

11th March 2004

Neil Stock
Head of Radio Planning & Licensing
OFCOM
Riverside House
2a Southwark Bridge Road
London, SE1 9HA

Re: The Future Licensing of FM Commercial Radio

Dear Mr Stock

The Music Business Forum (MBF)¹ welcomes the opportunity to respond to OFCOM's consultation on the future licensing of FM commercial radio.

We have not commented on all aspects of the consultation in our short submission, but instead have remarked on areas of particular interest to the music community.

The Music Business Forum welcomes the more transparent approach to the licensing process advocated by OFCOM. We also fully support the statutory duties imposed on OFCOM by the Communications Act 2003 with respect to the explicit consideration of the impact on 'music' when considering a change in ownership and/or format of analogue commercial radio licences. The central theme of our response is the need for OFCOM to meet this duty and that it should be implicit within OFCOM's radio strategy ensuring access to a wide range of musical diversity for the listening public.

The Music Business Forum (MBF) also intends to respond to the more recently issued consultation on 'localness' (outputs) of commercial radio, the forthcoming consultation on 'inputs', and the proposed digital radio consultation. In line with OFCOM's approach to holding informal discussion with people and organisations 'prior to announcing a big consultation', we would welcome the opportunity for the music industry to engage with OFCOM so that we can continually develop our working relationship. For your information, the Music Business Forum contact details are enclosed at the conclusion of this document.

We would be pleased to organise a delegation of music representatives from various parts of the industry - including independent record labels, music managers, and songwriters/composers - to come and discuss our considerations on these matters in more detail. We look forward to maintaining ongoing dialogue between OFCOM and the Music Business Forum on radio issues, moving forward.

Yours sincerely,

Sir Alistair Hunter

Chairman, British Music Rights
And Co-Chair of the Music Business Forum

¹ The MBF is an informal group of music business organisations that, since its inception in the spring of 2002, has gained a reputation as an effective lobbying force, acting in the interests of the music making community. The members of the MBF represent interests from all aspects of the UK music business, reflecting the vibrant diversity of the industry. Further details of the current membership of the MBF are annexed to this paper.

OFCOM's Broad Objectives for the Radio Sector

We support OFCOM's broad objectives for radio, as outlined in the consultation document (section 18) and, in particular, the ambition of "fostering of plurality and diversity". In relation to "a wide range of services, taken as a whole, are of quality", we also suggest that OFCOM's approach should also incorporate the words "and of a varied nature".

In relation to radio licensing in particular, the objective of maximising choice for listeners should be a key consideration reflecting a wide and diverse mixture of genres of music. The Music Business Forum also recognises that the BBC has an important role to play as the 'plus one' at the local level, and we will be responding to the DCMS consultation on Charter Renewal in due course.

Music, Radio, and the Communications Act

Parliament recognised the importance of diversity of music within broadcast radio services in the Communications Act 2003. Under section 312 of the Act, OFCOM is required, when considering applications for amending radio formats and be satisfied that the changes would not substantially alter the character of the service, to take into account the selection of spoken material and music in programmes included in the relevant service.

Before OFCOM can agree to a substantial departure from the character of an analogue service it must publish a notice specifying the proposed departure and period within which representations must be made (Section 313). The intention was clearly to ensure that the consultation process would be as wide, transparent and open as possible in all circumstances, with respect to commercial confidentiality considerations.

We strongly welcome the new statutory duty and obligation with respect to music and the character and content of local broadcasting sound services. It is crucial that there is a mechanism that ensures commercial stations require permission to change a format during a mid licence term and that the impact on music is assessed. One of the key concerns when the Communications Bill progressed through Parliament was that broadcasting experiences in a consolidating radio sector, such as the USA and Australia, have demonstrated how diversity of music output is easily squeezed out into the margins of the schedules.

OFCOM's unprecedented responsibility in this area should ensure that the process is more open and transparent. It is vital for the broad objectives for the radio sector that the consultation process is administered in a balanced manner which reflects the development of the growing commercial radio sector as well as the interest of the listener and music-making in the UK so to promote diversity the outputs of radio station programming.

Indeed, the Secretary of State, Tessa Jowell MP, stated in the House of Commons at the Consideration of Lords Amendments during the Communications Bill debate that:

"Ofcom must have regard to factors including the effect of the change in the selection of spoken material and music. That is one very specific area in which the position of music is safeguarded". (Hansard, 14 July 2003)

Furthermore, the music community's position on these matters received cross-party support from both Houses of Parliament during the Bill's passage. Now that the responsibility has transferred to OFCOM, we trust there will be both awareness and attentiveness to delivering the aforementioned statutory obligations.

Radio Stations Formats

We welcome OFCOM maintaining radio formats as the main mechanism by which the character of stations, as defined in their applications, is reflected in their licences. In relation to stations writing their own formats, we recognise the reflection of importance that OFCOM attributes to the formats system.

