



Review of music in radio Formats

Consultation

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About this document

Ofcom has a statutory duty to do all it can to secure a range and diversity of local radio services. We do this in part by including in each station's broadcast licence a description of the service it must provide, which is based on the proposals the licensee made when it applied for the licence. This description is known as a 'Format', and in most cases one of the key elements is the type of music that the station must play.

This consultation considers whether the way that we regulate the choice of music played by local analogue commercial radio stations is still appropriate, taking into account changes in the way music is consumed and responses to a Call for Inputs we published last year. We are now seeking views.

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Section 1

Executive summary

- 1.1 In order to help Ofcom comply with its statutory duty to do all it can to secure a range and diversity of local radio services, we are required to include conditions in each licence that we grant for a local radio service to ensure that the licensee delivers the type of service it proposed to provide when it applied for its licence (or if it was subsequently amended). This is known as the 'character of service'. One of the elements which define the character of service of most local radio stations is the selection of music included in the service.
- 1.2 In order to secure the character of service, each licence for a local analogue commercial radio service includes a description of the service, including the selection of music that the station must play, and a condition requiring the licensee to provide the service in accordance with that description. We call the part of a licence which includes this information the 'Format'. The Format in a local analogue commercial radio licence may include obligations relating to speech and local content as well. The term 'format' is also used more generally within the radio industry to describe a specific type of music-based programming that a radio station chooses to adopt, which is usually based around a particular music genre.
- 1.3 There is a wide range of music descriptions in the Formats of currently licensed services, from general descriptions such as 'Broad music' to more specialist genre descriptions such as 'Dance' or 'Rock'.
- 1.4 In 2008 Ofcom simplified its approach to Formats significantly to give radio stations greater flexibility to adapt to changing tastes and interests among their listeners.
- 1.5 Additionally, any local analogue commercial radio station can at any time ask to change its Format. In deciding whether to agree to such changes, Ofcom is required to consider various factors specified in statute, but our primary objective is to ensure that a range and diversity of services for listeners is maintained.
- 1.6 We recognise that the ways in which music is consumed, and the tastes and interests of listeners, continue to evolve with the development of new types of audio services. While the research available suggests that for listeners the importance and value of, and satisfaction with, music on local commercial radio remains very highly rated, there is emerging evidence that, in general, blurring in both artist output and listeners' tastes may be making some traditional music genre descriptions less relevant, and that increasingly tastes in music cut across different audiences and age groups.
- 1.7 We therefore decided to review whether there may be scope for, and benefits to listeners from, further changes in the way we regulate the music played by local analogue commercial radio stations.
- 1.8 To help inform this consultation document, in May 2014 we published a Call for Inputs seeking preliminary views and supporting evidence. The 13 responses we received expressed sharply diverging opinions on the effect of market changes; the need for services to have greater flexibility in music selection; and whether a change to the current regulatory approach was feasible or desirable.

- 1.9 As previously noted, Ofcom has specific statutory duties in this area. In particular, we are required to do all we can to secure a range and diversity of local radio services. We are also required to set conditions which we consider appropriate to ensure the licensee maintains the character of service proposed in its licence application. This includes the licensee's proposals in relation to the selection of music to be included in its programming. Accordingly, we do not consider that, as suggested by some respondents, all music requirements could be removed from Formats, or that all stations could have a Format which simply stated 'broad music', as neither of these suggestions would be compatible with the current statutory framework. We have therefore not included these suggestions among our options for consultation.
- 1.10 However, we have considered the furthest extent to which we could propose a revision to the current regulatory approach which is consistent with the statutory framework, but which offers greater flexibility to radio stations in terms of their selection of music.
- 1.11 We have identified three options:
- 1) No change. This would leave current Formats unchanged.
 - 2) Simplification of the Formats of stations playing "mainstream popular music". We consider certain non-specialist music genre descriptions (e.g. 'Contemporary' or 'Pop' music) could be simplified to "mainstream popular music". Formats specifying specialist music genres (e.g. Rock, Dance) would remain.
 - 3) High level Formats. Ofcom could allow licensees to request to change the music element of their Format to be either:
 - a) Genre led: specifying a specialist genre of music;

Or

 - b) Audience led: specifying music for a target audience profile (e.g. by age group or ethnicity).
- 1.12 We consider that Option 1, the current approach, retains an appropriate balance between licensees' desire for flexibility in music selection while enabling Ofcom to continue to fulfil its statutory duty to secure a range and diversity of services for listeners. We do not consider that market changes make the current regulatory approach disproportionate or irrelevant, nor that the available evidence suggests any current listener or licensee detriment.
- 1.13 Option 2 reflects the fact that there is currently a range of different descriptions in Formats for what is essentially mainstream popular music. This option would allow around 26% of licensees to amend the music description in their Format without changing their character of service, and would represent a clearer and more consistent approach for listeners and licensees alike. Under this option, there would be no change for other licences whose Formats include other music descriptions.
- 1.14 Option 3 represents what we consider to be the most deregulatory option available under the current statutory framework. Under this option, a licensee could seek a change to the current music description in their Format to a 'high-level' description – this would be either a specialist music genre (e.g. 'Rock') or 'Music for' a specific target audience (e.g. 15-34 year olds). We consider it is likely that any proposal by a

licensee to switch to an audience-led Format would represent a change to their character of service, and would therefore need to be considered in accordance with the statutory process for considering Format changes. There would therefore be an increase in regulatory activity to implement this option, and its effect would depend on the number of licensees seeking to switch to an audience-led Format, and the nature of the changes being sought, in different local markets.

- 1.15 In this context, we note the reservations expressed in some of the responses to the Call for Inputs as to whether music tastes can be reliably segmented by age group, and recent research from the BBC which suggests that there is a growing trend for music tastes to be shared across age groups. Implementation of this third option would also require Ofcom to monitor closely the extent to which there continued to be meaningful distinctions between stations in terms of their selection of music, and securing compliance with an audience-led Format would represent a particular challenge given that compliance would be based on whether the profile of the station's audience matched the target in its Format.
- 1.16 We welcome views on the options set out in this consultation document. Specific questions to help frame responses are set out in Annex 2.
- 1.17 The consultation closes on 02 April 2015.

Section 2

Background

Regulation of local analogue commercial radio

- 2.1 In most geographic areas, the radio spectrum used for FM and AM analogue radio services only allows for a limited number of services to be broadcast. Ofcom awards licences to services to broadcast following a competitive ‘beauty contest’ for each licence. Licences are not auctioned, but licence holders pay annual licence fees based on their relevant turnover and coverage.
- 2.2 Under section 85 of the Broadcasting Act 1990 (BA1990) Ofcom is required “do all that they can to secure the provision within the United Kingdom of a range and diversity of local services”.
- 2.3 In addition to this specific duty, Ofcom must also act in accordance with its general duties under section 3 of the Communications Act 2003 when carrying out its functions in relation to local analogue commercial radio services. These include its duty to have regard to the following:
- the objective of securing throughout the UK of a wide range of radio services which are calculated to appeal to a variety of tastes and interests;
 - the requirement to have regard to the opinions of consumers and of members of the public in general;
 - the requirement to have regard to the different interests of persons in different parts of the UK, of different ethnic communities and of persons living in rural and urban communities; and
 - the desirability of promoting competition in relevant markets.

Licence awards, character of service and Format

- 2.4 When awarding local commercial radio licences, the key considerations which Ofcom is required to take into account are set out in Annex 3 to this document. In addition to the general duties above, these include the extent to which the proposed service would broaden the range of radio programmes available in that area and cater for tastes and interests different to those already catered for by existing services.
- 2.5 When applying for a local analogue commercial radio licence, a prospective broadcaster is required to describe the character of service it is intending to provide. The “character of service” is defined in section 106(1B) BA1990 as including “the selection of spoken material and music in programmes included in the service”. This description may be fairly generic (for example “a broad music and information station”), or more specific if the broadcaster proposes to target listeners with a specialist music interest or particular cultural or ethnic group (e.g. ‘Dance music’, ‘Rock music’ or ‘Asian music’).
- 2.6 Applicants must not only propose a service that is intended to attract the local audience but also one that adds to the range of local radio programmes in that area. Where there is more than one local radio service licensed in a given area, it is likely

to be the case that there will be a greater degree of differentiation in subsequent licences, because of the requirement that local commercial radio services should broaden the range of local radio programmes available in that area. Applicants will typically propose a character of service where the selection of spoken material or music differs from existing services in the locality.

- 2.7 Ofcom must include conditions in a licence which it considers appropriate to ensure that the licensee maintains the character of service proposed in its application. Ofcom does this by describing the service to be provided in the Format and by imposing a licence condition requiring the licensee to broadcast a radio service which complies with the Format. The description contained in the Format is drawn directly from the character of service proposed by the licensee and will include the type of music that the licensee said it would play in its programming. Typically, the music element of the Format describes, in general terms, a music type (for example, 'Contemporary' music) or specialist genre of music (for example, 'Rock').

How the legislation is currently applied in licence Formats

- 2.8 In recent years Ofcom has made changes to the way it regulates the music played by local analogue commercial radio services. In 2008 we reviewed the regulatory approach and simplified the level of detail required to be written into a service's Format while still preserving the overall character of each service (in accordance with statutory scheme).¹ Ofcom removed more detailed requirements from Formats, such as the number or percentage of hours of a given genre of music that must be played, while stating that a licensee must continue to deliver a service that has the essential character required by its character of service. This included broad parameters as to, for example, the type and age of music played as a general guide to, rather than as a binding requirement of, compliance with the essential character.

- 2.9 As a result, where previously both the ratio of music types broadcast and the description of music genre would have been specified, today broadcasters are required to play music under much more general descriptions, as the examples below indicate:

"A broad music and information station"

"A locally focused broad music and information station"

"A rhythmic-based (e.g. dance, club etc) music-led service"

"A classic and contemporary rock station"

"A music-led, locally oriented adult contemporary station"

"A locally oriented contemporary and chart music and information station".

- 2.10 As set out in the table below, 37% of licences now specify only 'broad music', while non-specialist genre music descriptions – 'contemporary/chart', 'adult contemporary' - are featured in a further 26% of Formats. 37% of licences have a requirement to broadcast a particular genre of music. An individual station may play more than one type of music.

¹ <http://stakeholders.ofcom.org.uk/broadcasting/radio/formats-content/about-formats#2>

Music description	% of stations	Examples
Broad music	37%	Clyde 2
Contemporary/Chart	18%	Forth One
Adult Contemporary	8%	Eagle Radio
Classic/Gold	16%	Gold
Rock	6%	XFM
Rhythmic-based/Dance	8%	Kiss
Easy Listening	7%	The Breeze

In addition a small proportion of stations (5.5%) also have a requirement to broadcast a number of hours of specialist music per week.

- 2.11 In addition, many stations will specify their intended audience in their Format: for example, a service for 15 to 44 year olds, or a service for an ethnic audience in a given locality.

Format changes

- 2.12 There are statutory provisions which allow a licensee to apply for, and Ofcom to approve, changes to a Format. These are set out in Annex 3 to this document.
- 2.13 Where a licensee wishes to make a change to the description of music in its Format which could result in a change to the character of service that it broadcasts it must request a change to its Format under its licence conditions. In considering such a request, Ofcom is subject to the requirements of section 106(1A) of the BA1990. This provides that Ofcom may only consent to such a change in one or more of the circumstances which are set out in section 106(1A) of the BA1990. These are:
- the departure would not substantially alter the character of the service;
 - the departure would not narrow the range of local radio programmes available in the relevant area;
 - the departure would be conducive to the maintenance or promotion of competition in that area;
 - there is evidence of significant demand or support in the relevant area for the departure;
 - that locally-made programmes would no longer be made in the licensed area but in an area approved by Ofcom for the purpose.
- 2.14 Before deciding whether or not to give consent under any of the above criteria apart from the first and last ones, Ofcom must consult in accordance with section 106ZA of the BA1990.

