s.

PART 6: REGULATION OF RADIO SELECTION SERVICES

Industry position on Part 6 of the Media Bill

The UK radio sector (BBC, commercial and community radio) is united in its support for Part 6 of the Bill, which safeguards the future of the industry on voice-activated devices. The government recognises the significant public value provided by broadcasters (support that is echoed across the political spectrum) and the proposed measures are a proportionate safeguard against the risk that tech platforms, which play an increasingly important role in the distribution of UK radio services, seek to exploit their significant market power.

Purpose

Part 6 will help guarantee access to UK radio services on voice-activated smart speaker platforms (such as Amazon Alexa, Google Assistant and Apple Siri), including voice-activated systems in connected cars. This is vital, as online listening to radio is growing rapidly and has more than doubled since 2019 to a record high of 25%. Over half of this (14%) is through smart speakers.

It is worth noting that radio broadcasters currently enjoy good relationships with tech platforms and they are important partners for radio. However, as listening habits shift, radio's growing reliance on tech platforms increases the risk of an abuse of market power – with platforms currently free to charge for access to UK radio, push listeners to their own radio-like services, or insert their own advertising spots into UK radio streams.

If left unchecked, such behaviours pose a significant risk to the long-term sustainability of UK radio and the public value radio it provides to listeners; they also create a dampening effect on innovation, by generating long term uncertainty over UK radio's ability to access listeners and making it harder for licensed audio services to interoperate with the platforms they increasingly rely on to reach their audiences – the Media Bill will help prevent such behaviours from arising by introducing new powers:

- **A listeners' choice of station should be provided reliably** in response to a voice command, not re-routed to competing radio-like services from e.g. Apple or Google (self-preferencing)
- **Smart speaker platforms should provide unfettered access** (without charging) to radio stations licensed by Ofcom.
- **Broadcasters can request a default route for their stations** to be delivered to listeners on smart speakers, for example via Global Player, Rayo, BBC Sounds, Radioplayer or Tuneln.
- **Platforms should not overlay additional content**, such as unauthorised advertising, over the top of radio services (with some limited exceptions).

Summary of proposed amendments

1. Expanding scope to cover non-voice-activated in-car entertainment systems (362B A)
 2. Expanding protections to cover on demand and IP only content from the BBC and Ofcom licenced radio stations (362B F and 362B G).
 3. Including an obligation for voice assistant platforms to share user data with radio stations (362B I)
- Four wording changes that will improve and clarify definitions and provisions.

Further industry commentary on the clauses in Part 6 and detail on the proposed amendments can be found in Annex A.

PART 5: REGULATION OF RADIO SERVICES

Industry position on Part 5 of the Media Bill

Part 5 of the Bill impacts commercial radio services, with the main focus on removing outdated regulatory burdens on *analogue* licences. The commercial radio sector, with its 39 million listeners, welcomes these changes which are long overdue given rapid changes in listening habits. The government originally recommended reform – with the support of Ofcom – back in 2017 and the Media Bill is the first relevant legislative vehicle.

Purpose

Part 5 will safeguard news and information on local commercial radio, while simplifying the remaining rules on formats and production quotas for local analogue stations (FM and AM).

It should be noted that the vast majority of commercial radio services and listening are not directly affected by these changes – as 76% of listening to commercial radio is now on digital platforms (DAB and online). Services provided on DAB and online are not subject to this analogue regulation.

As such, the unprecedented range and choice of music and speech now available across commercial radio will be unaffected. Stations will continue to cater for every genre (jazz, classical, rock, country, dance, soul, talk) and era (60s, 70s, 80s, 90s, 00s, 10s), as this is not a function of the regulation.

However, in a world of almost infinite choice and competition (music streaming, online audio, podcasts) it is right to revisit regulation on local analogue stations, which was devised in the pre-internet era of the late 1980s to ensure a range and variety of content on a small number of outlets.

The last 10-15 years has already seen local analogue stations transition to popular brands, including Heart and Greatest Hits Radio, which combine national non-news programming with local news and information. These latest changes will support investment by broadcasters and the long-term sustainability of these stations, while ensuring the provision of local news and information is protected (due to the particular value placed on local news by audiences).

See Annex B for detailed industry commentary on clauses in Part 5 of the Media Bill. We are not proposing any amendments to this part of the Bill.

ANNEX A

Part 6 Regulation of Radio Selection Services – Industry commentary on key clauses

The key clauses in Part 6 of the Media Bill are summarised below, including references to relevant subsections.

