

## **BPI response to the Ofcom First Consultation on Proposed Changes to BBC iPlayer – Call for Evidence**

1. BPI (British Recorded Music Industry) Ltd. is the representative voice for the recorded music industry. Our membership comprises more than 420 independent record labels and the three major record labels – Universal Music, Sony Music and Warner Music. Together, these account for the production of more than 85 per cent of the sound recordings legally consumed in the UK every year.
2. BPI welcomes Ofcom’s intention to investigate the issue fully. BPI would like to emphasise that the Competition Assessment undertaken by Ofcom should include the potential impact of the BBC’s proposals on the exploitation of underlying rights in programmes, and as such it should also not restrict itself to assessing the competition impact on Video on Demand services. Ofcom should also assess the impact on audio streaming services and sites such as Vevo that host music videos and other music content and rely on exclusivity of content to drive viewers and revenues.
3. BPI’s members license audiovisual content to online video on demand services on a commercial basis. A 12-month free catch up window for BBC iPlayer would seriously undermine commercial deals with 3<sup>rd</sup> parties such as Netflix, Amazon Prime and Apple Music for music, music videos, live performance footage and for the use of music in TV programmes.
4. In addition, a 12-month window for iPlayer would impact on the terms that BPI’s members are able to negotiate with commercial broadcasters. Currently BPI’s members typically give other broadcasters no more than 30 days catch up as part of their broadcast rights, leaving a window for labels to generate revenues from secondary exploitation while there is still public interest in the content. The BBC unilaterally changing this model will undoubtedly have knock on effects on other deals for exploitation.
5. BPI will restrict its responses to the questions to those on which we are able to give a view in the short timeframe of this call for information.
6. BPI believes that the BBC’s proposals represent a material change in the operation of its platform and will have a significant effect on the licensing of rights by our members. In particular it will restrict the ability to exploit rights in secondary markets – on rival VOD and music streaming services. BPI does not believe that the BBC has taken sufficiently into account the commercial interests of its licensors / the owners of the rights embedded in TV programming in its test nor has it sufficiently weighted the impact of a longer window for iPlayer on the range and attractiveness of content on competing services and on the current commercial deals between rights owners and commercial platform operators.
7. As such BPI does not agree with the conclusion that it has proved the case that it should be able to introduce the following changes:
  - A new standard availability of at least 12 months for all commissions;
  - Full box sets of selected returning titles; and

- A selection of non-returning programmes extended for longer or brought back from the archive.
8. Ofcom's assessment should not be restricted to the Video on Demand sector, or consider only the impact on the market for TV programmes. It should also assess the impact on music rights and on the underlying music rights used in TV programmes (e.g. Later Live or Live Lounge).
  9. The market for streaming services is evolving rapidly, and more audio-visual content featuring music is being used as part of that evolution. Additionally, consumers are attracted to premium streaming services via exclusive content, for instance live footage that might only be available on that platform after the BBC 30-day window for exploitation.
  10. Exclusive content is a critical aspect in the challenge to transition consumers from free services to paid for services, and therefore the overall value of the market for music rights and the commercial revenues of those platforms. Music that is contemporary and relevant has a great immediate impact. 12-months on, the value consumers place on exclusive music content, music videos or live performances has reduced very substantially.
  11. The BBC has not, in BPI's view, made any assessment of the impact on music streaming services such as Spotify and Apple Music and has not given sufficient weight to the impact on the exploitation of underlying rights by rights owners. Nor has it considered properly the financial impacts on contracts between music rights owners and other platforms and services of the extension of the iPlayer window.
  12. BPI believes that Ofcom should include in the scope of its review the impact on owners of the underlying rights in programmes and of music rights that are licenced to the BBC whether in audio or in audio visual content.
  13. BPI and members will be able to discuss with Ofcom the impact of the BBC proposal markets for music rights and the impact on broad commercial exploitation. Licensing content to on-demand audio and video platforms is absolutely critical to the future of the UK recorded music industry. Audio and video streaming now accounts for over 60% of the industry's UK sales revenue and any public sector interference in this licensing market could substantially impair the industry's ability to invest in new artists and its international competitiveness. BPI has further evidence on the evolution of the audio streaming and the video streaming markets that it will be able to supply to Ofcom as part of its Assessment.
  14. BPI would appreciate a meeting, with members, as part of Ofcom's information gathering exercise during the assessment consultation where we will be able to explain our views in more detail and supply all relevant evidence.