- 2.15 Even where one or more of the statutory criteria for consenting to a Format change request is met, Ofcom retains discretion as to whether or not to give consent. Ofcom has published guidance on its website on how it exercises discretion in relation to such requests.²
- 2.16 Since 2007, there have been a total of 68 Format change requests which were subject to the requirements of section 106(1A) of the BA 1990. In 55 of these there was a proposed change to the type of music described in the Format. Music selection was not necessarily the main reason for the Format change request, but a consequence of a change in, for example, the audience the service was seeking to target. Of the 68 requests, 16 were considered by Ofcom to be substantial changes to the character of service and were therefore subject to consultation. Of these, all but four were approved.

Call for Inputs

- 2.17 In advance of this consultation, on 28 May 2014 we published a Call for Inputs to gather information and evidence.³ We said that we would welcome views from any interested person on any aspects of Ofcom's approach to music Format regulation within the current statutory framework. In particular, we were keen to hear from listeners and from people in the radio industry and the music industry. We said that respondents may find it helpful to focus on the following broad areas:
- Are the music genres set out in the current Formats still appropriate? In particular, has there been a blurring of genres such that two or more of the genres included in Formats are no longer distinct?
 - Do music Formats strike the right balance between allowing stations to adapt to changing tastes, and preserving each station's character of service?
 - Is there scope to simplify music Formats further while still preserving each station's character of service?
 - Are there alternatives to genre-based music regulation that could be a more effective way of delivering a wide range of services appealing to a variety of tastes and interests?
- 2.18 We also said that it would be helpful if any comments on the impact of the current approach to music Format regulation or alternative approaches could be supported by evidence (in particular in terms of any financial impact).
- 2.19 We said that the following consultation would consider whether any changes to the regulation within the existing legislation could benefit listeners in terms of the range of, and competition between, radio services and if so, what the potential options might be.
- 2.20 We received 13 responses to the Call for Inputs. Responses were received from: Global Radio, Paragon Media Strategies, RadioCentre, Town and Country Broadcasting, UKRD, UTV Media, five individual respondents and two anonymous

² <http://stakeholders.ofcom.org.uk/broadcasting/radio/formats-content/changes/>

³ <http://stakeholders.ofcom.org.uk/consultations/music-formats-cfi/>

respondents. None of the responses was confidential, and they are published on Ofcom's website.⁴

2.21 The issues raised in the responses, and Ofcom's consideration of those issues, are set out below and in the following sections of this consultation document.

2.22 The first of these issues is the scope of this review.

The scope of the review

2.23 UKRD, UTV Media, RadioCentre and Global Radio all agreed with Ofcom's decision to limit the scope of the review to local analogue commercial radio (excluding national analogue commercial services, digital radio services and community radio services).

2.24 UKRD considered that the review should be restricted to the music element of radio Formats and stated: "we do not share the view of some within the industry that this latest consultation should result in the review of wider regulatory matters; particularly relating to localness and we urge Ofcom to resist such pressures."

2.25 Global Radio and RadioCentre, however, considered that the scope of the review should extend to all elements of Formats.

2.26 RadioCentre argued that the extent of change in the radio industry and the unprecedented level of listener choice and technological change provides a significant case for examining all elements of Formats and therefore urged Ofcom to "consider the rules and regulations around formats by including speech quotas within the scope of any review". RadioCentre also questioned assumptions made by Ofcom within the Call for Inputs, particularly Ofcom's statement that "we are not reviewing localness as we published new consumer research only last year which supported our current approach". RadioCentre argued that this is based on the belief that localness and speech obligations are co-dependent, which they said is not always true, and that it would therefore be possible to review speech obligations without reviewing localness and vice versa. In addition, RadioCentre also argued that there is limited evidence to show that listeners support Ofcom's approach to protecting localness. Whilst they recognised that research showed that local content is valued by listeners, they considered that the 2013 research cited by Ofcom did not consider the location of broadcast in any detail. On this point, RadioCentre drew Ofcom's attention to recent research commissioned by RadioCentre which found that listeners said "providing local news and information was three times more important than 'local studio location'."⁵

2.27 Global Radio highlighted the announcement by Ed Vaizey in December 2013 that in addition to Ofcom's review of music in Formats in 2014, Government would "look more closely at other rules and regulations that exist around radio, to ensure they are fit for purpose in a digital age"⁶. Global Radio stated that they are disappointed that

⁴ <http://stakeholders.ofcom.org.uk/consultations/music-formats-cfi/?showResponses=true>

⁵ Kantar Media, October 2013, Public Value of Commercial Radio

⁶ Ed Vaizey MP, speech at GO Digital Conference 16 December 2013:

<https://www.gov.uk/government/speeches/go-digital-conference-16-december-2013>

the scope of the review is limited to music in radio Formats despite this announcement.

- 2.28 Global Radio also pointed out some developments they have observed recently regarding DAB “including a delay in approval for changes to DAB services on the national digital multiplex, and the inclusion of more detailed format descriptions in local DAB multiplex licence annexes for services simulcast on analogue” which they said could be “interpreted as moves designed to increase the regulation of content on DAB”. They considered this “would be a retrograde step and we would urge Ofcom to confirm this is not the intention.”

Ofcom’s consideration of responses

- 2.29 We stated in our Annual Plan and the Call for Inputs that the scope of this review is limited to the music element of Formats for local analogue commercial radio licences. We remain of this view.
- 2.30 Local analogue commercial radio licences contain conditions to secure the provision of local content and locally-made programmes.⁷ We said in the Call for Inputs that we would not be reviewing these localness requirements, on the grounds that we published new consumer research in 2013 which we consider supports our current approach to protecting localness⁸. We are aware of the research cited by RadioCentre, but do not consider that this provides sufficient evidence to warrant re-opening at this time the matter of how Ofcom complies with its statutory duty to secure the inclusion of both local content and locally made programmes in local analogue commercial radio services.
- 2.31 With reference to RadioCentre’s argument that speech and localness could be considered separately, we recognise that in principle this is possible. However, in practice the vast majority of speech obligations within local analogue commercial radio licences are the same as the localness requirement to provide local news or information. In the very small number of licences where there are speech obligations beyond this as part of the Format, these would have been proposed by the licensee in the course of applying for the licence and form part of its character of service. As is the case with the music element of Formats, the licensees in question can request a Format change to amend these obligations, if they so wish.
- 2.32 While we have taken into account wider market developments in DAB and other audio services, the outcome of this review is not related to the regulation of DAB services or multiplexes.

The current regulatory approach

- 2.33 Global Radio stated that although they welcomed the simplification of Formats in 2008, which included the removal of detailed speech and music quotas, they consider that in practice because of the way Ofcom implements the current

⁷ Ofcom has a duty under section 314 of the Communications Act 2003 to carry out its functions in relation to local sound broadcasting services in a manner which it considers is best calculated to secure the inclusion of local material and locally made programmes in these services.

⁸ <http://stakeholders.ofcom.org.uk/market-data-research/other/radio-research/radio-latest-audience-figures/>

regulatory regime 'de-facto quotas' for certain types of music or speech still exist. Global Radio uses several examples of Ofcom investigations against their stations to illustrate this point.

- 2.34 RadioCentre stated that “the way that Ofcom manages compliance with formats means that many stations are still, in effect, required to meet de-facto quotas of certain types of content. For example, a ‘contemporary’ or ‘chart music’ station must ensure 66% of its output is from the past 2 years. In addition, as noted above, a station that is described as ‘full service’ would appear to be required to provide speech output of between 30-50%. Stations failing to meet this requirement could be in breach of their licence.”
- 2.35 UKRD highlighted the simplification of Formats in 2008, and argued that this allows an appropriate level of flexibility for stations.
- 2.36 UTV Media considered that Ofcom retains appropriate and effective powers to allow stations to change their Formats through formal Format change requests. UTV Media stated “we note that a format change regime already exists to support reasonable amendments to music formats in line with the relevant statutory criteria. Accordingly a number of local commercial radio stations have applied for and received amendments to their music formats in recent years. This mechanic plays an important role in ensuring that the industry continues to provide an appealing range of service to listeners”.
- 2.37 RadioCentre considered the Format change process to be “cumbersome...unwieldy, bureaucratic.” They also argued that the Format change process is disproportionate to the usual moderate changes requested. They said: “We do not believe that these detailed investigations are necessary to protect listeners’ interests or are an efficient use of Ofcom’s limited resources. As well as contributing to operators’ management overhead, the inflexibility and delays inherent in the current system of regulation, and the uncertainty over whether format changes will be agreed are unnecessary constraints on the ability of the industry to compete and thrive in the digital age”.
- 2.38 Global Radio also put forward this view.
- 2.39 One individual respondent argued that Ofcom’s current regulatory regime prevents listeners from hearing music that they might have otherwise heard if it were not in place, namely that from local unsigned artists. They considered that the regulation has tied radio stations to charts dominated by record companies and that local unsigned acts have minimal chance of daytime play and are disadvantaged in the competition for airtime with more mainstream acts with record label contracts. They also considered that Ofcom has a “protectionist policy for Classic FM which allows them to dominate the classical music sector and the classical music chart yet other stations are straight-jacketed by regulation”.

Ofcom consideration of responses

- 2.40 The provision for Formats to be included as licence conditions is set by the legislation. Ofcom has a duty to ensure compliance with licence conditions. Where possible we have sought to simplify and reduce the regulatory burden of doing so to licensees, such as the simplification in 2008. At the time Ofcom was clear that:

"Given the cut in the amount of detail within each Format, it should be emphasised that the "spirit" of the Format will be firmly regulated, and our regulation will continue

*to have sampling at its core. Stations will still be monitored to make sure they comply with each Format. So while the new style Formats do not include quotas for example requiring a given percentage of music from a certain era we will apply a commonsense approach to enforcing them should there be any disputes. If, for instance, a stations Format requires it to be mainly classic pop, we would not accept that 51% classic pop and 49% heavy metal was a sensible interpretation of the Format's spirit."*⁹

- 2.41 Compliance is ultimately a matter for the licensee: we disagree strongly that 'de facto' quotas still exist. The current approach allows licensees to adopt a commonsense interpretation of their own Formats and what constitutes their character of service, and this seems to work well for the vast majority of licensees. It is only in the rare cases where a licensee and Ofcom have disagreed over how a particular Format should be interpreted that, in order to avoid any potential compliance issues, Ofcom has reluctantly felt it necessary to provide guidance of the kind which RadioCentre and Global Radio refer to as "de-facto quotas". This is categorically not the same as Ofcom imposing quotas on licensees. As noted above, the current system relies on licensees taking a sensible approach to what constitutes the 'spirit' of their Format. We note that since 2007 Ofcom has recorded only five licence breaches due to a licensee not complying with the music obligations in its Format.
- 2.42 We note the comments by some respondents that they consider the Format change process to be cumbersome and leads to delays and uncertainty.
- 2.43 The provisions to allow for a licence holder to request a Format change, and the criteria which must be satisfied in order for Ofcom to consider approving it, are set by the legislation. This includes the requirement for Ofcom to consult on any changes which it considers would substantially alter the character of the service, or do not relate only to the origin of locally-made programmes. Ofcom cannot disapply these statutory provisions.
- 2.44 We already publish guidance on the criteria that Ofcom applies to judge whether a request should be approved or not, which licensees can use to inform their application. This guidance is revised from time to time. If there are aspects of this guidance that respondents consider could be clearer or more detailed, we would be happy to consider this in due course.
- 2.45 We note that the number of Format changes since 2007 considered significant and therefore consulted upon was 16 (out of a total of 68 requested), of which just four were ultimately rejected. We do not consider this suggests a disproportionate process in considering listener interests and implementing the legislation.
- 2.46 In relation to the points raised by the individual respondent, we do not consider that any of the current Formats as drafted would preclude radio services from playing local or unsigned artists. These are choices of the radio broadcaster, and indeed feature in the output of many stations. Classic FM is a national FM radio service and outside of the scope of this review, but Ofcom does not have a particular policy in relation to the service.

