
Definition of New Music on Radio 1 and Radio 2

Proposed variation to Ofcom's Operating Licence for
the BBC's Public Services

CONSULTATION:

Publication Date: 23 January 2018

Closing Date for Responses: 20 February 2018

2.17 There are several ways in which the New Music definition could be structured. Following engagement with a number of stakeholders in the music industry to develop a suitable definition of New Music, the BBC put forward the following proposal:

“a track remains new for either 12 months from initial release to radio, digital download or streaming services, or for X weeks after entering the Top Y of the UK's Official Singles Chart, whichever is sooner”.

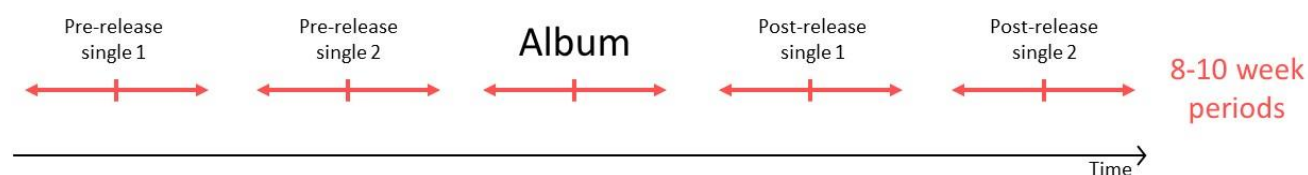
2.18 The BBC told Ofcom there had been “*general agreement that a definition formed in this way was a reasonable solution*”, but noted there had been no clear consensus on the underlined variables.

2.19 In our discussions with stakeholders, we have found that there is broad support for the BBC’s approach. In light of this, we are satisfied that the structure developed by the BBC for a definition of New Music is appropriate. We have therefore focussed our analysis on deciding how long a track remains new after its initial release and the effect of using the Official Singles Chart as a gauge for a track’s popularity.

How long a track is considered to be new after its initial release

2.20 The way that new music is brought to the attention of the public has changed over time. The record labels we spoke to told us that they will generally promote an artist’s new work for 12-18 months, depending on its commercial success. In the past, this promotional period could have contained several physical pre- and post-album singles, as well as the album itself, but not all album tracks would have been made available for individual purchase. This promotional structure created a number of discrete opportunities for record labels to promote an artist and seek radio airplay with the aim of appealing to a new audience. As shown in Figure 1 below, there may have been four or five eight-to-ten week periods (each including a four-to-six week pre-release phase) during which different tracks by an artist would be played on Radio 1 and Radio 2 and treated as New Music:²¹

Figure 1: Indicative historic album release cycle



2.21 The ease with which music can be distributed today has led many record labels to change their approach to promotion. Many record labels now adopt an ‘On Air, On Sale’ approach, which means that tracks become available for purchase and streaming at the same time that they begin to receive radio airplay. As such, post-album singles are far less common and record labels will instead co-ordinate marketing activity with radio stations by setting an ‘impact date’ representing a track’s intended peak of exposure. This may be some time

²¹ Under the existing definition, music is New Music if it is either unreleased or it has been less than one month since release date (physical release, not download release).

after a track has first been made available to the public to avoid audience fatigue and allow each different track to reach its full commercial potential.

- 2.22 As ‘impact dates’ are now less frequently tied to release dates, we accept that a definition of New Music enabling tracks to qualify for only a short window following their initial release could result in the BBC having to alter the musical output of Radio 1 and Radio 2 significantly as well as limiting the stations’ ability to promote a range of new material from UK artists over the traditional album cycle. We therefore consider it is appropriate for tracks to continue to qualify as New Music for a longer period, in order to provide Radio 1 and Radio 2 with a number of qualifying ‘impact dates’ around the release of an album.
- 2.23 In addition, our engagement with stakeholders has highlighted the importance of an extended period for audiences to become familiar with new tracks, particularly those from newer artists and less popular genres. Whereas established artists will generally have the support of a record label and a dedicated fanbase for their new material, it may take longer for tracks by newer artists, particularly those distributing music independently online, to find an audience. A longer period would help to ensure that such artists are not disadvantaged and allow Radio 1 and Radio 2 to play and promote their work.
- 2.24 We have assessed various options for how long a track should qualify as ‘new’, between three and 18 months. We have taken into account the changes to music distribution discussed above, and analysed Radio 1 and Radio 2 output during sample periods across 2017. We consider that a period of 12 months – favoured by the majority of the industry stakeholders we met – takes best account of modern music release practices. It will allow Radio 1 and Radio 2 to continue to play the same broad range of music as before, while providing more opportunities for new and emerging artists to be discovered and supported, in accordance with the policy objectives set out at paragraph 2.15.