The Music Business Forum is aware through previous experiences that there is an intrinsic danger with stations having somewhat ambiguous formats. Accordingly, we indicate to OFCOM the threats relating to formats being potentially widened in scope through indefinite prose. Our concern pertains to formats becoming effectively redundant and meaningless at the expense of music diversity, and ultimately, the listener. Equally, we believe that the maintenance of services which applicants propose is crucial to prevent any criticism of 'format creep', whereby stations purposely dilute the given format applied for. Formats must be lucid, respected and preserved.

In relation to consultation document and reference to Section 105 (b) (c), by changing the 'promise of performance' to a format launch instead, we expect that naturally, OFCOM can be expected to be extra vigilant of licensees conduct given the procedural alteration. Furthermore, in respect of Section 105 (d), we recognise that it is important to take into account formal audience research and analysis. Again, we reiterate our interest in maintaining pluralism, diversity and quality in the radio sector.

We hope that increased flexibility in the new system will not be at the cost of transparency and that the new system will ultimately further, rather than reduce, compliance.

Regional Formats

Moves to 'regional' stations must safeguard the objective of delivering diversity and quality for the listener. It has been asserted that the development of larger licenses support more specialised programming formats than smaller licenses. 'Specialised programming' must recognise a diverse range of music in the marketplace in the interests of the listener. Accordingly, we recommend that there should be an appropriate balance between licensing large and small licenses; and are pleased that when recently OFCOM's announced its first proposed timetable of new FM local commercial radio licences across six areas of the UK, there was a balance between large and small licences. We hope that this has set precedent for the future considerations.

As stated in the consultation document, part of the review of the (commercial) sector was an examination of the performance of ILR stations broadcasting on the FM waveband, and subsequently, OFCOM recognised the profitability of larger licences foremost in its analysis. The consultation document also acknowledges that this does not make allowances for non-financial contributions. We urge OFCOM to take into account the social and cultural value of reaching particular groups as part of its consideration of qualitative factors to ensure both access to, and the delivery of, high quality and diverse music, despite a market led approach. OFCOM must recognise that although these 'softer' attributes are much more difficult to enumerate and quantify, yet are just as important as the economic aspects.

We look forward to discussing our considerations in more depth, and are at OFCOM's disposal for a future meeting.

Contact Details for the Music Business Forum

For further information on the Music Business Forum, please contact:

Clair Wilcox
Music Business Forum Coordinator
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Current membership of the Music Business Forum

The members of the Music Business Forum include:

AIM (Association of Independent Music)

AIM was set up to represent the specific interests of independent record companies and distributors in the UK. AIM has 700 members and is non-profit making. The early adopter mentality of the independents is mirrored in all aspects of their business. AIM promotes this exciting and diverse sector internationally as well as in the UK. AIM set up the first collective negotiation system for licensing members' repertoire for internet and other uses, through its sister company Musicindie. AIM has also produced the widely acclaimed "AIM Guide to Survival and Success in the Music Business" CD ROM and set up the first free on-line business affairs service (Dr John) and on-line technology service (Dr Geek) through its award-winning website, www.musicindie.org.

AURA (Association of United Recording Artists)

Aura is a non-profit-making association run by featured performers for the good of featured performers. It represents the views of the contracted performer and is seen as the true representative of the featured performer. It is actively involved in the negotiation and collection of neighbouring rights income as well as all performer related revenue. Our membership are the British record industry.

BARD (British Association of Record Dealers)

BARD is a UK trade organisation formed specifically to act on behalf of and as a forum for retailers and wholesalers who specialise in the sale of entertainment products. It's aims are to ensure the highest standards of trading for retailers involved in the sale of music, video, DVD and multimedia products and to encourage and provide formal and informal contact between members, the public, governmental bodies and all sectors of the industry. BARD also plays an active role in GERA Europe (Global Entertainment Retailers Association Europe) and is a founding member of this organisation. GERA is an international organisation for retailers including USA, Australia, Canada, Japan and the European Community.

British Academy of Composers & Songwriters

The Academy represents the interests of composers and songwriters across all genres, providing advice on professional and artistic matters. It administers a number of awards and events including the prestigious Ivor Novello Awards. The Academy currently represents some 2,500 members.

British Music Rights

British Music Rights was established to promote greater awareness of the interests and concerns of some 40,000 British songwriters, composers and music publishers to UK and EU policymakers and the wider public. Our primary focus is to communicate an understanding of the rights and rewards for creativity in the music business; the value of those rights to UK plc; the impact of new technologies upon music creators and publishers and the resulting policy and legislative implications.

We are currently running an awareness campaign (www.bmr.org/campaign) entitled 'Respect the Value of Music' to raise awareness of the value of music, copyright and to educate people about the issues affecting music creators today. Our member organisations are the British Academy of Composers and Songwriters, the Music Publishers Association, the Mechanical-Copyright Protection Society and the Performing Right Society.

BPI (British Phonographic Industry)

Ever since its launch in 1972, the BPI (British Phonographic Industry) has had an enviable reputation for serving its members. The BPI started life with just five members and now represents the interests of hundreds of companies in turn representing thousands of labels throughout the UK spanning every conceivable genre of music. The BPI is recognised as the leading trade body for the UK record industry and an authoritative source of industry information. In addition, we protect members through a wide range of activities including: lobbying governments, fighting piracy, negotiating with broadcasters and trade unions to offer members access to agreements – saving them time and money, assistance with international trade fairs, showcasing British talent to the world with the annual BRIT Awards and running various educational and charitable events throughout the year.