⁹ <http://stakeholders.ofcom.org.uk/broadcasting/radio/formats-content/about-formats#2>

Section 3

Market context

3.1 In this section we set out a summary of market changes affecting the availability and access to music on radio services, and on non-broadcast audio services. We also set out available research on how listeners' habits and tastes have evolved, and highlight some of the issues raised by respondents to the Call for Inputs. A fuller analysis of the radio sector is included in Ofcom's Public Service Broadcasting Annual Report.¹⁰

Increase in the number of radio services

3.2 For many decades the primary means of listening to music was via a limited number of national and local radio stations broadcast on analogue FM or AM by the BBC or commercial broadcasters, or occasionally on music programmes on the main TV channels. Additionally, listeners might have personal collections of records, cassette tapes and CDs. This would have been the typical access to music for most listeners when the 1990 legislation on the licensing of local commercial radio services came into effect.

3.3 Today there are far more radio stations than two decades ago. Currently Ofcom licenses 291 local commercial radio stations on either the FM or AM analogue wavebands. There are three national radio stations available on FM or AM. There are over 200 Ofcom licensed community radio stations that may broadcast on FM, some of which are specialist music services. Listeners in most localities can receive more radio stations than in the early 1990s via just an analogue radio set.

3.4 Since the 1990 legislation, digital broadcasting of radio services has launched and further increased the number of radio services available. Digital Audio Broadcasting (DAB) is a radio broadcasting standard that, like analogue radio, allows services to be broad to particular local areas, but allows for a larger number of services: in each locality, DAB offers around twice the number of stations as are available on analogue. There are now 184 licensed local commercial DAB radio services broadcasting in the UK. Some of these services (c.50) are digital-only stations, and some are digital broadcasts of local analogue radio stations (called simulcasts). The BBC's national and local services also broadcast on DAB.

3.5 There is currently one DAB multiplex broadcasting nationally offering 14 UK-wide services. Ofcom has recently advertised for applications for a licence to provide a second national DAB multiplex.¹¹ Ofcom has also recently consulted on proposals for trials of small-scale DAB broadcasting that may in the future offer opportunities to broadcast DAB to particular localities.¹² While the outcome of these processes are not certain at this point, they have the potential to further increase the capacity for DAB services to be broadcast.

¹⁰ <http://stakeholders.ofcom.org.uk/broadcasting/reviews-investigations/public-service-broadcasting/annrep/psb14/>

¹¹ <http://licensing.ofcom.org.uk/radio-broadcast-licensing/digital-radio/advertisement-2014/>

¹² <http://stakeholders.ofcom.org.uk/consultations/small-scale-dab/>

- 3.6 In addition, some radio services are also broadcast on digital TV platforms: DTT, Digital Satellite and Cable. In the main, these are simulcasts of analogue or DAB broadcast radio services. The majority of UK radio services are now also simulcast via the internet. Many radio programmes are subsequently made available for 'catch-up' listening online.
- 3.7 Overall, there has therefore been an increase in the number of radio services for listeners in general, and radio listeners in most localities. We would expect the number of digital radio services available to continue to increase.

Increase in the availability and use of non-broadcast music services

- 3.8 The last two decades have also seen the increased availability of music on audio services that are not broadcast, but delivered via the internet.
- 3.9 The proportion of UK households with access to the internet is now 82%, while 77% of households have broadband¹³. Together with the development of digital music technologies (such as MP3 and audio-streaming) and internet connected audio devices (including PCs, internet radios, iPods, Wifi speakers and smartphones) this has enabled many consumers to access music from a range of different services.
- 3.10 There has been a proliferation in the number and type of non-broadcast music services that are delivered via the internet. The main types of services are:
- Digital music retailers, such as Apple's iTunes store or Amazon Music, or artists or record labels' own digital music stores, that allow listeners to pay to access or download files of individual music tracks or albums.
 - Video services such as Youtube (owned by Google) or Vevo that host a large volume of music videos, and also audio tracks featured in films and TV or accompanied by user generated content. These services are supported by advertising revenue. According to a 2013 YouGov survey, 40% of UK adults aged 16+ used YouTube in a three month period.
 - On-demand music streaming services such as Spotify, Deezer, Soundcloud or Google's Play Music allow listeners to select and "stream" individual music tracks, albums or playlists for listening. Basic services are supported by advertising revenue, with listeners able to pay monthly subscriptions for a "premium" service in order to listen to their selection advert-free, on multiple devices or off-line. At the end of 2013, there were more than 1.3 million premium subscribers to on-demand music streaming services in the UK.
 - Personalised "radio" services such as iTunes Radio or Rdio that create a stream or recommended playlist based on user preferences for particular artists or music genres.
 - Aggregators of broadcast and internet only radio services from around the world such as TuneIn that allow listeners to stream live radio services via the internet.

¹³ Ofcom Communications Market Report 2014

TuneIn doubled its UK unique audience, from 565,000 to 1.6 million between 2013 and 2014.

- 3.11 The recent growth in terms of user numbers and revenues has been in on-demand streaming services, whereas digital retail of individual tracks or albums for download is now in decline. The BPI estimate that the number of tracks streamed in the UK doubled between 2012 and 2013, and doubled again in 2014. Apple, Amazon and Youtube are expected to launch subscription music streaming services in the UK in the near future, which may further increase adoption and use of streaming services.
- 3.12 Streaming services are arguably a close competitor, and in the case of aggregators such as TuneIn carry actual simulcasts, of broadcast radio in that they receive advertising revenues (as well as direct payments by the listener) and are likely to feature a mix of artists and music genres.
- 3.13 However, there remain important differences in streaming services from broadcast radio on analogue or digital platforms:
- Use is reliant on an internet connection. This may be straightforward in-home, but less so in public places or in-car. Although mobile data coverage is improving, coverage maybe intermittent and not ubiquitous in particular localities.
 - It is not free at the point of consumption. There is at least the cost of internet access for the listener: where data usage is capped or charged per unit in a broadband or mobile phone contract, this would be considerable if a level of consumption approaching average broadcast radio consumption hours were switched online.
 - For most streaming services, there is typically an element of personal selection in either an individual track or playlist, or by the service using previous choices to build preferences for particular artists or genres. These services tend to appeal to heavy consumers or purchasers of music in particular genres. The music on broadcast radio is programmed by the broadcaster with the intention of serving the broadest interested audience, who in the majority are light consumers of music.
 - Due to the nature of the devices used (personal PCs, tablets and smartphones) and the element of personalised selection, listening to streaming services tends to be an individual experience needing a degree of active involvement of the listener. Broadcast radio is often a shared experience in households, or in public areas or workplaces, and is often considered a secondary media that does not demand active involvement to enjoy.
- 3.14 We consider that the uptake and usage of IP delivered audio services is likely to continue to increase. However, for the above reasons, although it offers an alternative platform for music services to broadcast radio, for the foreseeable future internet delivered services may not offer the same universal availability and low cost of access of broadcast radio. They may therefore be complementary, rather than a substitute for, broadcast radio. The role and importance of broadcast radio maintaining broad, popular appeal may even be strengthened as a result.
- 3.15 In summary, since the 1990 legislation, there has been an increase in the number of local commercial radio services on analogue, and increased competition for listening from services on FM, DAB and DTV, and from audio services on the internet. For

many listeners they will have added considerably to the number of sources of music available to them. However, digital services do not necessarily have the same geographic availability and ubiquity and low cost of access as analogue radio services.

Range and diversity of music

- 3.16 Ofcom's duty to do all it can to secure range and diversity applies in respect of local radio services. However, we recognise that, for licensees and listeners, the provision and consumption of these services is often made in light of other types of service available.
- 3.17 We have therefore considered whether the increase in number and type of different music services has added to the range and diversity of music content available. This is not an exhaustive analysis, and is based on the limited evidence available.

Range and diversity of music on local commercial radio

- 3.18 On analogue radio, of the three national services, two – TalkSport and Classic FM – have Formats that are different from those of almost all local commercial services. There is no restriction on local commercial services having a similar type of Format to the national services.
- 3.19 For local commercial radio services, applicants for a new service in a given area must propose how their service will cater to the tastes and interests of those living in the relevant area and how it would broaden the range of services available to them. These matters are often addressed by reference to the selection of music that the applicant proposes to include in its service. The range and diversity of services is therefore influenced by the different selections of music which are made by licensees: beyond this, competition between services for listeners also has bearing. In markets with more services, in principle there should therefore be a wider diversity of music played.
- 3.20 Range and diversity do not readily lend themselves to quantification. Range of music might take into account the number of different types of music played. Diversity might take into account the number of unique songs played. Therefore, only as a proxy for range and diversity, we have analysed case studies on the extent to which the number of music tracks played by services in a given locality are i) different on a particular service and ii) unique to that service.
- 3.21 We have used the Radiomonitor¹⁴ database, which is widely used by the music and radio industries, as the source of data for the number of different and unique tracks played by stations over a month long sample period in September 2014. We selected a number of case study markets with a different number of services, in different geographic locations, with different Formats and different broadcaster groups. These are set out in the table below.
- 3.22 This is a case study approach, and it is not intended to be an exhaustive analysis. The analysis is limited to analogue local commercial radio services (the focus of this consultation), rather than all radio services available in the locality. The analysis does not include the genre or artist of music attributable to each track, or the spread of

¹⁴ <http://www.radiomonitor.com/>

tracks across these, which may also be relevant to range and diversity. As it is a month long sample period, it does not reflect that there may be seasonal variations in the variety and types of tracks played by different services throughout the year.

Figure 1 Markets and services included in case study analysis

Market	Number of local FM stations	Stations included in analysis
Manchester	9	Key 103, Magic 1152 Manchester, Heart North West, Smooth North West, XFM Manchester, Capital Manchester, Gold Manchester, Real XS, Tower FM
London	9	Capital London, Capital London, Gold London, Heart London, Kiss 100, Smooth Radio London, XFM London, Absolute Radio London, Magic 105.4
Birmingham	6	Capital Birmingham, Free Radio, Free Radio 80s, Heart West Midlands, Planet Rock 105.2, Smooth Radio W Midlands
Portsmouth	6	Heart (Solent), Capital South Coast, Smooth Radio, Jack FM, Wave 105, Breeze (Solent)
Glasgow	6	Clyde 1, Clyde 2, Capital Scotland, Heart Scotland, XFM, Smooth
Sunderland	6	Metro Radio, Magic 1152, Planet Rock 105.2, Smooth Radio West Midlands
Sheffield	5	Hallam FM, Magic AM, Capital Yorkshire, Heart Yorkshire, Trax FM
Cardiff	5	Capital South Wales, Smooth, Kiss West, Heart South Wales, Nation Radio
Norwich	4	Heart (East Anglia), Smooth (East Anglia), Norwich 99.9FM, Kiss East

3.23 In each local market, for the sample period of September 2014, we analysed:

- The number of different tracks that each station plays. This is the total number of different tracks played by a particular station, not taking into account the number of times the track is repeated. The same track may also be played by other stations.
- The number of these tracks that are only played by (i.e. unique to) each station. This also takes into account the number of times these unique tracks are played and is therefore expressed as the percentage of the station's total music airplay (i.e. the percentage of music played that was not played by any other station).

3.24 The charts below set out our analysis. For each local market, they include the highest and lowest numbers of different and unique tracks played by the stations, and the average number of these across the stations.