Using the UK Official Singles Chart as a gauge for a track’s success

- 2.25 As part of the BBC’s obligation to offer output and services which are distinct from those of other providers, Schedule 2 of the Agreement highlights the importance of promoting new UK acts and broadcasting a distinctive musical output on Radio 1 and Radio 2.²² However, permitting Radio 1 and Radio 2 to include the most commercially successful tracks within the New Music requirements for a period of twelve months could lead to a reduction in their distinctiveness from the music mix offered by commercial radio stations. There is also a risk that playing a large volume of commercially successful tracks would crowd out the opportunities for music from emerging artists to be played. We therefore consider that a further restriction is required to ensure the distinctiveness of Radio 1 and Radio 2’s output so that well known material does not continue to be treated as ‘new’ even after it has reached a defined level of success.
- 2.26 The UK Official Singles Chart, which takes account of physical sales, digital sales and streams but not airplay, is the best available indicator of the success of recent releases.

²² Paragraph 2(3) of Schedule 2 to the Agreement

Once a track climbs to a high chart position, it is likely to be both established with the public and receive significant airplay on commercial radio services. Limiting the amount of time that such tracks are deemed to be New Music encourages the BBC to refresh the playlists of its music services, contributing to the distinctiveness of Radio 1 and 2's musical output.

- 2.27 We have looked at the effect of limiting the extent to which tracks that have reached the Top 10, Top 20 and Top 40 of the UK Official Singles Chart should continue to qualify as New Music. In our discussions with stakeholders, many proposed a limitation based on entry to the Top 20, which they considered to be a suitable measure for commercial success. However, others questioned whether the pool of tracks which entered the Top 20 was too small to encourage the BBC to refresh its Radio 1 and Radio 2 playlists regularly.
- 2.28 Our analysis of music played on Radio 1 and Radio 2 in 2017 suggests that the difference to the stations' daytime output between imposing a limitation based on the Top 20 and Top 40 would be marginal.²³ We therefore propose to include a reference to the Top 20 within our definition.
- 2.29 We have also considered for how many weeks after a track entered the Top 20 it should continue to be treated as New Music. Many stakeholders argued that a stricter limitation of around four weeks would prevent many songs from reaching their full commercial potential. However, some suggested that a longer period of around eight weeks could prove counter-productive, as it might encourage the BBC to leave the most popular songs on its playlists at the expense of other tracks. Taking into account these views and having analysed the impact of different options on Radio 1 and Radio 2 output during 2017, our view is that a period of six weeks following entry to the UK Official Singles Chart Top 20 is appropriate and is unlikely to require significant change to R1 and R2's music output.
- 2.30 In light of our assessment, we therefore consider that it is appropriate to revise the definition of New Music to read as follows:

A music track is to be considered "New Music" for a period of either:

(a) 12 months from first release (whether by physical, radio, download or streaming means), or

(b) 6 weeks after it enters the Top 20 of the UK Official Singles Chart whichever is sooner.

Proportion of New Music played applying the proposed definition

- 2.31 Figure 2 shows the amount of New Music played on Radio 1 and Radio 2 in 2017, applying our proposed definition and variables, and the BBC's most recently reported performance against the existing definition for comparison:

²³ If a track on Radio 1 is considered to be New Music for a period of either 12 months from first release or 6 weeks after it enters the Top 20 of the UK's Official Singles Chart, whichever is sooner, 56% of the station's output daytime would have qualified as New Music in 2017. If the Top 40 chart is used instead of the Top 20 chart, all other variables remaining the same, 54% of the station's daytime output would have qualified as New Music in the same year.

