

# **Ofcom Consultation on the Definition of New Music on Radio 1 and Radio 2**

Response from Global



20 February 2018

## Introduction

1. Global is one of the world's leading media and entertainment groups with a portfolio of some of the most respected media brands, events and festivals. We are home to some of the UK's best-loved radio stations such as Heart, Capital, Classic FM, Smooth, LBC, Radio X, Capital XTRA and Gold. 24.8 million listeners tune in to our stations each week. We also operate Heart TV and Capital TV and are one of the biggest festival companies in the UK, selling more than a million tickets a year.
2. We have previously responded to the public consultation on BBC Charter Review in 2015, the Operating Licence for the BBC, and to the BBC's Annual Plan for 2017/18 in 2017. In these responses, we have consistently highlighted the importance of the BBC providing distinctive content which justifies the £3.8bn of public money the BBC receives through the licence fee, of which £480m is spent on radio.

## Background

3. The new BBC Charter puts the requirement to provide distinctive content and services at the heart of the mission of the BBC. One of the five Public Purposes set out in the Charter is "to show the most creative, highest quality and distinctive output and service" and the BBC's services are required to "be distinctive from those provided elsewhere."
4. The Framework Agreement between the Secretary of State for Culture, Media and Sport and the BBC requires Ofcom to increase the current requirements on the BBC "to secure the provision of more distinctive output and services." The Framework Agreement set out specific requirements in respect of BBC Radio 1 and BBC Radio 2, including the following:
  - a) to improve focus on promoting new UK talent, particularly new UK acts
  - b) to ensure music output is more distinct from those of other broadcasters at both peak and other listening times
5. In the BBC Operating Licence, Ofcom set a condition that 50% of music in daytime on Radio 1 must be new, and 20% on Radio 2. These conditions were an increase on the conditions in the previous service licences set under the BBC Trust (45% for Radio 1, with no condition for Radio 2) but lower than the level which Radio 1 delivered in 2015/16 (60%) and at the same level which Radio 2 delivered in 2015/16.
6. Similar conditions were set in respect of UK music – a higher target for Radio 1 than in the prior service licence but lower than the level actually achieved in 2015/16, and a new condition for Radio 2 but set at the level of actual delivery in 2015/16. No condition was set in respect of music which is both new and

from UK artists, despite there being a specific requirement to improve focus on promoting new UK talent.

7. We were disappointed that the conditions set by Ofcom in the Operating Licence were set at levels below which the BBC was already operating and we continue to believe this is not consistent with the requirements in the Charter and Agreement to secure the provision of more distinctive content and to improve the focus on promoting new UK talent.

### **Ofcom's Proposed Definition of New Music**

8. We agree with Ofcom that the old definition of new music, based solely on physical release date, is no longer appropriate. We also recognise that the new definition should take account of the shift in the industry to a "day and date" release model in which radio stations are no longer able to play new tracks before their digital or physical release date, and of the fact that all songs on an album are in most cases now released at the same time.
9. The BBC and Ofcom have proposed a model whereby a track is considered new up to a X months after release (physical or digital), or for Y weeks after entering the top Z of the OCC chart, whichever is the sooner. We consider this to be a reasonable formula, provided that:-
  - a. the time periods and chart definition ensure that the BBC is set a reasonable target which is consistent with the letter and spirit of the Charter and Agreement, and
  - b. it is also clear that a track once played on the station cannot continue to be considered "new" for an extended period even if it does not chart.
10. In paragraph 2.15 of the consultation Ofcom states that its objective is to ensure that Ofcom's specific obligations under the Agreement are satisfied, viz:
  - a. to ensure that the music output of Radio 1 and Radio 2 is "more distinct from those of other broadcasters" (our emphasis), and
  - b. "to improve focus on promoting UK talent, particularly new UK acts, on Radio 1 and Radio 2." (again, our emphasis)
11. Ofcom's approach, however, has been to set the time periods and chart details in the proposed formula to ensure that the new definition produces a broadly similar % of new music as the old definition. We question whether this is consistent with Ofcom's obligations and, more broadly, what the point of setting a new definition is if it is engineered to deliver the same results as the old definition.

### **Our Proposed Amendments to the Definition**

12. We propose the following changes to the definition of new music.

- a. a limit of 6 months from release
  - b. a limit of 4 weeks from the date after which the track first enters the chart
  - c. chart entry defined as the top 40.
13. We do not accept that a track can reasonably continue to be considered “new” up to 12 months after its first release. We recognise that because all tracks on an album can now be released at the same time, tracks that have not charted or received airplay can still be considered new for a longer period of time than the 8 to 10 weeks for singles in the pre-digital age. However, to extend this period to 12 months is unreasonable and flies in the face of common sense. 6 months from release is, in our view, the longest period in which a track which has not charted can reasonably still be considered “new”.
14. Under the old definition, a track remained “new” for up to one month from release. By definition, a single in the pre-digital era could not chart before being released so its lifespan as a new track on radio would never be longer than a month, and in most cases less than this. A limit of 6 weeks from chart entry in the proposed new definition is clearly a much looser definition than this, irrespective of how long the track would have been available to radio stations before its release date. We therefore propose 4 weeks from first chart entry.
15. It has been argued that 6 weeks is necessary in order to permit the station to play a track for a reasonable period of time but this is not the case. The station can continue to play the track after 4 weeks from it charting, but it would not continue to be considered new.
16. Ofcom cite analysis in the consultation that the difference between a top 20 and top 40 definition of chart entry does not make a material difference to which tracks are included in the definition of new music. Ofcom does not state the precise sample periods used for this analysis. We sought to replicate these results in 2 separate weeks in 2017, week commencing 3<sup>rd</sup> July and 9<sup>th</sup> October. We found that a top 40 definition vs a top 20 definition resulted in the % of new music falling from 60% to 55% and from 54% to 52% in these weeks. The traditional definition of chart entry has always been top 40 and it appears based on our analysis that in some weeks this can make a difference. For these reasons we believe top 40 is the right definition.
17. In addition, it is important that a track played on the station can only continue to be defined as new for a limited period of time. We are concerned that this appears to be a serious omission in the formula proposed by BBC and Ofcom.
18. The rationale for a track remaining “new” for a longer period from release than is the case under the old definition is based on the argument that album tracks are now typically all released at the same time. The BBC has argued that Radio 1 and Radio 2 need a reasonable period of time in which to introduce these tracks and should not lose the opportunity to play album tracks.

19. However, it would be entirely unreasonable for the BBC, having play-listed a track, to continue to treat it as “new” for up to 12 months after its first introduction to the station. We accept that tracks can still be “new” to the audience even if they were released some time ago, but we do not accept that a track can still be “new” to the audience months after the station first started playing it. This would clearly make no sense.
  
20. We therefore believe it is essential that music cannot continue to be treated as new for more than a set number of weeks after its first play on the station. We suggest 4 weeks as an appropriate limit, to be consistent with the condition on chart entry. Note that, as discussed above, this does not mean the station can no longer play the track after 4 weeks, just that it can only count towards the station’s new music requirement for 4 weeks.