Figure 2 Number of different tracks played by local commercial radio stations

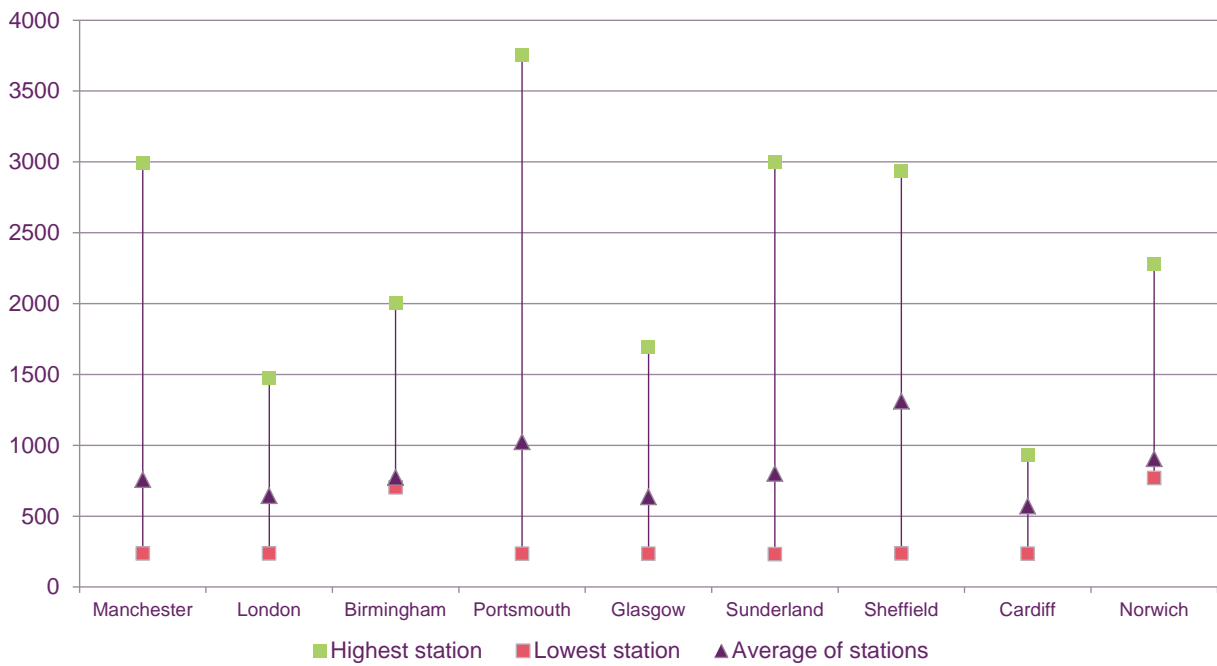
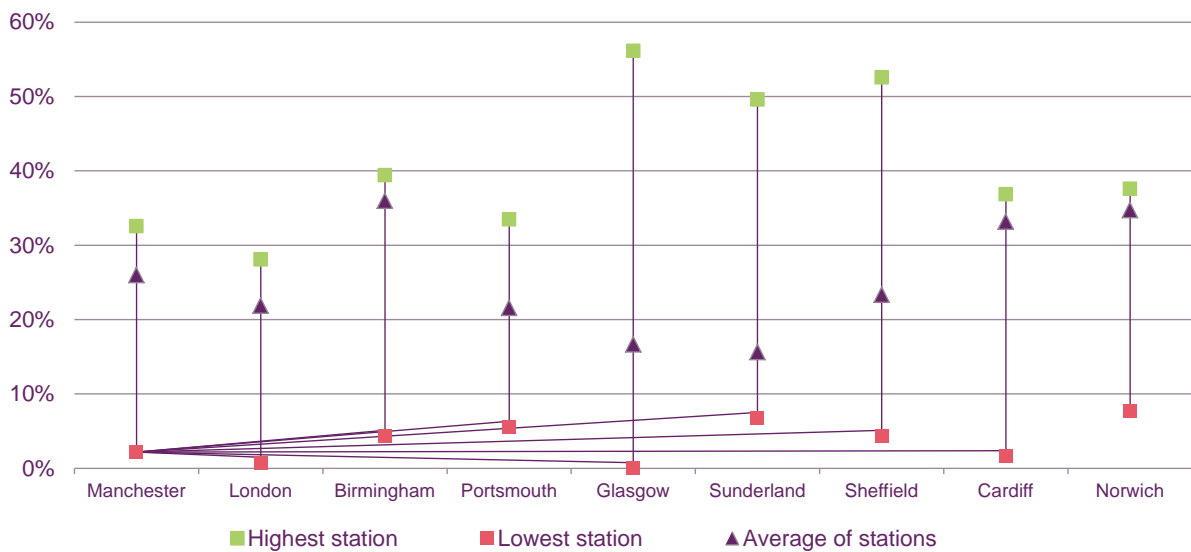


Figure 3 Percentage of music played by local commercial radio stations that is unique

Percentage of music airplay unique to a station (%)



Source: Ofcom analysis of RadioMonitor data, September 2014

3.25 The analysis suggests that in the case study local markets there is a range and diversity of music tracks played. On average, stations typically played between 750 and 1000 different tracks in the month, of which around a quarter were unique to a station and not played by any other station in the market (at least, in the sample period). As many stations have Formats to play popular or contemporary music, there is a natural limit to the number of different and unique tracks that will be played in a given month.

- 3.26 However, there is a wide variation in the number of different and unique tracks played by different individual stations in most markets. For example, in Portsmouth one station played 234 different tracks, while another station played 3752 tracks. In Glasgow, one station played no unique tracks, while 56% of the tracks played by another station were not played by any others.
- 3.27 There are likely to be a number of reasons, many particular to a local market, that account for the variation in the number of different and unique tracks between stations. However, the analysis suggests that the contribution to range and diversity of music is not equally distributed by station: some stations play a far higher percentage of unique music than other services. This suggests that maintaining points of differentiation between services is important in protecting the diversity of music played overall.
- 3.28 It might be expected that, in markets with more services, both the total number of tracks played across stations and the number of different and unique tracks played by each station should be higher than average. However, the analysis suggests that the average number of different and unique tracks played by stations in markets with more services (London, Manchester, Birmingham) are similar to those with fewer services (Sheffield, Cardiff, Norwich). This suggests that there is not necessarily a correlation between the number of competing stations and the range and diversity of music they provide.

Range and diversity of music on other services

- 3.29 On DAB or DTT, the multiplex operator is required to carry a broad range of services, but the selection of music is not an obligation in a digital-only licence. Many of the digital services are simulcasts of local commercial radio services and therefore make no further addition to range and diversity of music. However, we note that many digital-only radio services focused on music have in fact opted to play, and brand their services by, a narrower range of music (e.g. the Absolute Radio 70s/80s/90s stations, or Planet Rock) than in most local commercial radio formats. This will tend to increase, rather than duplicate, the range of music on local commercial radio.
- 3.30 Internet delivered radio and music streaming services are not regulated in the same way as broadcast radio: music selection is entirely a matter for the service provider and/or the listener. There is an exponentially larger range of music tracks and genres available than played on broadcast radio: most services list many millions of tracks available compared to the hundreds played on the average local commercial radio service in a given month.
- 3.31 However, we note in analysis of the most frequently played/streamed tracks on streaming services that there is a fairly high level of duplication with the most played tracks on radio. For September 2014, we compared the weekly commercial radio¹⁵ Top 40 radio airplay charts (compiled and published by Radiomonitor) with the Top 40 streaming charts (compiled and published by the Official Chart Company). On average, of the most played tracks on radio, 24 of these also appeared in the Top 40 of streaming-only charts per week. This suggests that, while streaming music

¹⁵ The chart as compiled includes local and national FM and DAB stations. It is not possible to disaggregate local commercial radio services only, but we consider that there is unlikely to be much difference between these and other stations in the most popular tracks played.

services greatly increase the range of music available to its users, there is not necessarily a gulf – and indeed maybe a positive correlation - in what is most popular for listeners on streaming services and what is played on commercial radio services overall.

3.32 Overall we consider that, in the last two decades, the increase in music services available on broadcast and non-broadcast services available has tended to widen rather than duplicate, and for many listeners may be complementary to rather than competitive with, the range and diversity of music available on local commercial radio services.

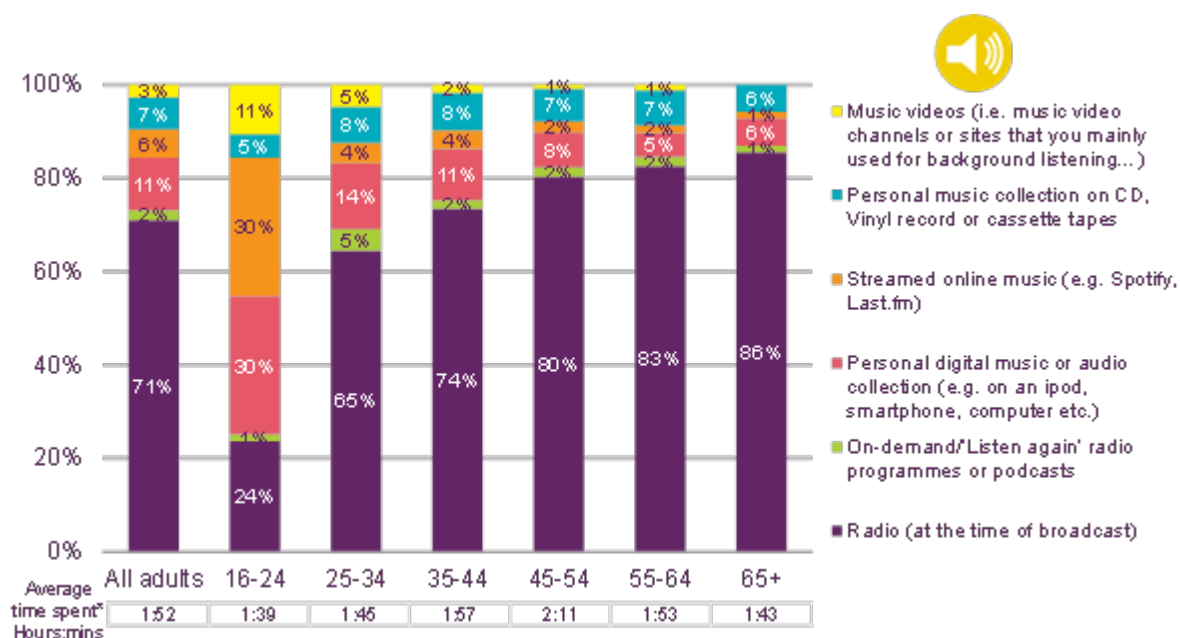
Listeners' consumption habits

3.33 Arguably the most important factor in assessing the effect of new services on the range and diversity of music is whether listeners' consumption of radio has changed markedly as a result.

3.34 According to Ofcom's 2014 Digital Day research, listening to live radio accounts for 71% of all listening-based activity. Internet based music streaming or use of music video sites accounts for 9% of listening time.

3.35 However, there are significant variations between age groups. For example, among those aged between 16 and 24 live radio share falls to 24% whilst streamed music accounts for more (30%) of their listening time. For those aged over-45 live radio exceeds 80% of their listening time. For all but the youngest listeners, live radio accounts for the majority of the average listeners' time – and more time than any other means of listening to music.

Figure 4 Proportion of listening activities by age group



Source: Ofcom Digital Day Research 7-day diary
 Base: All listening activity records for adults 16+ (17290), 16-24 (999), 25-34 (2342), 35-44 (4113), 45-54 (4334), 55-64 (3284), 65+ (2218) *Average time spent is the total average daily time spent listening to media, including simultaneous activity

- 3.36 On average, 90.4% of the adult population listens to broadcast radio on a weekly basis. On average 32.5% of adults listened to national commercial radio each week in 2013, and 51.4% listened to local commercial radio. Both figures are above the level of reach in 2008, suggesting that commercial radio retains broad appeal to listeners.
- 3.37 However, the average hours spent listening to radio by listeners of all ages is falling: from 24.3 hours per week in 2002 to 21.5 hours in 2013. The decline among those aged 15 to 24 has been the most rapid: they listen for 2 hours 18 minutes per week less in 2013 than they did in 2008, a fall of 12.9%. It remains to be seen whether this difference will continue as this cohort ages. 15 to 24s represent only c.10% of total radio listening hours, and their consumption of radio has always been lower than other age groups with personal music collections preferred.
- 3.38 By service type, the most pronounced decline in average hours has been in the local commercial radio sector (-11.8% since 2008). This was followed by the BBC local and nations' services, with a decline of 8%. The national commercial radio sector showed the smallest level of decline (-1.3%).
- 3.39 In terms of the choice of platform for radio listening, DAB receiver take-up at home among UK adults reached 49% in Q3 2014. 23% of UK adults claim to have listened to radio services via the internet, whilst 21% and 24% claim to listen via a mobile phone or television set respectively. Despite this, listening via an analogue radio receiver – although declining as listening switches to DAB – remains the largest single platform accounting for 60% of radio listening hours.
- 3.40 In summary, for the majority of listeners, live radio represents the majority of their listening activity. Local commercial radio services continue to reach the majority of the population, and the majority of radio listening hours continue to be to analogue delivered. Although these metrics are in moderate decline, the rate of adoption and use, and extent of fragmentation of listening to, other audio services is not certain. We expect that local commercial radio services on analogue radio will remain an important source of listening and music for the majority of the population for the foreseeable future.

