

A stylized logo for the UK Music industry. The letters 'U' and 'K' are rendered in a bold, sans-serif font. The 'U' is composed of three parallel, slightly offset shapes, and the 'K' is also composed of three parallel, slightly offset shapes, creating a sense of depth and movement.

UK

UK MUSIC

UK Music response to
"A Communications Review for the Digital Age"

June 2011

ABOUT UK MUSIC

UK Music is an umbrella organisation representing the collective interests of the UK's commercial music industry - from songwriters and composers, artists and musicians, to studio producers, music managers, music publishers, major and independent record labels, music licensing companies and, now, the live music sector.

UK Music exists to understand, explain, promote, protect and nurture the UK's commercial music sector so that its inherent value grows and its positive knock-on effects reverberate ever further and ever deeper.

UK Music's membership is comprised of:

- Association of Independent Music (AIM) representing over 850 small and medium sized independent music companies;
- British Academy of Songwriters, Composers and Authors (BASCA) – with over 2,000 members BASCA is the professional association for music writers and exists to support and protect the artistic, professional, commercial and copyright interests of songwriters, lyricists and composers of all genres of music and to celebrate and encourage excellence in British music writing
- The BPI representing more than 350 music companies, from major labels to the smallest independents, accounting for more than 85% of all recorded music sold in the UK
- Music Managers Forum representing 425 managers throughout the music industry
- Music Producers Guild representing and promoting the interests of all those involved in the production of recorded music – including producers, engineers, mixers, re-mixers, programmers and mastering engineers
- Music Publishers Association, with more than 260 major and independent music publishers representing close to 4,000 catalogues across all genres of music
- Musicians Union representing 32,000 musicians
- PPL licensing for 46,000 performers and 5,750 record companies
- PRS for Music is responsible for the collective licensing of rights in the musical works of 75,000 composers, songwriters and publishers and an international repertoire of 10 million songs
- UK Live Music Group, representing the main trade associations and representative bodies of the live music sector

Approach to deregulating the communications market

1. Just as the Communications Act of 2003 had a tangible effect on the UK's music industry, so will the forthcoming Communications Bill. The legislation will potentially affect all commerce relating to the licensing of music for a wide variety of uses across all platforms.
2. People want access to the communications infrastructure because they want access to the content that flows across it. So long as there is high quality content on offer, there will be an insatiable demand for the best, most effective and innovative means of accessing and consuming that content.
3. The past decades bear witness to that. Music and technology have always had a symbiotic relationship, each reliant upon the other for their success. Demand for music has incontrovertibly driven the sales of millions of digital devices, digital connections, and digital services.
4. **Therefore, in embarking on this review of the regulatory regime for the UK's communications sector, we urge Government to adopt the *dual* ambition not only of establishing a dynamic and successful communications and media market but equally, a world beating content producing sector. If the UK's creators and producers are to continue to generate the quality content that drives demand for communications services, the benefits to the UK will be truly maximised and our joint full potential realised. It is worth noting that the digital and creative industries are linked together in the Government's Plan for Growth.**
5. Our vision is for a communications infrastructure that is safe, fair, open, vibrant, and stable, where all citizens can fully participate, with built-in incentives for what is lawful and safe, and one which fosters the continual production of high quality content.
6. For music creators and right holders, it would mean sharing in the rewards wherever and whenever their music adds value. For those using the allure of music to help build their businesses in the digital world, it would mean seeking, and being granted, the rights to do so legitimately, quickly, and for a fair price. For consumers, it would mean a continuously developing range of digital shops, services and forums where music is available, experienced, recommended, distributed and enjoyed fully in the knowledge that it is legal and that creators are being paid. And for those who don't play by the rules, it would mean a swift and effective response.
7. We are committed to the aspiration of a stable digital marketplace where the disruption, divisions and barriers of the past decade are replaced with mutually beneficial partnerships which lead to an explosion of new goods and services delivered by new technologies and connections.

Deregulation and analogue radio

8. The music industry has a huge impact on the radio industry and is fundamental to the future success of the sector. According to an Ofcom report, music is the single most important reason for people choosing a radio station, above news, weather, traffic and chat. The investment cost of radio's most valuable content is primarily born by the music industry

9. A thriving and prosperous commercial radio market remains an important element in the cultural ecology of the UK. While digital radio listening may be growing, analogue radio subsists as the dominant and crucial source of audience interaction. Radio industry figures indicate that 92% of the population still listen to analogue radio on weekly basis, with patterns of engagement established at a young age. An Ofcom survey of children showed that 71% of 8 to 11 year olds listen to radio; increasing to 85% amongst 12 to 15 year olds.
10. We hope Government will acknowledge that there is a strong public interest argument and an equally strong economic rationale to aspire to a radio ecosystem which is diverse and appeals to a wide variety of tastes and interests, which fosters investment of high quality UK originated programming, and which can sustain a healthy and prosperous commercial radio market.
11. Previous governments have tried to legislate for diversity and localness in broadcasting programming through the Communications Act 2003 (and prior to that, in the Broadcasting Acts of 1996 and 1990). Ofcom have tried to ensure diversity of programming through its regulatory approach. The main tool for ensuring diversity of programming has been through the use of station formats.
12. Over the years, the commitments made by station applicants have become increasingly generalised and less specific. The cumulative impact has been to weaken the philosophical link between formats, the use of spectrum as a public good, and the notional debt which arises as a result of that use.
13. At the same time, commercial broadcasters have become more technologically sophisticated, skilful and successful at targeting music at a particular demographic in order to deliver maximum advertising revenue, a natural and understandable consequence of the industry's efforts to maximum revenues. The consequence however is that playlists have become ubiquitously uniform as the sector's drive to compete for the same core advertisement revenue manifests itself in a contest for the same core audience.
14. Government will no doubt want to create the right balance between the easing the pressures faced by commercial radio, and upholding the wider public interest that arises from the use of spectrum as a public good.
15. **We urge Government to consider the impact that any proposed deregulation will have on the wider investment environment in the content production industries. We would caution Government against new mechanisms which might mandate community service radio to perform public service functions relating to localised content, without the means of financing or investing in the production of that content. Government may wish to consider instead the benefits of migrating to a straight-forward commercial spectrum pricing model, with in-built market incentives that fosters investment in content production.**

