

## Radiocentre response to Ofcom consultation: Definition of New Music on Radio 1 and Radio 2

### Summary

1. **Radio remains the most important source of music discovery for consumers**, despite the many changes in music distribution and consumption in recent years with the rapid expansion of downloads and streaming services. The BBC has a particular responsibility to provide radio airplay for new and distinctive music from across a range of genres due to the extent of its licence fee funding and the structural advantages of its services.
2. **The BBC's role and responsibility to ensure distinctive music output is recognised by Government**, especially with respect to new artists and UK artists. This was highlighted in the last Charter Review, which found that Radio 1 and Radio 2 should be more differentiated from the rest of the market and have a greater focus on breaking new and UK acts. As a result, specific requirements on new and distinctive music were included in the BBC Framework Agreement with Government for the first time, alongside a number of broader statements designed to increase quotas and requirements on BBC services.
3. **Against this background, there was a reasonable expectation that Ofcom would introduce new and stretching definitions and targets for the BBC** in its new Operating Licence. Yet it resulted in a narrower range of requirements and only increased quotas in a small number of areas, always to a point below current levels of delivery. This latest consultation seems consistent with this approach, in that the definitions and requirements do not appear designed to drive change to increase distinctiveness, but are shaped to reflect the services as they are currently.
4. **It is certainly true that music marketing, release and consumption patterns have changed significantly in recent years**. The concept of a 'release date' for a track in the digital world is not as straightforward as in the past, when physical releases were the predominant method of distribution. Therefore it is appropriate to examine the specific definition and methodology for assessing 'new music' in future.
5. **In order to address this issue Ofcom has proposed an extraordinarily long time period to define new music** (12 months from first release), potentially limited by the extent of the track's commercial success (6 weeks after it enters the Top 20) whichever is sooner. This would provide significant flexibility for the BBC and may well assist in further driving the commercial success of certain artists or tracks. We question whether these should be the correct measures of success for such a definition.
6. **We suggest that Ofcom's priority should be to do more to drive the distinctiveness of Radio 1 and Radio 2** and comply with the requirements of the Framework Agreement. In order to help deliver this we suggest reviewing the time periods attached to Ofcom's definition and modelling a number of other different scenarios based on existing output. Radiocentre has reviewed playlist information for Radio 1 and Radio 2 over the past four months (using data from Radiomonitor).
7. **Our analysis suggests that applying a significantly shorter time period to define new music would be achievable** and that the 12 month time period since first release is too long. We also believe that the measure of commercial success should be clarified and amended. In conclusion we propose the following alternative definition:

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

- a) **6 months** from first release (whether by physical, radio, download or streaming means), or
- b) **4 weeks** after it enters the **Top 40** of the UK Official Singles Chart  
*whichever is sooner.*

## Background: BBC obligations on distinctiveness

8. The BBC plays an important role in delivering high quality and distinctive radio content to UK audiences. It is able to do this because of the significant licence fee funding it receives (£3.8bn including £700m for radio), as well as preferential access to broadcast spectrum and huge marketing and cross-promotional power across TV and online. These factors contribute to the BBC having a dominant market share in radio (53%), much higher than its share of other media.
9. The Government recognised this situation during the BBC Charter Review process in 2015-16. As a result it introduced external scrutiny and regulation by Ofcom and included distinctiveness within the BBC's mission statement for the first time. This was reinforced by a number of statements in the BBC Framework Agreement including those below.

*"Ofcom must seek to increase the current requirements on the BBC as a whole to secure the provision of more distinctive output and services"* – BBC Agreement, Schedule 2 (2)(1)

*"Ofcom must have a presumption against removing any of the current requirements which would result in the provision of less distinctive output or services"* – BBC Agreement, Schedule 2 (2)(1)

10. When considering how to implement these requirements in the case of BBC radio the key focus of the Agreement was to consider the proportion of new and distinctive music being broadcast, especially at peak times on Radio 1 and Radio 2 (the most mainstream services). As part of this process, there was an acceptance that these radio stations should be required to do more to provide the broadest possible range of music to their audiences, which is not widely available elsewhere.
11. This was evident initially in the Government White Paper on the future of the BBC, which highlighted the importance of its radio stations having *"a greater focus on breaking new UK acts and playlists unlike other broadcasters"* and that Radio 1 and Radio 2 in particular should be *"more differentiated from the rest of the market"*. These issues were considered to be sufficiently important to be included in the BBC Framework Agreement (below).