Listeners' attitudes to radio and music

- 3.41 The research available suggests that the importance, value, satisfaction and role of music on local commercial radio remains rated very highly by listeners.
- 3.42 In Ofcom's 2013 research¹⁶ into local commercial radio services, the music played is valued by a higher proportion of respondents (76%) than for any other aspect. This was the case across all age groups, although there are differences in the role that music plays:
- Over 55s claimed to be heavy radio listeners, owing in part to their relatively high listening availability. Music, and specifically nostalgic era-based or specialist genres (jazz, classical), were regularly stated as a primary attribute by this age group.

¹⁶ Ofcom 2013 Research: <http://stakeholders.ofcom.org.uk/binaries/research/radio-research/research-findings13/listeners-perspective.pdf>

- 35-54s were most time-poor and their general media consumption, including radio, was felt to be the most compromised. Music again dominated as the core radio attribute for this age group. Many participants turned to radio for music variety, new or specialist genres, or iconic music from their youth.
 - 25-34s were more engaged with current affairs and their local communities. They were heavy consumers of commercial radio, accessing it primarily for music, in particular retro music.
 - Radio was primarily consumed by 18-24 year olds as a means of entertainment, with music as the most important content for this group. The variety of music, as well as access to new music and live music were important.
- 3.43 In research by Kantar Media for RadioCentre (2013)¹⁷, 79% of listeners consider the type of music they like to be an important feature of local commercial radio, whilst at the same time, 79% are also satisfied that the type of music they like is provided by their choice of radio station.
- 3.44 Research by YouGov in 2014¹⁸ found that radio services in general continue to play an important role through the curation of, and facilitating exposure to, multiple genres of music and new music. A survey of radio listeners found 21 different types of music that listeners like listening to on the radio: the results ranged from 39% of listeners liking music from the 1980s to 4% liking World Music. Among those aged 16+ who buy new music or attend concerts on a regular basis, 42% state radio as a source that they regularly use to discover new music.
- 3.45 This is not to say that listeners tastes, either in general or in particular age groups, are static or have been unaffected by an increase in the number and diversity of music services available. Research from BBC Marketing and Audiences tends to suggest that musical tastes increasingly transcend age groups. The BBC research suggests that music genres may now make less sense than they used to as young mainstream audiences have little (if any) affiliation to a single genre, tend to be naturally experimental, are receptive to new music, are more active music consumers and allow their mood to influence choice.

Responses to the Call for Inputs on listener habits and tastes in music

- 3.46 In its response to the Call for Inputs, RadioCentre considered that market changes have resulted in a fundamental change in music consumption habits, feeding through to and influencing listeners' music tastes and genres of music. RadioCentre noted that analogue listening hours are declining compared to listening on DAB or other digital platforms. They used the particular examples of Kiss and Absolute Radio, whose analogue listening hours now represent 40% and 21% of their total listening hours respectively.
- 3.47 It further considered that “these changes – alongside the increased access to a much more diverse range of music at the click of a button – may be part of the reason that

¹⁷ RadioCentre research: *Value of Commercial Radio* published 2013:
http://www.radiocentre.org/files/radiocentre_leaflet_hel_neue_light.pdf

¹⁸ YouGov research: *New Generations and the Future of Radio* 2014:
<http://reports.yougov.com/sectors/media/media-uk/new-generations-and-future-radio/>

music listeners appear to have developed more eclectic tastes than in the past.” RadioCentre also provided analysis of data relating to local commercial radio listeners’ profile that they consider suggests audiences are becoming less predictable and segmented by music choice. They argued, using the examples of Kiss FM and BBC Radio 1, that there continues to be a high proportion of older listeners who listen to stations with music targeted at young audiences. In addition to this, they also used the examples of BBC Radio 2 and Magic FM to argue that the pattern is also evident for the younger age groups who listen to stations that have music targeted at older audiences.

- 3.48 RadioCentre considered that the “blurring of music genres and changing musical styles makes it difficult to define a station principally by its music, or use particular stock phrases or terminology in an attempt to describe its sound. Audiences and artists are not confined to a particular genre or category of music. Labelling such tracks as simply rock, rhythmic, jazz or classical is very difficult and open to interpretation. And while almost all such music could be described as pop, contemporary, chart or broad music, the use of multiple terms to describe such a range of output seems cumbersome and an unnecessary complication”.
- 3.49 Global Radio considered that there has been a general broadening of listener tastes in music, which has led to a proliferation of musical genres and sub-genres. To support this, Global Radio uses TGI data to show that “consumers of all age ranges today enjoy a much broader range of music than used to be the case. In 2004, 22% of adults said they especially chose to listen to 5 or more genres of music. Ten years later, this percentage had increased to 30%. The shift in the percentage of consumers who enjoy at least 10 genres of music is even more marked. In 2004, only 2% of adults said they especially chose to listen to 10 or more genres. By 2014 this had grown to 6% of listeners”. They conclude that “not only have musical tastes become much broader over time, but also that it is harder and harder to appeal to a particular demographic group solely by playing a particular genre or genres of music” and “we do not believe that in 2014 there is any point in trying to define music by genre or a written music format. It is simply not the way people listen to or consume their music. Our audiences don’t define their musical taste by genre or by using these words. Nor does it reflect the way artists think about their music”.
- 3.50 Global Radio argued that as a result the relationship between the music a station plays and the audience it attracts is complex and that “Stations with similar playlists do not necessarily appeal to the same audiences. Regulating music formats is therefore not an effective means of ensuring listeners have access to a range and diversity of services”. Global cited examples of their own stations, including Capital and Heart, where sometimes their musical outputs are similar but the overall content mix are very different. Global Radio included an analysis of the overlap in audience profile for local commercial stations in London compared to the overlap in music played, using Capital as a benchmark. They argued that if it were the case that you could ensure an appeal to different audiences by making sure each station played a different type of music, it would be the case that there would be a correlation between audience overlap and music overlap with those stations which play similar music to Capital having a greater audience overlap as well. However, based on the results of their analysis, Global said this was not the case and that stations with similar playlists do not necessarily appeal to the same audiences. They considered that even if stations played the same music, their feel would be unique still as music is only one part of the complete package.

- 3.51 Global Radio concluded “This explosion in choice not only renders music format regulation of local analogue commercial radio stations unnecessary, it also makes it more important for stations to be free to adapt to changing audience needs. Music format regulation inhibits innovation, reducing not increasing diversity. Music tastes have evolved. Listeners of all ages now enjoy a much wider range of music than was the case a decade ago. It is therefore no longer possible for stations to target a particular demographic group solely through music selection. The terms used in radio formats to describe music – such as “chart”, “contemporary”, “rhythmic”, “melodic” or “easy listening” – do not reflect how listeners define their musical tastes, or how artists themselves think about their music”.

Ofcom consideration of responses

- 3.52 We accept that the evidence available suggests that there is a trend for audiences to listen to a wider range of music genres, and that music genre is becoming less predictable in terms of the audience profile it will reach. In some ways, this suggests that listeners’ interests are best served by having a range of services playing different music from which to choose to listen to different genres as their ‘eclectic’ tastes demand. However, we acknowledge that this is not how listeners tend to use broadcast radio where, despite an increase in number of services, the repertoire of stations has remained limited to between 3 and 3.5 for the average listener. It would also be inconsistent with the commercial aims of most local radio stations to identify and attract as much listening as possible from a particular target audience.
- 3.53 In developing our options, we have considered the extent to which it is possible to increase licensees’ flexibility in the selection of music they include in their services in order to meet more eclectic tastes and interests without reducing the range and diversity across services as a whole. In particular, we note Global Radio’s comments about some of the terms used to describe music in Formats and have considered whether there is scope to simplify these.
- 3.54 We note the evidence provided and referenced by respondents to the Call for Inputs that calls into question whether music tastes and listening can be reliably segmented by target age group as tastes are increasingly shared across age ranges. Nonetheless, our analysis suggests that the age profile of audiences for stations does tend to segment in local markets, and be in line with a target age group where this is specified in the Format.

Competition and range and diversity

- 3.55 In its response to the Call for Inputs, UKRD stated that the UK had decided to “develop its local commercial radio sector based upon a qualitative and service based offering rather than a free for all based upon the United States version” and that “there is no question that many local communities are served far better than otherwise would be the case precisely because of this approach”. They also highlighted their concerns surrounding “frequency squatting” in which some operators have sought to build national or regional brands on the back of what should be local services. UKRD believes that both “format creeping” and “frequency squatting” have resulted in the decline of the “spirit of the licence” (i.e. a detachment from the communities the station is supposed to serve).
- 3.56 UKRD also argued that “there is a danger that further relaxation of music formats may allow larger regional or national (quasi-national) stations to encroach upon the operations of ... smaller operators who presently manage their businesses in line with formats and obligations previously agreed to; formats which often ensure choice and

difference in various market places.” They added: “UKRD has yet to see any real evidence that the present regulatory approach is not an effective means of ensuring diversity exists. Indeed, it is far more likely that more niche stations often regional or national in scale, may well use the opportunity to move to a more mainstream product to try and drive market share higher.”

- 3.57 UTV Media considered that there are distinct market characteristics in the UK which means that the market (i.e. competition between operators) would not be an effective means of securing diversity of services. UTV Media said that “the allocation of a significant proportion of FM spectrum to the state broadcaster, and the close geographic proximity of key population centres” both “limit the number of FM frequencies available in any one locality” and means that “economic imperatives would be unlikely to prompt licensees to spontaneously choose to offer diverse musical formats” if there were to be deregulation, resulting in more specialist and niche stations realigning their music outputs in direct competition with more mainstream stations. They considered the likely consequences would be “a reduction in the music diversity offered by commercial radio and a resulting narrowing of the sector’s aggregate audience appeal”. They also considered that “negative economic impact would arise due to the intensified competition for core commercial radio listeners and advertisers at a local level, with larger stations enjoying significant competitive advantages over their smaller rivals as a result of their superior economies of scale and lesser requirements for costly local programming”.
- 3.58 Global Radio argued that there is limited evidence to suggest that if music in radio Formats was deregulated, this would lead to a loss in the diversity of musical outputs. They considered that in London and other metropolitan areas, there is “substantial choice on FM”. Additionally, they considered that in smaller localities where there are a limited number of operators who own more than one licence, there is a strong incentive for these licensees to differentiate their stations rather than providing a similar service and restricting their audience reach. Further, they also considered that in these areas where there are a limited number of FM licences, all under separate ownership, it would not be rational or sustainable for operators to compete with the same Formats. Global Radio argued that the market (i.e. competition between licensees) could and would act as an effective regulator to ensure diversity in terms of music Formats. They said: “In less populated areas, where there are fewer local analogue commercial stations available, there are strong reasons to believe that diversity will be maintained and probably enhanced by giving operators more flexibility. The industry has undergone significant consolidation in recent years. Operators with more than one licence serving the same area self-evidently have a strong incentive to differentiate their stations rather than cannibalise their own audience by providing two very similar services”. They also argued that “operators differentiate their content in this crowded market in many different ways, not solely through the music the station plays. Current regulation stifles innovation by limiting operators’ flexibility. The regulation of music formats therefore acts to reduce, rather than increase, the range of services available”.
- 3.59 RadioCentre highlighted the increased level of consolidation of ownership of radio services within the market today. RadioCentre believed that this has had a positive effect on the range and diversity of services available as “it is in the interests of such companies to continue to provide differentiated services to listeners and advertisers, rather than multiple services that provide similar content in the same market. To do otherwise would cannibalise their audience and ultimately their advertising revenue. Yet the provision of different type of service in the radio market by single operators should provide some considerable comfort for Ofcom, as this behaviour will support

its duty to provide a wide range of radio services that cater for a variety of tastes and interests.” They added: “clearly smaller and medium sized radio stations need to be able to co-exist comfortably alongside these larger stations, which tend to operate a different business model. The crucial difference being that many of the larger stations are national brands focussing on national advertising, whereas most small local stations make a virtue of localness and what they are able to offer to local advertisers. There is no suggestion that changes to format regulation will change this dynamic or undermine this diversity”.

