

Response to Ofcom Draft Annual Plan 2010/11

Introduction

1. RadioCentre is the industry body for Commercial Radio, formed in July 2006 from the merger of the Radio Advertising Bureau (RAB) and the Commercial Radio Companies Association (CRCA).
2. RadioCentre members account for 90% of Commercial Radio listening and 86% of industry revenue. The membership is made up of 267 radio stations of all types – including the major Commercial Radio groups, small local radio groups, independent local stations and digital-only services. RadioCentre therefore represents the views and interests of a very broad range of radio stations small and large, and not just the interests of one or two of the largest radio groups.
3. The role of RadioCentre is to maintain and build a strong and successful Commercial Radio industry - in terms of both listening hours and revenues. RadioCentre operates in a number of areas including working with advertisers and their agencies, representing Commercial Radio companies to Government, Ofcom, copyright societies and other organisations concerned with radio. RadioCentre also provides a forum for industry discussion, is a source of advice to members on all aspects of radio, jointly owns Radio Joint Audience Research Ltd (RAJAR) with the BBC, and includes copy clearance services for the industry through the Radio Advertising Clearance Centre (RACC).

Background

4. RadioCentre provided comments on a number of priority areas in response to Ofcom's draft annual plan for last year (2009/10), a number of which are referenced in the current draft plan as being either completed or partially completed. In particular, we would identify the drive to digital radio (and associated deregulation); the review of sections 9 and 10 of the Broadcasting Code regarding commercial references on radio; and the proposed changes to media ownership rules. We would make a number of brief observations on these issues in terms of the progress that has been made to date, before considering the extent to which these should remain priorities within the current annual plan.
5. On the drive to digital and localness deregulation, we were pleased that Ofcom was able to make detailed recommendations on the regulatory and legislative burden in this area during the past year, notwithstanding the legislative constraints that remain in place until the outcome of the Digital Economy Bill is known. This is clearly an issue of the utmost priority for Commercial Radio and we will refer to it in greater detail below.
6. In relation to the Broadcasting Code, we were pleased that this was ultimately included in Ofcom's annual plan for 2009/10 (despite not being evident in the draft annual plan). We note that, although a consultation did take place on this issue, a further consultation is due to take place later this year. Again we will address this in our response to this year's draft plan.

7. As far as the current media ownership rules are concerned, RadioCentre welcomed Ofcom's consultation and subsequent recommendation to the Government in this area, namely to remove local radio service ownership rules; liberalise the local cross media ownership rules; and remove the local and national radio multiplex rules. We await action from Government in this area to implement these recommendations by Order.
8. Therefore RadioCentre would acknowledge that Ofcom has made significant progress in specific areas that affect the framework within which Commercial Radio operates. However, a number of very significant challenges remain and we would emphasise the need to act quickly and decisively in these areas and ensure that they feature prominently within the workplan for 2010/11.

Ofcom's priorities for 2010/11

9. Ofcom outlines nine broad priority areas for the coming year, which are listed in the chart on page 11 of the consultation document, with the related work areas illustrated at Figure 1 (p.12).
10. Despite radio being a significant part of Ofcom's remit on broadcasting policy and licensing, it is not immediately apparent how crucial matters concerning the industry are accounted for and included within the plan, or indeed whether they are considered to be priorities at all. While some of the specific projects listed in Annex 1 and within the Simplification Plan and associated tables at Annex 3 are clearly important matters for the radio industry, the overall structure of the draft plan means that it is not clear how these initiatives relate to Ofcom's stated priorities.
11. This observation may be equally true of other sectors and to some extent is an inherent difficulty with a broad ranging planning document of this nature. However, it would be helpful to get greater clarity on the correlation between Ofcom's broad priorities and its specific intentions in relation to projects that form the work programme.
12. For example, our current assumption would be that both the overarching priority to 'adapt content regulation to meet the changing needs of audiences' and the commitment to 'review regulatory rules that affect funding of content' (Fig. 1) are guiding principles that will inform the work that Ofcom is continuing regarding the reform of the Broadcasting Code and the regulation of commercial references on radio. However, the extent to which this specific work is influenced by it being a priority in the annual plan is not clear.
13. In addition, there are a number of significant radio-related projects that do not appear to fit easily alongside the broad priorities that Ofcom has outlined – including ongoing work to facilitate the drive to digital; deregulation of localness requirements; licensing considerations; illegal broadcasting; and spectrum issues.
14. Some of these will fall under the stated drive to 'identify opportunities for deregulation and simplification' (Fig. 1), but others do not clearly appear to be related to the priorities as they are currently structured for 2010/11. We hope that this is not an indication that these matters are seen as secondary or