Clause 48 – 362B A (Meaning of “radio selection service”)

Defines key characteristics of “radio selection service” as a service that:

- Enables access to a selection of radio services over the internet (1a)
- Provides ability for radio services to play (1b)
- Is controlled by voice command (1)

This clause describes the technology used for radio listening that is covered by the legislation (i.e. voice controlled services that provide access to radio – like Amazon Alexa).

Industry comments:

- We believe that it would be better if "radio selection services" could be expanded beyond voice-controlled services to reflect changing consumption patterns in audio markets. This definition still only refers to “spoken commands” and therefore risks not being future proof.
- The reference to "spoken commands" does not reflect all the different ways in which listeners access internet radio services, particularly on in-car entertainment systems which aren't necessarily voice-activated. Notably, instead of spoken commands, listeners may use screen-based navigation in order to find and select such services.

Clause 48 – 362B B (Meaning of “designated radio selection service”)

Defines a ‘designated radio selection service’ and how/ why it will be in scope of the new obligations.

- A service can be designated only if it is used to listen to radio by a significant number of users (2)
- Level of use to be significant can depend on circumstances e.g. in vehicles (2)
- SofS must receive advice from Ofcom before designating (3)
- SofS must consult before designating (4)

This clause describes the features of specific voice-controlled services that will have to comply with new obligations on ensuring access to radio and the process of deciding or “designating”.

Industry comments:

- We welcome the greater clarity this clause provides on which services should be designated. In particular, the requirement for the SofS to designate a service (based on a report from Ofcom) only if “the level of use of the service in the United Kingdom to listen to internet radio services is significant” provides clearer direction.

- In addition, we welcome the clause that states level of use can be considered to be significant in certain specific circumstances, such as “while in a vehicle”. This recognises that the thresholds for significant use might vary based on where listening takes place (i.e. in home vs in car).

Clause 48 – 362B F (Meaning of “internet radio service”)

Defines key characteristics of “internet radio service” as a service that:

- Programmes consisting of sound (1)
- Distributed over the internet (1)

This clause describes the overall nature radio services covered by the legislation (i.e. sound programmes provided over the internet).

Industry comments:

- We welcome the definition of internet radio service that is broad enough to cover all Ofcom-licensed commercial and community stations, as well as the BBC – in recognition of radio’s significant public value.
- We also welcome changes from the draft Media Bill to disregard the requirement for the same advertising to run online and on broadcast services. The previous version of the Bill would have restricted the ability to provide targeted advertising, so we are pleased that this aspect has been taken out of the current version of the Bill.

Clause 48 – 362B G (Meaning of “relevant internet radio service”)

Defines “relevant internet radio service” as:

- A UK radio service licensed by Ofcom – including BBC, commercial radio, community radio (11)
- Provided over the internet at the same time (4)

This clause describes specific feature of radio services that will benefit from the new protections, namely all Ofcom-regulated radio services provided online at the same time as on FM, AM or DAB.

Industry comments:

- We believe that the benefits of the regime should go beyond simulcasts to include on demand content and IP-only radio services.
- In addition, we are concerned that the definition may not be sufficiently flexible. For an internet radio service to be covered by the protections in the Bill, it now states that all programmes must also be included in a UK broadcast radio service *at the same time*. This is very restrictive and doesn’t account for time-lag or small differences in output (for example, an additional music track instead of an advertisement for logged in listeners). It would be much more realistic to require all programmes to be included in a UK broadcast radio service at the same time “to a material extent only”.

Clause 48 – 362B H (Sections 362B F and 362B G: power to amend)

This clause gives the Secretary of State powers to make future amendments to section 362BF and 362BG, including a power for an amendment:

- preventing or restricting charging for allowing the internet radio service in question to be played (4)

The intention of clause is to provide powers that could in future prohibit or restrict radio stations from levying charges on voice assistant platforms.

Industry comments

- We do not support this power to amend with the specific reference to charging by radio services. It is unclear what this power is trying to prevent as there is no regulatory mechanism by which broadcasters could force voice assistant platforms to pay. Moreover, broadcasters have significantly less bargaining power than voice assistant platforms. Restricting the ability of radio stations to levy charges may unhelpfully interfere with the contractual freedom of radio stations and voice assistant platforms, and the incentive of both voice assistant platforms and broadcasters to innovate.

Clause 48 – 362B I (Access to relevant internet radio services)

Key section that imposes new obligations on voice controlled (and designated) radio selection services when providing access to UK radio services.