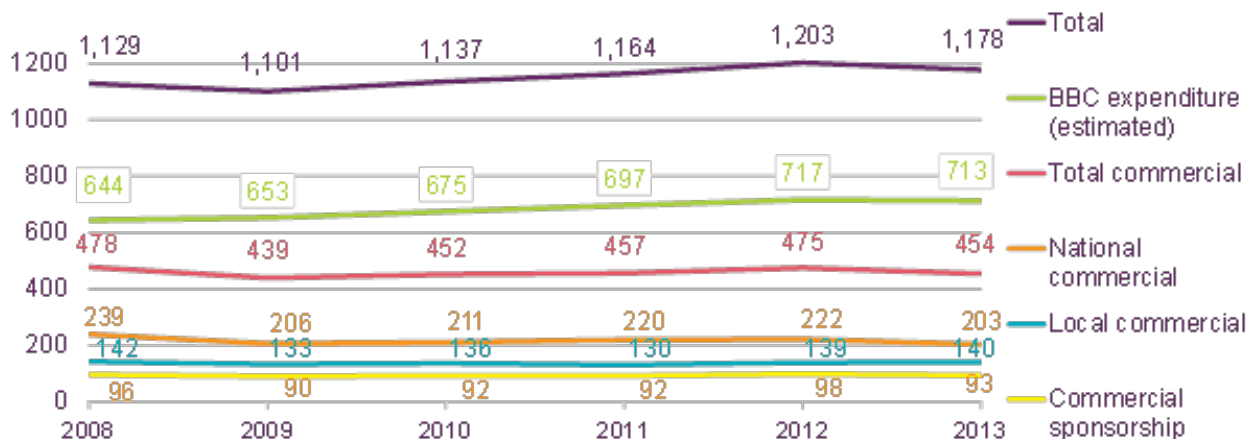
- 3.60 Town and Country Broadcasting and two individual respondents also considered that the market would act as an effective regulator in delivering competition and range and diversity of services.
- 3.61 One individual respondent believed that consolidation of ownership had resulted in there being a reduction in the level of diversity of services.

Ofcom’s consideration of responses

- 3.62 As set out in section 2, the legislative regime which applies to local analogue commercial radio stations is designed to secure a range and diversity of local services through the exercise of Ofcom’s regulatory functions. It is therefore not open to Ofcom to refrain from exercising its regulatory functions on the basis that competition alone will secure that outcome. In any event, as set out above, respondents have mixed views as the extent to which competition alone is capable of delivering diversity in local radio services.
- 3.63 We also note the differing views regarding consolidation of ownership of licence holders and the effect on the diversity of services. The existing regulatory approach considers each locality as a separate market, and Ofcom’s duties are to award licences, or consider changes to licence Formats, on the basis of the range and diversity of services in each locality. The intention of the existing legislation and approach is that all services, regardless of ownership, add to the range and diversity of available services in the relevant local market.

Financial considerations

- 3.64 We have considered whether the increase in number and type of different music services has affected the commercial revenues of local commercial radio services.
- 3.65 Between 2008 and 2013, commercial radio sector revenue declined in nominal terms from £478m to £454m. Within this total, the fall in revenue is mainly attributable to national radio services: local commercial radio revenues have remained flat in nominal terms at £140m.

Figure 5 Radio sector revenue 2008-13 (£ million)

Source: Ofcom Communications Market Report 2014. Operator data / BBC Annual Reports 2008 to 2013

- 3.66 There are a large number of factors behind the trends in revenues, and we accept there may be variation between different broadcasters in different local markets. However, at a headline level this suggests that the increase in number of broadcast and non-broadcast services in the last few years has not to date had a significant detrimental effect on the commercial revenues of local commercial radio services.
- 3.67 Some of the respondents to the Call for Inputs considered other matters relating to the financial impact of music Format regulation.
- 3.68 In its response to the Call for Inputs, UTV Media considered the financial impact of a potential change to regulation upon local businesses. They argued that if there was any reduction in the range of services offered and a lessening of the connection between the service and the locality it is intended to serve, the role played by local commercial radio as a platform for local businesses to advertise their services would be undermined.
- 3.69 UTV Media also considered that less regulation of music in radio Formats would weaken the case for local commercial radio to benefit from preferential music royalties rates: "Licensed commercial radio services have historically enjoyed preferential music royalties rates from bodies such as PRS for Music when compared with internet radio and music streaming services. This reflects a Copyright Tribunal ruling made over twenty years ago which took account of the licence conditions associated with commercial radio licences including the existence of format stipulations relating to music diversity. We consider that this approach remains appropriate given the significant public value offered by local commercial radio but note that it would be undermined if a more market-led approach were to be adopted by policy makers".
- 3.70 RadioCentre, by contrast, considered that the current regulatory regime creates financial difficulties for commercial radio operators. They used the particular example of radio groups who operate several stations under the same brand, but due to inconsistencies in the Formats, this requires not only time and inconvenience, but also financial cost for the operators, to maintain a differentiated playlist.

Ofcom consideration of responses

- 3.71 We note the comments on potential financial impact for third parties. We did not receive any responses to the Call for Inputs from any locally-based businesses or the wider music industry. We therefore have not reached a view on whether or not they would be affected by changes to the regulation of local analogue commercial radio services, but would welcome their responses to this consultation.
- 3.72 Regarding additional operating costs incurred due to the current regulation, we note that neither RadioCentre nor licensees have quantified these costs. However, given that the regulatory scheme under the BA1990 is designed to secure a range and diversity of local services, we consider that any commercial operator which holds or acquires a number of different local licences should be cognisant of the possibility that there may be different regulatory obligations for securing the character of service in respect of each of them.
- 3.73 We note that any radio licensee may request a change to its Format at any time. In developing our options, however, we have considered the extent to which it is possible to simplify different descriptions within Formats which cover the same category of music in order to provide a clearer and more consistent approach for listeners and licensees.
- 3.74 We would also highlight that in assessing each of the regulatory options set out in the following section, we have carried out and are consulting on an impact assessment. We encourage respondents to respond to this and provide quantitative evidence where possible.

Section 4

Options for music in radio Formats

4.1 In the light of the statutory framework, the market context, and the responses to the Call for Inputs, in this section we consider the options for the regulatory approach to the music element of Formats. We are consulting on the options we have identified, and the costs and benefits to stakeholders, and whether or not these would be preferable to the current approach.

Potential options proposed in responses to the Call for Inputs

4.2 The responses to the Call for Inputs were sharply divided on whether any change was needed to the way in which Ofcom regulates the music played by local analogue commercial radio services.

4.3 RadioCentre, Global Radio, Town and Country Broadcasting and two individual respondents argued that Ofcom should deregulate the music aspect of radio Formats.

4.4 RadioCentre argued “There is no compelling evidence that the current approach is the best way of ensuring Ofcom meets its statutory duties or providing any material benefits for listeners. On the contrary the current framework can prevent radio stations from reacting to the demands of listeners”. RadioCentre considered that “the range of services now available to listeners mean that this kind of regulation is no longer necessary, but it creates an uneven playing field for commercial radio stations competing for listeners’ attention with online services. No other medium is subject to this degree of micro-regulation. The current rules should be reformed and commercial radio should be free to innovate and grow its business”.

4.5 RadioCentre also expressed its belief that Ofcom “retains a good degree of discretion in this area.” Specifically, it highlighted factors which it considered could provide a basis to move to a single ‘broad music’ definition for the vast majority of local commercial radio stations. It considered “that this approach merits further investigation and should be considered in detail as part of the full consultation. As part of this it would be helpful to consider the practical steps of how radio stations might be provided with the opportunity to make the transition to become broad music stations, without entering into a full format change process as required at present. Or indeed whether the format change process itself could be simplified”.

4.6 RadioCentre went on to address alternative approaches: “As far as other alternative approaches are concerned, the main possibility would appear to be a system based on providing a wide range of services based on age demographics. It would not be appropriate for Ofcom to segment the demographics of each commercial radio market, in order to try and provide a separate service for each age group”.

4.7 Global Radio considered that “music format regulation imposes an unnecessary burden on the industry” and considered “there is no compelling evidence that there would be a reduction in range and diversity if music formats were removed”. They added: “Ofcom has considerable discretion under the current legislation. Nothing in the current statutory framework requires Ofcom to regulate through written descriptions of music formats. Indeed, over a third of all local analogue commercial radio stations already have “broad music” licences with no stipulations on music

content.” Global concluded by urging Ofcom to “remove music formats from local commercial radio licences.”

- 4.8 Town and Country Broadcasting considered that “regulation of music formats is an outdated and unnecessary regulatory burden for station operators.” They added: “We submit that all music genres should be abolished and stations should be free to adapt their music output at will. As long as there remains the opportunity for licences to be contested, the market will reward successful operators who understand and serve their local markets, whilst punishing those which fall short.”
- 4.9 A further two individual respondents argued that every station should be able to choose what music they play and let the market decide what music is most popular.
- 4.10 Paragon Media Strategies, UKRD, UTV Media and two of the individual respondents all argued that Ofcom should retain the current form of regulation.
- 4.11 UTV considered that “removing music diversity protections from FM local commercial radio formats would undermine the basis on which commercial radio is licensed and present risks to the overall health of the sector”.
- 4.12 UKRD stated that “it is not opposed to sensible de-regulation either in terms of format considerations or wider regulatory issues – indeed, we have, from time to time, been at the forefront of calls to de-regulate over the years – but, in the wider context of this debate, we do believe that de-regulation has not only gone too far but should go no further”. It added “we are concerned about any further relaxation of regulation and would urge Ofcom to proceed with great caution before it relaxes yet further the already fairly “light touch” regulatory regime that now operates. UKRD were particularly concerned that a desire to relax any regulatory structures represents what they would call “format creep”, which they consider had the underlying motivation to remove all of the local commitments attached to local commercial licences.
- 4.13 One individual considered that there was a lack of diversity in terms of style and tempo of music in services, and that there should be specialist evening music slots. Another individual considered services should play country and western music.

Ofcom’s consideration of responses

- 4.14 We welcome the consideration and proposals that respondents have made for potential options. We have carefully considered these in the context of the requirements of the legislation and Ofcom’s statutory duties.
- 4.15 Some of the responses appear to misunderstand the extent to which Ofcom has discretion to de-regulate further. As set out in Section 3, Ofcom has specific statutory duties in relation to the regulation of local radio services. In particular, we are required to do all we can to secure a range and diversity of local radio services. We are also required to set conditions which we consider appropriate to ensure the licensee maintains the character of service proposed in its licence application. This includes the licensee’s proposals in relation to the selection of music to be included in its programming. Accordingly, we do not consider that all music requirements could be removed from Formats, or that all stations could have a Format of ‘broad music’, as neither of these suggestions would be compatible with the current statutory framework.

- 4.16 We disagree with RadioCentre’s comment that a Format of “broad music” does not make any stipulation in relation to the music content of a service, since it requires that the service includes a variety of music (from different music genres and/or types). While a “broad music” Format may be possible in a given locality where this adds to the range of services, it cannot become the Format of all local analogue commercial radio stations since this would not secure a range and diversity of local radio services.
- 4.17 We note RadioCentre’s discussion of Formats based on age demographics, and its view that it would not be appropriate for Ofcom to segment the demographics of each market in order to try and provide a separate service for each age group. We consider that there is scope for Ofcom to secure a range and diversity of local services through the use of Formats based on a target audience demographic. However, as we set out later in this section, such an approach appears potentially to have some disadvantages in terms of securing clear distinctions between different services and ensuring that a range of target audiences are catered for.
- 4.18 We also note the comments of individual respondents about what they perceive to be the current lack of particular types or genres of music in local analogue commercial radio. Ofcom cannot require the provision of a particular genre by licensees – the statutory regime provides for it to award a licence from the services proposed by licensees with a view to securing range and diversity. We would expect that the proposals made by prospective licensees (or by licensees seeking a Format change) would be responsive to and reflect audience demand within the relevant locality for particular types of radio service and music content.