unimportant areas of work for Ofcom, as they remain critical for the future of Commercial Radio.

Ofcom's proposed work programme for 2010/11

15. Against the background outlined above it is vital for the Commercial Radio industry to have confidence that the key areas of activity it requires from Ofcom (detailed below) will still form an integral part of the work programme for 2010/11.
16. Ofcom clearly understands the imperative to make changes to address the challenges facing Commercial Radio. In particular it notes the structural and cyclical economic changes that have meant that 'a significant number of stations (particularly smaller stations) have become loss making and some radio stations have closed' (para 4.55). This provides the context for urgent action required to enable the industry to survive and flourish in future.

Drive to digital/ regulation of localness

17. The continuation of work regarding the regulation of localness and music formats on Commercial Radio, as one of the simplification initiatives proposed by Ofcom is very welcome. We agree that this forms an essential body of work that will assist in 'reducing the regulatory burden on the commercial radio sector and ensuring radio regulation is fit for the digital age' (p.64).
18. Commercial Radio remains absolutely committed to delivering local content and Ofcom is right to acknowledge its value. But stations look forward to the possibility of delivering this local content in different ways with more flexible rules, some of which are enabled by changes flowing from the Digital Economy Bill, and others that remain a matter for Ofcom under its localness rules.
19. Specific measures to permit co-location and programme sharing in broader defined areas will help to reduce costs, while also maintaining distinctive local content. In addition, greater freedom to restructure the industry and expand digital services will provide a broader range of choice for consumers.
20. We supported Ofcom's efforts to minimise delay in implementing these changes by consulting in advance of the legislative change anticipated by the Digital Economy Bill. In addition it is helpful that Ofcom has stated that 'we plan to revisit our work programme if legislative changes stemming from the Digital Economy Bill, which include proposed amendments to Ofcom's duties, come into affect' (para 5.10). Our only observation on this point would be that the fate of Digital Economy Bill will be known in around six weeks, so it may be preferable to have firm arrangements expressed in the annual plan to deal with the outcome.
21. However, we hope that this indicates that this work area is an integral part of Ofcom's work programme. It is insufficient to simply state that 'we will continue to monitor developments' (para 4.59). The detailed outline provided later in the document (p.64) is more encouraging as it indicates firm action where possible, whether or not the legislation is approved in the coming months.

22. We also believe that there is a strong case for further simplification of music formats with less emphasis on music output as a means of defining the characteristics of local Commercial Radio services. Stations continue to be prevented from reacting to the needs and demands of listeners, which seems overly restrictive in a fast changing music and entertainment market.