In setting requirements on the BBC, Ofcom must:

*"improve focus on promoting UK talent, particularly new UK acts, on Radio 1 and Radio 2"* – BBC Agreement, Schedule 2 (2)(3)

*"ensure Radio 1 and Radio 2 music output in particular is more distinct from those of other broadcasters, taking into account number of plays not just size of playlist at both peak listening and other times"* – BBC Agreement, Schedule 2 (2)(3).

## The BBC Operating Licence

12. Ofcom was required to take all of these requirements into account when setting the first Operating Licence for the BBC. When this licence was published in October 2017 a number of stakeholders raised concerns that it failed to meet several of the obligations outlined in the White Paper and

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<sup>1</sup> Government White Paper 'A BBC for the Future: a broadcaster of distinction', May 2016

listed in the Charter and Agreement (see Radiocentre submission to Ofcom<sup>2</sup> and letter to Sharon White, 1 December 2017).

13. Rather than increasing requirements on BBC radio services Ofcom has actually overseen a reduction, when compared to the framework that was in place previously under the BBC Trust. For BBC network radio there are now 34% fewer regulatory 'conditions' in place (39 instead of 59), with a dramatic reduction in broader requirements on services (fewer than 60 compared to more than 200 previously).
14. While quotas have been increased slightly in some areas this is *only* the case where the BBC is already performing ahead of the new targets (e.g. weekly news on Radio 2, news and current affairs on Radio 4) therefore requiring no change in output. Moreover, there has been no strengthening of target audience requirements as outlined in the Framework Agreement, with all previous targets in this area being abandoned and left for the BBC to set in its Annual Plan. As a result, there will be an 'editorial focus' on 15-29s for Radio 1 and over 35s for Radio 2, which is not defined but is less clear and measurable than a target audience (and will be left to the BBC to change or amend).
15. This backdrop is important, as commercial radio operators and other stakeholders had a reasonable and legitimate expectation that Ofcom would introduce new and stretching requirements on BBC radio services through the new Operating Licence. That does not appear to have been the case so far for BBC radio. Instead Ofcom has reduced the range of regulatory commitments and set quotas at a level below current delivery. This falls short of the expectations of Government and Parliament, outlined in the White Paper and ultimately included in the new Charter and Agreement.

### Scope of the consultation

16. The overall concerns about Ofcom's approach are pertinent when considering the way in which it is seeking to set the parameters for measuring new music in the consultation – and the fact that it has failed to provide any further detail on how the distinctiveness of music output will be assessed in future.
17. In particular, it seems that the criteria and definitions that Ofcom is considering for new music would require no change in behaviour or output from Radio 1 or Radio 2. Instead the targets being proposed (50% for Radio 1 and 20% for Radio 2) will again be below the current level of delivery using the proposed definition (56% for Radio 1 and 32% for Radio 2, according to Figure 2 on p.10 of the consultation document). We believe that this is a flawed approach as it will not improve distinctiveness or improvements against these measures. It could be argued that this is another example of Ofcom designing and setting regulatory conditions that reflect BBC services as they are, rather than how they should be.
18. It is helpful that the Operating Licence includes conditions on Radio 1 and Radio 2 to play a broader range of music than comparable providers, taking into account both the number of plays and the size of the playlist, at both peak listening time and daytime. Yet any impact will be minimal if it remains unclear precisely what metric Ofcom is planning to apply, over what period and whether this will take into account audience size throughout the day (which more accurately reflects what listeners actually hear).
19. There is also no explicit target in the Operating Licence for music which is both new *and* from UK artists. This could result in most new music being from the US and most UK music being from established artists. We do not believe that this was the intention of the Charter and Framework Agreement.

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<sup>2</sup> Radiocentre [response](#) to Ofcom consultation 'Holding the BBC to account for the delivery of its mission and public purposes', July 2017

20. The BBC Annual Plan does include some parallel statements on music distinctiveness for Radio 1 and Radio 2, but these are so broad that they cannot reasonably be expected to drive greater distinctiveness. For example, both Radio 1 and Radio 2 commit to a “daytime playlist that features a greater range of songs”<sup>3</sup> which fails to address the nature, genre or commercial success of an artist or track. In addition, there is a commitment to ensure that on average at least half of the 100 most played tracks are distinct from relevant competitors. This fails to take into account the extent of multiple plays (or heavy rotation) of recent charts hits on Radio 1 and Radio 2, especially during daytime and peak times. As a result, it will be very difficult for this measure to assess fully whether the core music output heard by listeners on these stations is distinctive or not.
21. We had hoped and anticipated that this consultation would cover this full range of issues. It is disappointing that Ofcom is focussing only on the best way to define and measure new music for Radio 1 and Radio 2 and ignoring the broader range of measures of distinctiveness.