Impact on the BBC

16. The BBC is the standard bearer in broadcasting a diverse range of music on radio, a reflection of its public service remit to stimulate creativity and cultural

excellence. The BBC's unique public service obligations provide the basis for its distinctiveness and are the bedrock of the broad public support it enjoys.

17. We would argue that a radio market, left on its own, would be unlikely to sustain the likes of Radio 3 and 6 Music. BBC Radio 3, in fact, is the largest commissioner of new music in the world. BBC 6 Music delivers 56% of UK music in a full week. The Radio 2 service licence commits to 40% UK music and Radio 1 has a service licence commitment that 40% of daytime music will be from UK acts. By way of example, data from comparemyradio.com would appear to suggest that a station like Capital Radio would play 152 unique tracks against Radio 1's 1,096 unique tracks over the past 30 days.
18. In giving oxygen to new talent, BBC Radio helps create an audience base and often, those same composers and performers go on to become better known over time and eventually will feature prominently in the output of commercial stations. The relationship between public service broadcast and the commercial sector is thus dynamic and beneficial to both.
19. **We urge Government to ensure that the BBC is able to continue fulfil this critical aspect of its public service remit by maintaining its targets for broadcasting new music, music by UK artists, and its commitment to local and regional programming.**

Intellectual property and the digital economy

20. A balanced copyright regime with effective means of remedy is one important aspect of a broader strategy for growth for copyright based industries, alongside access to finance for SMEs to aid investment and innovation, and support for industry's efforts to facilitate the licensing process through improvements in systems and processes.
21. Statements made by Government indicate that the Communications Bill will be used as the platform to deliver any changes to copyright law which require primary legislation. Prior to knowing what the Government's intentions are with respect to the recommendations made in Hargreaves Review of Intellectual Property and Growth, it is difficult to offer specific comments at this stage.
22. That said, we wish draw to Government's attention one particular issue relating to the Copyright Tribunal, which is the mechanism for resolving disputes between copyright licensors and licensees on price. **Collective licensing bodies should have equal access to the Copyright Tribunal in the same way as commercial users have. Specifically, collecting societies should be able to make references to the Copyright Tribunal. This would provide a fair balance for collecting societies in case of users infringing licensing terms or in case of changed conditions. Such a right of referral requires primary legislation and the Communications Act would be the ideal vehicle.**
23. We would further urge Government to acknowledge that the growth it seeks from the creative industries can only be achieved so long as investors have confidence that their ability to make a return will not be undermined by pervasive copyright infringement. This is not special pleading; it is a first requirement of any functioning marketplace, and certainly a prerequisite in the global digital entertainment market.

24. We ask for Government's support for the following broad principles:

- **The fates of technology companies, access providers, and content producers are intertwined and they must advance together; the growth of one sector cannot be sustained at the expense of another.**
- **The responsibility to grow the legitimate digital market, and simultaneously to discourage infringement, is shared between Government, copyright owners, digital intermediaries, and consumers. Legislation must reflect this shared responsibility.**
- **Fairness and balance demand that creators and their investors are able to participate fully in the digital market, manage and protect their assets online, and share in the value created by their content.**

These principles should act as a guide for any legislation relating to content production and copyright.

Regulatory convergence across different platforms

25. Most parts of the communications and media infrastructure are already regulated. The internet – engaging children and adults in their millions and connecting people from all over the world – is unquestionably a powerful and enticing place with more good and services (legal and illegal) and more information and mis-information on offer, than any other marketplace in the world. As in every other sphere of such social and economic importance, the online world must also have rules and regulations. This is crucial both for protecting the public and for the creation of a properly-functioning marketplace.
26. There can be no illusion as to the scale of the challenge involved in any attempt to regulate the internet. A global phenomenon requires a global coordination of efforts towards a shared vision. However, there are some areas where national Governments can lay down markers and begin to make a difference.
27. **Regulation should confer responsibilities on all entities participating in the digital marketplace. Regulation should create an expectation that all practices and technical processes should demonstrate a bias in favour of that which is lawful, safe and secure. This might manifest itself in a new requirement on ISPs for transparency in traffic management tools, new provisions to enable site blocking in certain circumstances; and support for a voluntary system to guide consumers and citizens as to whether sites and service providers have signed up to a code of practice.**

Ends.