CM Ltd

CM was founded in 1983. Then Community Music Limited, CM was established to create new musical opportunities for young people, and accreditation for non mainstream/unqualified professional musicians. It does this by: music training, production and education programmes; setting up new organisations and initiatives that can be used elsewhere; strengthening the sector by contributing to policy.

During any year CM will run a mixed programme of courses, outreach projects, education programmes, partnerships with higher education, internet radio shows, music promotions around London, artist development and music production schemes and consultancies for other projects. CM has had a substantial impact on statutory and independent music provision across the country. It has worked with hundreds of professional musicians and thousands of young people, generating new courses, awards, jobs, music, organisations and replicable ideas. CM has set up or assisted: Community Music Wales; Community Music East; Midi Music; ADFED (Asian Dub Foundation Education); Show How; PyrotechnicRadio.com; Sound Connections; Arts Learning Partnership (London). CM is representing the members of Sound Connections (voluntary youth music providers in London) and the Arts Learning Partnership (post 16 provision) on the MBF.

Equity

Equity is the trade union representing performers and creative artists across the entire spectrum of entertainment and the arts. We include in our membership singers who work in choirs, choruses and groups but also those who work as individuals in pubs, clubs and other light entertainment venues, concerts, opera, pop, theatre, recordings, sessions, radio, television, films, and in places of worship.

The MCPS-PRS Alliance

In 1997 MCPS and PRS formed a joint operational company to create a single back-office for the two societies in order to bring about efficiencies in rights administration for their composer and publisher members. The gross collections of the MCPS-PRS Alliance were about £460 million in 2000, which represents the third largest society world-wide behind Japan and Germany.

Music Managers Forum (MMF)

The Music Managers Forum is an organisation that exists to assist and support the role of music managers within the industry. Formed in 1992, it was known as the International Manager's Forum until 2000, when it became the MMF. The organisation has grown steadily over the last decade and now has over 500 members, plus MMF chapters worldwide providing a comprehensive network for new or existing managers.

Providing music managers with a solid support infrastructure has always been one of the MMF's main concerns and this is being achieved and maintained by concentrating on training and education for managers. These sessions are organised by a dedicated MMF training office and take place both within and outside of London. In addition to the training classes, there is a web resource, regular email updates with all the latest news relevant to our members, discounts on major industry events, and an internationally published handbook which serves as a comprehensive guide to music management.

MPA - (Music Publishers Association)

Established in 1881, the Music Publishers Association [MPA] has more than 200 members representing over 3,000 associated and administered publishing companies. The MPA exists to safeguard the interests of UK music publishers and the writers signed to them, providing publishers with a forum and a collective voice, and working on their behalf to defend copyright and inform both legislators and the wider public of its importance and value.

Musicians' Union

Established in 1893, the Musicians' Union (MU) is the largest organisation representing musicians in Europe with a UK membership of over 30,000. The far-reaching work of the Musicians' Union reflects the diversity of its membership, which engenders every possible musical background, including high-profile headline-grabbers to session and orchestral players, your local pub musician, music writer or teacher; no corner of the profession goes unheard. Members receive a comprehensive, tailor-made service that includes business and legal advice, pension schemes, insurance and free public liability cover. And as you would expect, the Union excels in developing our members' status and skills, protecting not only their employment rights but intellectual property and related rights, (and striving to improve them). Further, the MU actively pursues political change to enhance musicians' professional standing throughout the UK, and internationally.

National Music Council

The National Music Council seeks to celebrate and promote the value and enjoyment of music, which contributes, in all its forms, to the cultural, spiritual, educational, social and economic well-being of the United Kingdom.

The National Music Council sits at the centre of a complex network of national music organisations, but is the only organisation that exists to promote the interests of the music industry as a whole.

Membership of this unique body is drawn from all areas of the music business and is open to 'umbrella' organisations with an interest in music and its development in the UK: professional, voluntary and amateur; subsidised and commercial; creative and educational. The strength of the Council lies in the number and diversity of its members and the large constituencies they and the Council serve.

P@MRA

Run by performers for performers, P@MRA is the UK's collecting society for all performers - soloists, featured band members, session singers and musicians. P@MRA pays international earnings to its members free of charge through a series of reciprocal agreements with international collecting societies.

PPL (Phonographic Performance Ltd)

PPL represents over 3,000 record companies – 12,000 labels and licenses the broadcast and public performance of their repertoire – recordings in every genre of music. We collect and distribute revenues from radio stations, pubs, clubs and thousands of users of sound recordings on behalf of member companies as well as some 23,000 performers.

VPL (Video Performance Ltd)

Video Performance Limited (VPL) is the UK organisation set up by the music industry in 1984 to administer the broadcast, public performance and dubbing rights in music videos. VPL represents the copyright owners of music videos and currently has over 800 members comprising mainly, but not exclusively, record companies. There are over 45,000 music videos currently registered with VPL.