### Assessing New Music

22. Leaving aside the observations above, it is indisputable that the process of marketing and releasing new music to the public has changed significantly in recent years. In particular, Ofcom is correct that the promotional structure built around an album, with separate pre-release and post-release singles (illustrated by Fig 1 on p.7 of the consultation document) is largely a thing of the past.
23. Instead albums are now released digitally at the same time as singles, enabling the public to purchase, download or stream all of the music in one go. The adoption of an ‘On Air, On Sale’ approach from many of the labels also means that these tracks only tend to become available for radio airplay from this point. Therefore we have some sympathy with the view that current definition of new music included in the BBC Operating Licence should be revised.
24. However, Ofcom’s objectives and guiding principles in setting such a new method for measuring new music are not entirely clear from the consultation document. Other than the broad assertion that it must ensure that it has regulatory conditions in place to meet its requirements on new and distinctive music under the Framework Agreement, there is no sense of what Ofcom is hoping to achieve.
25. What is clear is that Ofcom does not want to force the BBC to move to a radically different playlist for Radio 1 and Radio 2. On the contrary much of Ofcom’s approach is predicated on the desire to avoid introducing a definition that could mean that only a very small minority of music output would ever be considered as ‘new’. According to the BBC, the existing definition could mean as little as 17% of Radio 1 music being considered as new. Yet Ofcom appears to make a leap from this unintentionally radical definition, to accepting that it should develop a new definition that reflects current output on Radio 1 and Radio 2. As with other criteria in the Operating Licence, we do not accept this is necessarily the best way to improve distinctiveness and deliver on the requirements laid down in the Charter and Framework Agreement.
26. Instead it would make more sense to construct a definition of new music that reflects changes in methods of marketing, release and promotion, but also requires BBC radio services to improve their performance. This would create the possibility of even greater benefits for listeners (and new artists) rather than simply requiring the BBC to deliver the status quo, or potentially reduce its new music output.
27. While a definition that finds only 17% of Radio 1 daytime output to be new music might well be unworkable, it is also the case that there are no clear benefits from setting the parameters so far the other way that the BBC is over delivering. It should be possible (and we would argue desirable)

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<sup>3</sup> BBC Annual Plan, October 2017

to develop criteria which mean that BBC services are stretched beyond what they deliver at the moment.

28. The challenge for Ofcom is to do this in a way that reflects its obligations, drives distinctiveness and is realistic for the BBC. In order to determine the best way to balance these demands we would suggest some further modelling against current BBC performance (which we outline further in the section below).

### Ofcom’s proposed approach

29. Ofcom’s current proposal builds on a suggestion from the BBC and is outlined below.  
*A music track is to be considered “New Music” for a period of either:*  
*a) 12 months from first release (whether by physical, radio, download or streaming means), or*  
*b) 6 weeks after it enters the Top 20 of the UK Official Singles Chart*  
*whichever is sooner.*
30. We would not necessarily develop a definition of new and distinctive music in this way. For example, we would be interested to know whether Ofcom has considered defining new music as the proportion of songs played prior to their ‘impact date’, the modern equivalent of a release date. In addition we would suggest that the period from first play on daytime radio should be taken into account (e.g. if a track was played 6 months ago on Radio 1 in daytime it should not be considered new). However, there is certainly a logic in using multiple elements to define new music – including the time since first release and the level of commercial success.
31. Given the structure that is being proposed the crucial element in assessing Ofcom’s current proposal is whether the timescales in the definition will capture new music in practice. In particular, we would question whether the time period being suggested from first release is appropriate. While we appreciate there have been changes in methods of music promotion and release, it is far too broad to define any music track released in the past 12 months as being ‘new’. As noted by Ofcom, this risks leading to a reduction in genuinely new and distinctive music being broadcast on Radio 1 and Radio 2.
32. We can understand why the BBC would propose such a change, as it would enable it to ensure very significant flexibility in music output. In addition, it is unsurprising that the music industry would support such a long period as it could help improve the chances of airplay supporting commercial success and promotion on Radio 1 and Radio 2. We question whether these should be the principal considerations for Ofcom.
33. In order to take a more considered view on whether it would be practical for Ofcom to apply a different time period from first release, we conducted our own analysis of Radio 1 and Radio 2 daytime output based on the past four months.