Licensing of analogue radio stations

23. A separate but related issue regarding the drive to digital is the way in which Ofcom decides to licence those Commercial Radio stations not on DAB, whose licences are due to expire over the next few years.
24. The Digital Economy Bill provides for an automatic 7-year renewal for stations that *are* on DAB for national and local stations – but makes no mention on how stations not on DAB will be treated. However, the current Ofcom policy (since 2007) is to re-award these licences up until 31 December 2015 or five years, whichever is the longer.
25. This was seen as a mechanism for co-ordinating the end dates and proposed switchover of these services, in the absence of legislation and the power to terminate analogue licences. Prior to the adoption of this policy, analogue licences were re-awarded by Ofcom for 12 year periods (as it was empowered to do following the 2003 Communications Act).
26. Ofcom will need to consult on whether it should change its current policy and revert to issuing 12 year licences. Therefore we would emphasise the need for this to be within Ofcom's planning considerations once the outcome of the Bill is known.
27. In consulting on this matter we believe that it is vitally important that Ofcom indicates clearly that the main option it will be consulting on (and its preferred option), will be to revert to issuing 12 year licences. Such an indication will be immensely helpful as small analogue radio stations seek to plan for the future and in some cases secure the necessary financial support to continue to operate in an uncertain climate.

Broadcasting Code

28. As noted previously, we welcome the implicit connection between priorities outlined in the work programme (Fig.1) and the proposed review of regulation regarding commercial references on radio under the Broadcasting Code. We are particularly heartened by the fact that this then appears as an explicit area of work in Annex 1 (p.44).
29. In September 2009 RadioCentre submitted a detailed response to Ofcom's initial review of the Broadcasting Code. This stated that Ofcom's approach fell short of industry aspirations and failed, either to provide the industry with the financial boost that it urgently requires, or align citizen and consumer protection consistent with contemporary levels of media literacy. We instead called for a more radical regulatory approach, with a new Section 10, underpinned by principles of *editorial integrity* and *transparency*.

30. Progress in this area (for radio) was understandably delayed following the Government's moves to liberalise product placement on television. Clearly this has caused Ofcom to consider the broader implications of a change in policy across media.
31. We understand that the further review of regulatory rules in this area will be conducted later this year, and will entail separate consultations for television and radio, which is a move that we support. However, this is not clear within the work programme or the simplification plan (p.67) and we would suggest that clarity is provided on this process.

Illegal Broadcasting

32. Commercial Radio remains committed to tackling illegal broadcasting, which continues to blight many of our services, and we value Ofcom's critically important role in the ongoing enforcement programme.
33. We are pleased to note that Ofcom again considers '*keeping the airwaves free from interference*' (para 2.55) to be a key stakeholder service. Clearly this activity also corresponds with Ofcom's commitment to serving the interests of citizens and consumers.
34. However, as we specified in our response to previous consultations on Ofcom draft annual plans, there is a need to identify potential new solutions for reducing levels of unlicensed activity. Ofcom acknowledges the particular importance of this work in preparing to manage the spectrum required for the 2012 Olympics in London. As such we would welcome further initiatives from the regulator as to how Ofcom and the radio industry can work together to further minimise the damaging effects of illegal broadcasting.

Conclusion

35. RadioCentre welcomes the opportunity to comment on Ofcom's priorities and associated work plan for 2010/11 and we applaud the progress in a number of areas that affect Commercial Radio. However, a number of very significant challenges remain and we would emphasise the need for Ofcom to act quickly and decisively in these areas and ensure that they feature prominently within the work programme for 2010/11. For example, in relation to localness regulation, although the fate of the Digital Economy Bill is not yet known, it would be preferable to have firm arrangements expressed in the annual plan to deal with the outcome, whether the Bill is approved or not.
36. We accept that the work plan does outline how Ofcom intends to address several issues relating to Commercial Radio. However, we are concerned that the connection between Ofcom's proposed priorities and the work plan itself is not clear enough. Although RadioCentre is an organisation that deals with these issues on a daily basis and is deeply engaged in these subjects, we have found it difficult to understand how the elements of the work plan fit with the nine priority areas. Therefore, stakeholders may struggle to understand Ofcom's overall strategic direction from reading this document. This would be unfortunate considering the positive steps outlined on a number of issues such as deregulation, the licensing of analogue radio stations and tackling unlicensed

activity.

RadioCentre, February 2010

RadioCentre

4th Floor, 5 Golden Square, London W1F 9BS

t: +44 (0) 20 3206 7800

www.radiocentre.org