Designated platforms must take ‘all reasonable steps’ to secure that:

- radio services can be selected and played reliably on spoken command (1)
- the playing of a service is not interrupted e.g. by additional advertising – subject to some exceptions and user preferences (2)
- broadcasters are able to request a default route for stations to be delivered to listeners e.g. BBC Sounds, Global Player, TuneIn (4)

In addition, designated platforms cannot impose a charge on the provider of a relevant radio service for facilitating access as set out in this clause (6).

This clause will help ensure unfettered access to radio services on designated voice assistant platforms (expected to be Amazon Alexa, Google Assistant and Apple Siri initially), by preventing charging or unauthorised advertising and ensuring radio services are provided as intended.

Industry comments:

Access to data

- We note there is currently no obligation on tech platforms share data with radio broadcasters in relation to the distribution of the latter’s audio services. Enhanced access to user insights would enable broadcasters to serve their listeners needs better, helping stations to optimise their content and commercial offerings to the needs and preferences of audiences more effectively.

- We recommend the inclusion of a provision on voice assistant platforms to provide radio stations with effective, high quality and real time access to user data that is generated by the listeners of those stations.

Reasonable steps (s.362B 1)

- We note the watering down of the robust obligation to ensure access to UK radio – we would prefer a “duty” as set out in the draft Bill, rather than an obligation on the voice assistant platforms to “take all reasonable sets” to comply with the key access requirements.

Exceptions – pre-roll advertising (s.362B 1(2)(iii))

- We do not support the exception that would allow pre-roll ads to be played before the stream “if the provider of the selected service agrees”. While this does give the radio company the ability to refuse, it raises the question of how much coercion can be applied to the radio company by powerful tech firms, which a broadcaster may be reliant upon in many other ways that are not in scope of the legislation.
- We would prefer wording that protects the autonomy of radio stations and would recommend an amendment that states “if the provider of the selected service *freely requests*” – which clarifies that pre-roll advertising would only be allowed if it is something the radio provider has requested.

User preferences (s.362B 1(5))

- We would be concerned if the power to override interruptions was exploited by the voice assistant platforms (e.g. by coercing or inducing users to accept additional advertising or remove existing advertising.
- Overall, we understand the desire to clarify that certain user preferences (alarms, doorbells) be permitted. However, it is conceivable that users may also be offered an incentive by the platforms (directly or indirectly, through cross-platform subscription packages like Amazon Prime) to either accept additional ads, or subscribe to ad-free services. To avoid this scenario, we recommend that this subsection should specifically disregard advertising when considering user preference.

Carriage fees (s.362B 1(6))

- We note that the restriction on carriage fees/ charging by voice assistant platforms is now a little broader than the one in the draft Media Bill. While we welcome this improvement, we are not sure this completely removes their ability to raise fees elsewhere.
- The amended wording still only relates to charges (i.e. financial payments). It is critical that the wording explicitly includes language such as ‘or impose any other conditions’ following the prohibition on charging.

Proposed amendments

1. **Expanding scope to cover in-car entertainment systems:** Amendment to expand the scope the definition of a “radio selection service” to include non-voice activated in-car entertainment systems (362B A).

2. **Expanding protections to cover on demand and IP only content:** Amendment to expand the scope of “internet radio service” to include on-demand and internet only content provided by the BBC or Ofcom-licenced radio stations (362B F and 362B G).
3. **Including an obligation for voice assistant platforms to share user data with radio stations:** Amendment to include a provision on designated radio selection services to provide radio stations with effective, high quality and real time access to user data that is generated by listeners of those stations (362B I).
4. **Power to amend:** Remove the clause that provides for powers that could in future prohibit or restrict radio stations from levying charges on voice assistant platforms. (362B H(4)).
5. **Definition of internet radio service:** Amendment to make the definition of an “internet radio service” less restrictive so that it can account for time lags or small differences in output. This would add “to a material extent only” after “at the same time” in s. 362B G(4).
6. **Pre-roll advertising:** Amendment to protect the autonomy of radio stations by clarifying that pre-roll advertising would only be allowed if it is something the radio provider has freely requested by replacing “agrees” in s. 362B I(2)(a)(iii) with “freely requests”.
7. **No charging:** Amendment to strengthen the no charging provision on platforms so that it covers non-financial charges by including “or impose any other conditions” following the prohibition on charging on s. 362B I(6).