Options

- 4.19 As set out above, we consider that the option of removing the music element from Formats entirely, or changing all Formats to specify “broad music”, would not be consistent with the legislation. We have therefore not considered these proposals further.
- 4.20 Within the statutory framework, we have considered whether there are options that would afford the greater flexibility sought by some licensees while ensuring that a range and diversity of services continues to be provided for listeners. We have identified three options:
- 1) No change to the current approach.
 - 2) Simplification of mainstream music Formats.
 - 3) High level Formats.
- 4.21 Below we describe each option in detail and consider its potential costs and benefits to stakeholders. We have structured our discussion of the potential impacts as follows:
- **Listeners**, in terms of services that cater for a range of tastes and interests, or if there would be an impact on particular audiences;
 - **Licensees**, in terms of their flexibility in operating services, and whether there would be a particular impact on some types of local commercial radio services.

- Whether the option would be in keeping with the general **market changes** in the radio sector and in audio services more widely.
 - Whether there are practical considerations in **implementation**, in terms of the regulatory burden and costs for licensees and Ofcom.
- 4.22 We note that quantitative evidence in relation to costs and benefits of the options is relatively limited. Furthermore, the scale of any impact would to a large extent be determined by how many licensees, and in which locations, opted to make changes to their selection of music as a result of any option. We have therefore described the potential impacts on stakeholders in qualitative terms. We would welcome the views of respondents, and where possible quantitative evidence, on the potential impact on their own particular services and local markets.

Option 1: No change

Description

- 4.23 Option 1 would be to leave the music element of Formats unchanged in the licences for local commercial analogue radio services.
- 4.24 Across the Formats, there are a range of different descriptions which are used in the licences. Descriptions vary between one or more of the following elements: a specific music genre only (e.g. Rock); a reference to the age of the music (e.g. Contemporary Chart); and a reference to the target age range of the service (e.g. under-30s, over-50s). Currently 192 (about two-thirds) of Formats in licences include at least two, if not all three, types of description.
- 4.25 The variety in the descriptions employed is a result of using the licensee's proposal for the character of service as a template for the Format. As such, they accurately reflect the character of service that the licensee intended to provide when the licence was granted or, if the Format has been amended subsequently, when its Format Change request was granted.

Listeners

- 4.26 We consider the current approach still serves the tastes and interests of the majority of listeners: the reach of local commercial radio services and high levels of listener hours and satisfaction tend to support this. We note that, where it does not fulfil these entirely for all listeners as suggested by some individual respondents, Ofcom is not able to require the provision of particular music genres by licensees.

Licensees

- 4.27 As the Format under this option reflects the character of service put forward by the licensee, this option aligns the licensee's obligation to provide specified content with the content that the licensee has said it wants to provide when applying for a licence. We are not aware that it has become more difficult to comply with the licence conditions, or that there has been an increase in the regulatory burden or costs for licensees as a result of the current approach. The number of local commercial services choosing to apply for, and operating under, licences has increased in recent years.

Market Changes

- 4.28 As set out in the previous section, we do not agree that market changes in themselves make the current regulatory approach disproportionate or irrelevant. We do not consider there is evidence of negative financial impact or disbenefit from the current approach.
- 4.29 We note that some respondents considered that, as the market develops and listener tastes change, a Format may limit the licensee's ability to respond to that quickly. It is open to the licensee to make a Format change request in order to address this.

Implementation

- 4.30 We note that the current approach is the basis on which all existing local commercial licences have been applied for and awarded, and are currently operated. This option therefore offers greatest certainty to licensees in terms of compliance, and would have no additional implementation costs.

Option 2: Simplification of “mainstream popular music”

Description

- 4.31 A second option would be that many non-specialist music genre descriptions could be simplified to “mainstream popular music”.
- 4.32 There are currently close to 50 different music descriptions used across Formats. Some describe the era of release (e.g. Gold, Classics) or its specialist music genre (e.g. Rock, Jazz, Easy listening). However, a significant number relate to the popularity of a song. The non-specialist genre descriptions of music selection in existing Formats that we have identified are: *Top 40, Contemporary Hit Music, Current Hits, Adult Contemporary (AC), Contemporary, Soft Contemporary, Soft AC, Hot AC, Soft Pop, Melodic AC, Adult hits, New Music, Varied Music, Chart Music, Pop, Adult-oriented pop, Mainstream Music*.
- 4.33 We consider that these descriptions do not secure a particular genre of music, but relate to the track's popularity or its recent release, and in many cases overlap or are very similar to each other. Having reviewed these descriptions, we consider they appear to be sufficiently synonymous in terms of the music that could meet this description to allow them to be rationalised into a single description. We consider these terms could be simplified to a single description of “Mainstream popular music”. We would welcome views of respondents on both this description and the non-specialist genres we have identified above that seem synonymous with each other and could be included under this description.
- 4.34 All other elements of the Format, including a specialist music description if there is also one in place, would remain as now. To be clear, Formats specifying specialist music genres or any other description would not be affected.

Listeners

- 4.35 We consider that listeners should not be impacted by this change. On the basis that the descriptions we have identified are synonymous with mainstream popular music, there should be no material change to the selection of music that the licensee is able to play under the conditions of its licence.

- 4.36 That said, we think there may be scope for this modification to enhance the repertoire of tracks played across services as perceived restrictions on what is, for example, “contemporary” or “adult” or “popular” music would be removed. Over time, this may lead to a greater number of different tracks being played by an individual service. Equally, it is possible that more services could also play them and so the unique number of tracks may not increase at the same rate.
- 4.37 Under this option, licences with music descriptions in their Formats other than those listed above would be unaffected. It would not change the existing provision of specialist music by local commercial radio services.

Licensees

- 4.38 Currently 26% of Formats of licensed services have one of the non-specialist music genres listed above that we consider to be synonymous with mainstream popular music.
- 4.39 We consider many of these licence holders would benefit from the option. The change to “mainstream popular music” may introduce a degree of flexibility that licensees may not have considered was available in music selection. It could remove the uncertainty mentioned by some respondents as to whether some variants of mainstream popular music are consistent with their Format. This may lead over time to services being able to respond to subtle shifts in listener demand without requiring a Format Change request.

Market changes

- 4.40 We consider that the simplification is consistent with developments in the radio industry overall. In particular, the option may simplify music selection across a network of local commercial services where they are able to have a consistent Format. This may reduce overheads and increase potential for shared branding across licences in common ownership.

Implementation

- 4.41 Subject to the views of respondents, we do not consider that the rationalisation of the music Formats we have identified into a single mainstream popular music Format would change the character of service for any of the services affected. As a result, the modification would not require a request from the licensee under its licence conditions to change its Format, nor would it be subject to the requirements of sections 106(1A) and 106ZA BA 1990. Instead, the change could be made by Ofcom in exercise of its general power to vary licence conditions under section 86(5) BA1990, either with the licensee’s consent or having had an opportunity to comment on the change.
- 4.42 Over time, we consider this option may lead to fewer Format change requests, or less uncertainty over whether one is required, where a licensee may previously have wanted to change music repertoire between the terms that are being simplified. It may also reduce the perceived costs of demonstrating ‘compliance’ with a non-specialist music Format that some respondents consider occur today.

Option 3: High-level Formats

Description

4.43 We have considered the furthest extent to which the flexibility in music selection sought by some respondents could be set out in a Format while ensuring that Ofcom continues to meet its relevant statutory duties.

4.44 We consider this option could increase the flexibility provided under the Format for licensees in the selection of music by requiring only a “high level” description in the Format. Under this option, the music element of a high-level Format could take one of two forms, and either be:

a) Genre led: specifying music from a list of classifications;

OR

b) Audience led: specifying “music for...” a specified target audience profile.

4.45 Under the current approach, over time the descriptions proposed by licensees have led to different variations of music genres (e.g. Classic Rock or Hard Rock) or audience profiles (e.g. Under 40s, 15-34 year olds). Some of the descriptions overlap or lack clear distinction from other Formats. Under a high-level Format, clearer differentiation between stations would be important, and we would propose to remove these issues by standardising the genre classifications and target audience profiles to be used.

4.46 We would propose that the standardised classifications would be:

a) Genre led:

- Mainstream popular music (as defined in Option 2);
- Rhythmic (including Dance, Urban and Soul);
- Rock (including variants such as Classic rock, Guitar-led or Alternative Rock);
- Ethnic music (including Asian music, Greek music, Irish music, Turkish music, Welsh music);
- Easy listening;
- Gold / Classics;
- Jazz;
- Classical music.

b) Audience led:

- Younger listeners (16 to 34 year olds);
- Middle age listeners (35 to 54 year olds);

- Older listeners (55+ year olds);
 - Ethnic community as specified by the licensee (e.g. Asian community).
- 4.47 We have based these classifications on the descriptions in most frequent use in licences today, but would welcome views from respondents on the standardised classifications proposed.
- 4.48 Under this option, licensees could opt to change their current music Format to one of these high-level Formats if they felt a 'high level' description would offer them more flexibility in their selection of music. It would be for licensees to decide whether they want to opt for a high-level format or keep their existing Format. The Format would need to specify one classification from either the genre list or audience profile list above.
- 4.49 By way of an example, a station with a current Format of "a locally oriented, contemporary/chart music-led service for under 40s" might wish to change its Format to either:
- Under a) : "a locally oriented mainstream popular music service"
- or
- Under b) : "a locally oriented service with music for 16 to 34 year olds".
- 4.50 For the reasons set out above and subject to the views of respondents, we do not think the modification specified in sub-paragraph 5.49(a) would amount to a change to the character of service which would trigger the format change process under sections 106(1A) and 106ZA BA1990. It is less apparent, however, that the same applies to the modification set out in sub-paragraph 5.49(b), given that the change would appear to enable the licensee to play music other than mainstream popular music in its service and still fulfil its format. This would appear, therefore, to be capable of amounting to a change in the character of service.
- 4.51 Of course, the same station may wish to change its Format more dramatically, and propose a change to any of the genre-led or audience-led classifications available. In the example, it may wish to change the selection of music from "contemporary" to "rhythmic", or it may wish to change from "under 40s" to "music for 35 to 54 year olds". Such a change would amount to a change to the character of service and would need to be requested by the licensee and considered by Ofcom in accordance with the statutory Format change process.

Listeners

- 4.52 We consider that in some cases this option could serve the interests of listeners. It may increase the differentiation between services that offer a particular specialist music genre, and those that play a wider variety of genres in catering for a particular audience. It may incentivise services to focus on the tastes and interests of different audience segments of a given local market, and to respond more readily to their changing tastes and interests. In principle, this would increase the benefits to groups of listeners and increase the range of music played across services taken together.
- 4.53 We note that an audience-led Format has often proved successful, and added considerably to the range and diversity of music, where there are services that target

specific ethnic audiences. However, as regards target age group formats, respondents to the Call for Inputs were doubtful whether music tastes could be reliably segmented and served by target age group. They suggested that the evidence available suggests a growing trend for music tastes to be shared across age ranges, and that music played does not necessarily determine the target age profile of the audience.

- 4.54 We would acknowledge that under this option differences between services in the selection of music for a target audience may not be as differentiated, or as clear in the licence, as the current requirement for a specified specialist music genre or type. In a local market there could be some stations specifying music genre, and others specifying target audience, and playing similar music. This could result in more uncertainty and less variety for listeners in terms of what individual stations provide.
- 4.55 It is also possible that either i) some audience groups are less attractive for, or attracted to, particular radio stations than other audiences, or ii) different audience groups are in general attracted by the same music. Over time, this could lead services to offer very similar music selection – albeit reaching different audiences - and cater less for a diversity of tastes and interests.