**Fig 1: Proportion of new music during daytime on Radio 1 and Radio 2**

	Radio 1	Radio 2
% music less than 12 months since first release	57 %	33 %
% music less than 6 months since first release	45 %	28 %
% music less than 3 months since first release	34 %	24 %
% music less than 1 months since first release	13 %	13 %

Source: Radiocentre analysis of Radiomonitor data (Oct 2017 – Jan 2018) where track data was available, using Ofcom definition of daytime on BBC radio

34. While this is only an estimate based on a discrete sample period, these findings are broadly consistent with the figures in the consultation document and suggest that there are other approaches that Ofcom could consider when seeking to define new music. In particular, it provides further evidence that the 12 month target is far too long and not stretching enough for either Radio 1 (with a target of 50% new music) or Radio 2 (with a target of 20% new music), even when considering the additional restriction of chart success, addressed further below.
35. As a result we would argue that applying different time periods from a release date (for example 6 months or 3 months) might be more appropriate, with these targets entirely achievable with goodwill and a concerted effort to make changes to the daytime playlist.
36. Ofcom (and initially the BBC) has sought to defend the use of the criteria of 12 months since first release by introducing the concept of limiting the extent to which the most commercially successful songs continue to count as new. This is designed to try and moderate the risk of Radio 1 and Radio 2 dramatically increasing the level of commercially successful and well-known tracks from the past year.
37. We understand that its chosen method of reflecting this prominence and commercial success is the period 'after it enters the Top 20' of the UK Official Singles Chart (a 6 week period is proposed). Although this element of the proposed formula is not entirely clear from the consultation document, which also refers to the 'weeks of Top 20 entry' (in Figure 2, p.10). As a result we suggest that Ofcom clarifies the meaning of this requirement.
38. This concept of assessing commercial success is only really necessary because of the extraordinarily long time period (12 months) that Ofcom is proposing at point a). Once again we would be interested in the impact of different time periods and parameters being applied to understand whether this is really the most appropriate criteria to challenge the BBC on new and distinctive music output.
39. In considering the best criteria to apply Ofcom claims that the difference between the proportion of tracks released in the past year which entered the Top 40 or Top 20 more than 6 weeks ago is relatively marginal (56% compared to 54% according to Ofcom). But we believe that Ofcom should also conduct further analysis to examine what proportion of tracks on Radio 1 and Radio 2 which were first released in the past 6 months and what period of time after entering the Top 40 (or Top 20) is appropriate to apply.
40. Using a period of 6 weeks after Top 20 entry as a measure of chart success seems arbitrary and once again designed to cause minimal disruption for BBC services. It may well be the case that some music industry stakeholders "argued that a stricter limitation of around four weeks would prevent many songs from reaching their full commercial potential" (para 2.29), but again we would question whether this should be considered as a significant factor in defining the role of Radio 1 and Radio 2. The priority outlined in the Charter and Framework Agreement was to improve distinctiveness of these services not to maximise commercial success of artists.
41. In practice, applying the current definition would seem to enable a large proportion of tracks from the most commercially successful albums of the past year to continue to be classified as new music for a long period of time. For example, according to data from the Official Charts Company, it would mean that the following proportion of tracks from 2017 albums would be considered as 'new music' for up to 12 months from their release date anniversary (unless or until 6 weeks after they enter the Top 20):
  - 10 out of the 12 tracks on the album 'Human' by Rag'n'Bone released the February 2017
  - 9 out of the 12 tracks on the album 'Dua Lipa' by Dua Lipa released June 2017

- 12 out of the 13 tracks on the album 'Beautiful Trauma' by Pink released October 2017
- 9 out of the 10 tracks on the album 'The Thrill of It All' by Sam Smith released October 2017
- 13 out of the 15 tracks on the album 'Reputation' Taylor Swift released November 2017.

42. We would obviously not dispute the freedom for Radio 1 and Radio 2 to play tracks by these artists, but we do question whether the BBC should have the ability to include such a large proportion of commercially successful tracks from almost a year ago as part of its new music quota, which is ultimately designed at improving distinctiveness.

### Radiocentre proposal

43. In the light of this analysis we suggest that Ofcom also reviews the implications of narrowing the definition of a successful track to 4 weeks after entry into the Top 40 (and Top 20 for comparison), as well as reducing the time period from first release. This analysis could help to inform a definitive position on which the variables should be adjusted and to what level, in order to drive change and support a more distinct range of new music on these services.

44. Based on what we know already from the analysis of Radiomonitor data (and the relatively limited impact of extending the definition of commercial chart success to the Top 40) our starting point would be to propose a narrowing of the criteria in the following way.

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

- a) 6 months from first release (whether by physical, radio, download or streaming means), or*
- b) 4 weeks after it enters the Top 40 of the UK Official Singles Chart*

*whichever is sooner.*

20 February 2018