ANNEX B

Part 5 Regulation of Radio Services – Industry commentary on key clauses

The key clauses in Part 5 of the Media Bill are summarised below, including references to relevant subsections.

Clause 41 (Licensing of analogue radio services)

Amends Chapters 1 and 2 of Part 3 of the Broadcasting Act 1990 on the licencing of analogue radio services.

This clause will update licencing powers of Ofcom, particularly regarding the range and diversity of analogue commercial radio services, giving them more flexibility to decide whether or not to relicence any analogue frequency which may be vacated over the coming years.

Industry comments:

- We welcome this clause and have no further comments.

Clause 42 (Licensing of local services)

Amends Chapter 2 of Part 3 of the Broadcasting Act on the licensing of analogue radio services.

This clause gives Ofcom discretion to decide how applications for a licence must be made, recognising that over the coming years there are likely to be very few occasions where Ofcom will need to hold a competition for an analogue local commercial licence.

Industry comments:

- We welcome this clause and have no further comments.

Clause 43 (Character of local services)

Amends the 1990 Broadcasting Act, removing the requirement of local commercial radio stations to commit to a particular ‘format’ in future, including genre of content or age group. This is replaced by new requirements on local news and information in Clause 44 (2).

This clause recognises the unprecedented choice and diversity of content now available across commercial radio, so removes remaining format obligations on local analogue commercial radio stations (FM and AM).

Industry comments:

- We welcome the removal of format requirements on analogue commercial radio, which recognises the choice and diversity of content now available and the fact that such obligations no longer serve a useful purpose.

Clause 44 (Local news and information)

A new requirement will be introduced requiring local commercial radio stations to:

- “regularly broadcast” programmes including local news and information (4) and
- ensure local news is “locally-gathered” (4)

“Locally-gathered” means news gathered in the local county area or less, enabling Ofcom to use local radio coverage areas as a proxy for this (7).

In return for this commitment to local news and information, stations will have greater flexibility in how they produce their programming.

This clause enshrines local news and information requirements on local analogue commercial radio stations, while providing greater flexibility in terms of how and where to content in produced.

Industry comments:

- We support the safeguarding of local news and information requirements on local analogue and commercial stations. We will work with Ofcom to develop the framework once the legislation is in place.

Clause 44 (9) – 315 A (Local news and information in local digital radio services)

This new clause provides powers for the SofS to secure local news and information on DAB radio services in future (if and when local FM/ AM services cease transmitting). It proposes placing the obligation to ensure the carriage of local news fall on the local multiplex operator (1).

This clause provides government with the ability to introduce local news obligations on DAB radio services, should FM and AM services cease in future. The obligation is not designed to fall on radio stations but on the companies responsible for local digital transmission (e.g. Arqiva) through a ‘multiplex’ of local stations.

Industry comments:

- We support the principle of introducing powers to ensure local news and information on DAB services in future (new section 315A).
- However, multiplex operators have expressed some concern with the practicality of the approach. Some have suggested that a more proportionate approach would be to require multiplex operators to take reasonable steps to provide capacity for services that provide local news, but not to require them to remove other service providers from the multiplex if it is full.

Clause 45 (Financial assistance for radio)

Amends Chapter 6 of Part 3 of the Communications Act 2003 to insert a new section on financial assistance for radio and sound services.

This clause gives the Secretary of State a power to give financial assistance for local commercial or community radio stations.

Industry comments:

- From conversations with DCMS we understand that there is not currently any specific scheme or programme where this power would be applied, but we can see a value in enabling the Secretary of State to provide direct financial assistance to local and/or community radio services if needed in future.

Clause 46 (Licensing of non-UK digital sound programmes)

Amends section 245 of the Communications Act 2003 which specifies the radio services which fall to be regulated by Ofcom with the intention to specify Ireland as a qualifying country.

This clause is intended to allow RTE (the Irish national broadcaster) and other Irish commercial and community radio station operators to apply for digital licences for their radio services to be broadcast in the UK.

Industry comments:

- We welcome this clause and have no further comments.

Clause 47 (Radio multiplex licences)

Amends Part 2 of the Broadcasting Act 1996 in relation to the application process for radio multiplexes and the conditions attached to these licences.

This clause simplifies the arrangements between multiplex operators and Ofcom, which reflects the maturity of the digital radio market and choice available to consumers.

Industry comments:

- We welcome this clause, however we disagree with the proposed approach and would prefer information on payments to multiplex operators be 'provided' to Ofcom rather than 'published'.