Figure 2: Proportion of New Music played on Radio 1 and Radio 2 during daytime under proposed definition compared to existing definition

	Radio 1	Radio 2
% of total music played within 12 months of first release	67%	33%
% of total music played within 12 months of first release or 6 weeks of Top 20 entry – proposed definition	56%	32%
% of total music played within one month of physical release – existing definition	60%	26%

Source: Ofcom analysis of RadioMonitor and Official Charts Company data using multiple sample periods in 2017; BBC Annual Report and Accounts 2016/17

Level of conditions

- 2.32 In setting the Licence, we retained a number of requirements from the BBC Trust’s service licences (including the New Music requirements on Radio 1 and Radio 2). In many cases we increased the level of those requirements to better reflect actual performance and underpin delivery at higher levels.
- 2.33 In the March 2017 consultation we made it clear that we would “set the levels of these requirements to ensure the BBC maintains its current level of performance.” We proposed to increase the minimum amount of New Music that Radio 1 was required to broadcast during daytime from 45% to 50%, due to consistent overperformance against the condition. We also proposed retaining Radio 2’s daytime New Music requirement at 20%.
- 2.34 Under our proposed definition of New Music, it is likely that Radio 1 and Radio 2 would continue to overperform against the requirements in the Licence. We remain of the view that it is appropriate to increase the level of the New Music requirement for Radio 1 to 50% and to maintain the level for Radio 2 at 20%. Those levels will continue to secure the distinctiveness of the musical output of each station and we therefore consider that it is appropriate to proceed on this basis if we decide to adopt the revised definition.

Procedures for amending an operating licence

- 2.35 Ofcom has a power to amend any operating licence set and in doing so must consult the BBC and any person Ofcom considers appropriate. The operating framework for BBC regulation sets out how Ofcom sets and administers the operating licence regime and the procedures to be followed, including the “Procedures for setting and amending the operating licence”.²⁴ This consultation follows those procedures (and applies the considerations it lists) together with Ofcom’s consultation principles (see Annex 3).

²⁴ https://www.ofcom.org.uk/_data/assets/pdf_file/0025/107089/procedures-bbc-operating-licence.pdf

Proposed licence variation

Proposed amendments

2.36 In line with the reasoning set out above, we propose to amend the definition of New Music in the Licence as follows:

A music track is to be considered “New Music” for a period of either:

(a) 12 months from first release (whether by physical, radio, download or streaming means), or

(b) 6 weeks after it enters the Top 20 of the UK Official Singles Chart whichever is sooner.

2.37 We also propose to amend condition 2.39.2 to provide that at least 50% of music played in daytime on Radio 1 is New Music:

“in each Financial Year at least 50% of the music in Daytime is New Music, of which a significant proportion must come from new and emerging United Kingdom artists”.

Do you agree with the proposed amendments to the BBC’s Operating Licence set out in paragraphs 2.36 to 2.37 of this consultation?

A1. Impact assessment and equality impact assessment

Impact Assessment

- A1.1 Ofcom is required under the Charter and Agreement to put in place a Licence, and to do so in accordance with the provisions contained in those documents. Ofcom also has a legal duty to carry out impact assessments where our policy decisions are likely to have a significant effect on businesses or the public, or when there is a major change in Ofcom's activities.²⁵
- A1.2 In reaching our view on the appropriate revised definition of New Music, we have considered the impact on the BBC, other radio stations, the music industry more generally and listeners. The analysis set out in this document includes such an impact assessment for the purposes of the relevant duties imposed on Ofcom.

Equality Impact Assessment

- A1.3 We are required by statute to assess the potential impact of all our functions, policies, projects and practices on people with any of the following protected characteristics: age, disability, gender, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation.²⁶ We refer to groups of people with these protected characteristics as 'equality groups'.
- A1.4 We fulfil these obligations by carrying out an EIA, which examines the potential impact our policy is likely to have on people, depending on their personal circumstances. EIAs also assist us in making sure that we are meeting our principal duty of furthering the interests of citizens and consumers, regardless of their background and identity.
- A1.5 In setting our first Licence for the BBC Ofcom conducted an EIA considering the effects of our proposed approach for holding the BBC to account for the delivery of its mission and public purposes.²⁷ We concluded that securing delivery of the BBC's mission and public purposes through this regulatory regime will bring benefits to all consumers of BBC output including equality groups.
- A1.6 We do not consider the proposed change to the definition of New Music to have any additional positive or adverse impact on equality groups.

²⁵ Section 7 of the Communications Act 2003.