Licensees

- 4.56 We consider that some licence holders would benefit from the option if they felt that a 'high level' description would offer them more flexibility in their selection of music than their current Format description. In the main, this would be through opting for an audience-led Format. This could increase the repertoire of music available to be played on these services, and allow services to change their music played according to shifts in listener demand and in response to competition from other radio and music services.
- 4.57 We note that some respondents felt that, if more flexibility in Formats led to less differentiation of services in a local market, there was a risk that smaller stations would be more impacted by losing listeners and revenues and their commercial sustainability may come under threat. Other respondents argued that, if encouraged to compete directly, services would differentiate themselves in terms of music played or other elements of their service. We are not certain what the eventual outcome would be, and consider it would vary from local market to market, but note that this option creates a least a risk of adverse impact for some services compared with the current regulatory approach.
- 4.58 Licensees opting for a high-level Format would need to specify one classification from either the genre list or audience profile list above. We accept that re-classifying in the way we propose may not be suitable for all licensees, who may opt to retain their existing Format. There may also be a situation in the future where the classification of music genres set out above does not include a desired genre, or needs to be updated. In some cases, in the short term, the flexibility in music selection afforded by this option for some licensees may be restricted.

Market changes

- 4.59 We consider that, under this option, the increased flexibility in music selection would afford licensees more discretion to respond to market changes without having to instigate a Format change process. This may lead to more direct competition with digital-only or non-broadcast music services. We note that some of these services

have built up particular niche audiences in, for example, music from particular decades or music genres that more local commercial services could now play. However, given these services do not have particular licence obligations or regulatory restrictions, they would similarly be able to respond and adapt to market changes.

Implementation

- 4.60 We consider that, compared with the other options, Option 3 would pose a number of implementation issues, and increase the regulatory burden for Ofcom and licensees, at least in the short term.
- 4.61 Where a licensee opted for a 'high-level' Format, in many cases this would be likely to require a statutory Format change request. This may lead to an increase in Format change requests, and accompanying consultations, in the short term. In some situations, where two services sought to change to the same music Format, for example in terms of a target audience of "35 to 54 year olds", Ofcom would have to consider and potentially reject one or more change requests unless the Formats were otherwise differentiated. However, in the longer term, the flexibility afforded licensees by a high-level Format may reduce the number of Format change requests regarding the selection of music.
- 4.62 We consider there are also potential issues in ongoing compliance, monitoring and enforceability of Option 3. In order to meet our statutory duties, we consider that licensees would have to be able to demonstrate that i) they were meeting the tastes and interests of their target audience and ii) that in doing so this contributed to a range and diversity in the music being played across stations in the locality. In particular, Ofcom would require evidence to come to a judgment about whether or not a station is securing through its selection of music its target audience demographic.
- 4.63 The first might be demonstrated by research or sampling of audience profile. We have conducted case studies of a select few markets to see whether audiences are segmented across services by age group. Analysis of RAJAR data shows that the audience profiles of stations with an age range currently included in their Format tends to skew as expected, although the level of this skew that would be 'compliant' with the Format may need to be agreed and set out. However, as respondents have noted, the age profile of the audience may not be entirely related to the selection of music and audiences are not always predictable in terms of the music they choose to listen to. There is also the impact of competitor services, or other non-radio services, on audience profile to consider. This is likely to lead to more uncertainty for licensees over compliance than the current approach.
- 4.64 The second point would need Ofcom and licensees to monitor closely the extent to which there continue to be meaningful distinctions in the selection of music played appealing to different target age ranges. We are mindful that some respondents mentioned that they consider this type of monitoring, and judgement on types of music and how they feature in the service, to be bureaucratic and burdensome. However, given Ofcom's duty to "do all it can" to secure a range and diversity of local radio services, we consider that such oversight is likely to be necessary given the potential limitations that demographic based formats could have in continuing to secure this.
- 4.65 Therefore, while we are open to licensees' suggestions on how, under Option 3, compliance could be readily demonstrated, we consider that any implementation of

the proposal would be likely lead to considerably more regulatory activity for Ofcom and licensees.

Equality Impact Assessment

- 4.66 Ofcom is required to assess the impact of any proposals in accordance with the Northern Ireland Act 1998 and Equality Act 2010. Equality impact assessments also assist us in making sure that we are meeting our principal duty of furthering the interests of citizens and consumers. We have therefore considered what (if any) impact the issues under consideration in this document may have on equality.
- 4.67 We consider that Options 1 and 2 would have no impact for listeners overall. This includes the groups specified under the Equality Act.
- 4.68 Age and ethnic background are two of the relevant groups in the Equality Act. As indicated above, Option 3 b) may allow more licensees to opt to select music with appeal to audiences of particular age groups or ethnic background. We note that this option is already available to licence applicants and a common feature of licence conditions today: we consider this has been to the benefit of those audiences targeted. However, under this option, more licensees may seek to select music for particular audiences, potentially leading to less selection of music for those audience groups not targeted. Although their tastes and interests in music may well continue to be met by these or other services, for some listeners there may be a reduction in music catering for their tastes and interests. We note that, under Option 3, Ofcom's Format Change process would take account of such impact by consulting on proposals to target a particular audience group.

Summary of options and consultation questions

- 4.69 We consider that Option 1, the current approach, remains an appropriate balance between the licensees' need for flexibility in music selection and securing range and diversity of services for listeners.
- 4.70 It is possible that Option 2 may increase flexibility, or at least remove some uncertainties perceived by licensees, in music selection for c.26% of existing licence holders with descriptions similar to mainstream popular music without affecting the character of the service they operate. We consider this option would be relatively straightforward to administer.
- 4.71 Although Option 3 would allow greater flexibility in music selection for licensees opting to target the tastes and interests of a specified audience, this may be at cost to other segments of the audience or to the diversity of music played overall. We consider that the option would lead to a significant increase in regulatory activity in the short term and, like some respondents, note that there would be a number of significant issues in ongoing compliance, monitoring and enforceability of such an option.
- 4.72 In each of the above options, the provisions for a licensee to request, and Ofcom to consider, a change of Format would remain. To be clear, if under Options 2 or 3 a licensee wished to change either the music genre or audience profile from that currently specified in their licence, this would constitute a Format change.
- 4.73 We are consulting on the three options outlined and would welcome responses on the following questions:

Consultation question 1

a) Which of the three options outlined in this consultation document, if any, do you consider would best meet the needs of both listeners and licensees? Please explain the reasons for your view.

b) Do you agree with the simplification of descriptions we propose under Option 2, and classifications we propose under Option 3? If not, please explain the reasons for your view and provide alternative wording.

Consultation question 2

If you think there are other options which would be consistent with the statutory framework, please provide details and explain the reasons for your view.

Annex 1

Responding to this consultation

How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 02 April 2015**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://stakeholders.ofcom.org.uk/consultations/formats-review/howtorespond/form>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email musicradioformats@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted to the address below, marked with the title Review of Music in Radio Formats - Consultation.
- Ofcom – Content Policy Team
5th Floor, Riverside House
2A Southwark Bridge Road
London SE1 9HA
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together in Section X. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Further information

- A1.7 If you want to discuss the issues and questions raised in this Call for Inputs, or need advice on the appropriate form of response, please contact Content Policy Team on 020 7 981 3000.

Confidentiality

- A1.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A1.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>

Cover sheet for response to an Ofcom Consultation

BASIC DETAILS

Consultation title:

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	<input type="checkbox"/>	Name/contact details/job title	<input type="checkbox"/>
Whole response	<input type="checkbox"/>	Organisation	<input type="checkbox"/>
Part of the response	<input type="checkbox"/>	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)

Annex 2

Consultation questions

Consultation question 1

- a) Which of the three options outlined in this consultation document, if any, do you consider would best meet the needs of both listeners and licensees? Please explain the reasons for your view.
- b) Do you agree with the simplification of descriptions we propose under Option 2, and classifications we propose under Option 3? If not, please explain the reasons for your view and provide alternative wording.

Consultation question 2

If you think there are other options which would be consistent with the statutory framework, please provide details and explain the reasons for your view.

Annex 3

Statutory duties with regard to radio regulation

Section 105 BA 90: Special requirements relating to grant of local licences

Where OFCOM have published a notice under section 104(1), they shall, in determining whether, or to whom, to grant the local licence in question, have regard to the following matters, namely--

- (a) the ability of each of the applicants for the licence to maintain, throughout the period for which the licence would be in force, the service which he proposes to provide;
- (b) the extent to which any such proposed service would cater for the tastes and interests of persons living in the area or locality for which the service would be provided, and, where it is proposed to cater for any particular tastes and interests of such persons, the extent to which the service would cater for those tastes and interests;
- (c) the extent to which any such proposed service would broaden the range of programmes available by way of local services to persons living in the area or locality for which it would be provided, and, in particular, the extent to which the service would cater for tastes and interests different from those already catered for by local services provided for that area or locality; and
- (d) the extent to which there is evidence that, amongst persons living in that area or locality, there is a demand for, or support for, the provision of the proposed service.

Section 106 BA 90: Requirements as to character and coverage of national and local services

(1) A national or local licence shall include such conditions as appear to OFCOM to be appropriate for securing that the character of the licensed service, as proposed by the licence holder when making his application, is maintained during the period for which the licence is in force.

(1A) Conditions included in a licence for the purposes of subsection (1) may provide that OFCOM may consent to a departure from the character of the licensed service if, and only if, they are satisfied--

- (a) that the departure would not substantially alter the character of the service;
- (b) that the departure would not narrow the range of programmes available by way of relevant independent radio services to persons living in the area or locality for which the service is licensed to be provided;
- (c) that, in the case of a local licence, the departure would be conducive to the maintenance or promotion of fair and effective competition in that area or locality; *or*
- (d) that, in the case of a local licence, there is evidence that, amongst persons living in that area or locality, there is a significant demand for, or significant support for, the change that would result from the departure; *or*

(e) that, in the case of a local licence--

(i) the departure would result from programmes included in the licensed service ceasing to be made at premises in the area or locality for which the service is provided, but

(ii) those programmes would continue to be made wholly or partly at premises within the approved area (as defined in section 314 of the Communications Act 2003 (local content and character of services)).

(1B) The matters to which OFCOM must have regard in determining for the purposes of this section the character of a service provided under a local licence include, in particular, the selection of spoken material and music in programmes included in the service.

(2) A national or local licence shall include conditions requiring the licence holder to secure that the licensed service serves so much of the area or locality for which it is licensed to be provided as is for the time being reasonably practicable.

(3) A national licence shall include conditions enabling OFCOM, where it appears to them to be reasonably practicable for the licensed service to be provided for any additional area falling outside the minimum area determined by them in accordance with section 98(2), to require the licence holder to provide the licensed service for any such additional area.

(4) Subject to subsection (5), OFCOM may, if they think fit, authorise the holder of a local licence, by means of a variation of his licence to that effect, to provide the licensed service for any additional area or locality adjoining the area or locality for which that service has previously been licensed to be provided.

(5) OFCOM shall only exercise the power conferred on them by subsection (4) if it appears to them--

(a) that to do so would not result in a significant increase of the area or locality for which the service in question is licensed to be provided; or

(b) that the increase that would result is justifiable in the exceptional circumstances of the case.

(6) As soon as practicable after OFCOM have exercised that power in relation to any service, they shall publish, in such manner as they consider appropriate, a notice--

(a) stating that they have exercised that power in relation to that service; and

(b) giving details of the additional area or locality for which that service is licensed to be provided.

(7) In this section "relevant independent radio services" means the following services so far as they are services falling to be regulated under section 245 of the Communications Act 2003--

(a) sound broadcasting services;

(b) radio licensable content services;

(c) additional services;

but, in relation to a departure from the character of a service provided under a local licence, does not include a service that is provided otherwise than wholly or mainly for reception by persons living and working in the area or locality in question