²⁶ As defined in the Equality Act 2010.

²⁷ Ofcom, [Statement: Holding the BBC to account for delivering for audiences, Annexes](#), October 2017; paragraphs A6.11 to A6.25

A2. Responding to this consultation

How to respond

- A2.1 Ofcom would like to receive views and comments on the issues raised in this document, by 5pm on 20 February 2018.
- A2.2 You can download a response form from <https://www.ofcom.org.uk/consultations-and-statements/category-3/definition-new-music-bbc-radio>. You can return this by email or post to the address provided in the response form.
- A2.3 If your response is a large file, or has supporting charts, tables or other data, please email it to NewMusic@ofcom.org.uk, as an attachment in Microsoft Word format, together with the cover sheet (<https://www.ofcom.org.uk/consultations-and-statements/consultation-response-coversheet>). This email address is for this consultation only, and will not be valid after February 2018.
- A2.4 Responses may alternatively be posted to the address below, marked with the title of the consultation:
- Max Owens
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- A2.5 We welcome responses in formats other than print, for example an audio recording or a British Sign Language video. To respond in BSL:
- Send us a recording of you signing your response. This should be no longer than 5 minutes. Suitable file formats are DVDs, wmv or QuickTime files. Or
 - Upload a video of you signing your response directly to YouTube (or another hosting site) and send us the link.
- A2.6 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A2.7 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt if your response is submitted via the online web form, but not otherwise.
- A2.8 You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.
- A2.9 It would be helpful if your response could include direct answers to the questions asked in the consultation document. The questions are listed at Annex 5. It would also help if you could explain why you hold your views, and what you think the effect of Ofcom's proposals would be.

- A2.10 If you want to discuss the issues and questions raised in this consultation, please contact Max Owens on 020 7981 3000, or by email to max.owens@ofcom.org.uk.

Confidentiality

- A2.11 Consultations are more effective if we publish the responses before the consultation period closes. In particular, this can help people and organisations with limited resources or familiarity with the issues to respond in a more informed way. So, in the interests of transparency and good regulatory practice, and because we believe it is important that everyone who is interested in an issue can see other respondents' views, we usually publish all responses on our website, www.ofcom.org.uk, as soon as we receive them.
- A2.12 If you think your response should be kept confidential, please specify which part(s) this applies to, and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don't have to edit your response.
- A2.13 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A2.14 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further at <https://www.ofcom.org.uk/about-ofcom/website/terms-of-use>.

Next steps

- A2.15 Following this consultation period, Ofcom plans to publish a statement in March 2018.
- A2.16 If you wish, you can register to receive mail updates alerting you to new Ofcom publications; for more details please see <https://www.ofcom.org.uk/about-ofcom/latest/email-updates>

Ofcom's consultation processes

- A2.17 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex 3.
- A2.18 If you have any comments or suggestions on how we manage our consultations, please email us at consult@ofcom.org.uk. We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.
- A2.19 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact Steve Gettings, Ofcom's consultation champion:

Definition of New Music on BBC Radio 1 and Radio 2

Steve Gettings
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA
Email: corporationsecretary@ofcom.org.uk

A3. Ofcom's consultation principles

Ofcom has seven principles that it follows for every public written consultation:

Before the consultation

- A3.1 Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. If we do not have enough time to do this, we will hold an open meeting to explain our proposals, shortly after announcing the consultation.

During the consultation

- A3.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A3.3 We will make the consultation document as short and simple as possible, with a summary of no more than two pages. We will try to make it as easy as possible for people to give us a written response. If the consultation is complicated, we may provide a short Plain English / Cymraeg Clir guide, to help smaller organisations or individuals who would not otherwise be able to spare the time to share their views.
- A3.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A3.5 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.
- A3.6 If we are not able to follow any of these seven principles, we will explain why.

After the consultation

- A3.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish all the responses on our website as soon as we receive them. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.

A4. Consultation coversheet

BASIC DETAILS

Consultation title: **Definition of New Music on Radio 1 and Radio 2**

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing

Name/contact details/job title

Whole response

Organisation

Part of the response

If there is no separate annex, which parts? _____

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

A5. Consultation question

Do you agree with the proposed amendments to the BBC's Operating Licence set out in paragraphs 2.36 to 2.37 of this consultation?