Title: Changes in protection for foreign sound recordings and performances **IA No:** **RPC Reference No: RPC-DSIT-IPO-5286(1)** **Lead department or agency:** Intellectual Property Office **Other departments or agencies:**	**Impact Assessment (IA)** **Date:** 25/10/2023 **Stage:** Consultation **Source of intervention:** International **Type of measure:** Secondary legislation **Contact for enquiries:** David Burns, david.burns@ipo.gov.uk

Summary: Intervention and Options

RPC Opinion: Pre-scrutiny

Cost of Preferred (or more likely) Option			
Total Net Present Social Value	**Business Net Present Value**	**Net cost to business per year**	**Business Impact Target Status**
£265.2m	£265.2m	-£41.9m	Qualifying provision

What is the problem under consideration? Why is government action or intervention necessary?

UK copyright law provides producers and performers of sound recordings (e.g., record labels and musicians, respectively) rights to control or receive remuneration when their recordings are used, e.g., broadcast or played in public.
UK law extends these broadcasting and public playing rights to foreign producers on a near blanket basis, while restricting performers' eligibility for them. Existing arrangements result in substantial costs on UK users (e.g., radio broadcasters) of foreign sound recordings that, in some cases, have little direct or indirect benefit to UK creators and consumers and could be avoided, and are also not consistent with the international treaties on copyright (which generally require the UK to extend or restrict rights to foreign performers and producers on a more consistent basis than UK law currently provides).

What are the policy objectives of the action or intervention and the intended effects?

The aims of intervention are to:

- ensure UK copyright law is consistent with the requirements of the Rome Convention and WIPO (World Intellectual Property Organization) Performances and Phonograms Treaty (WPPT)
- reduce costs to UK users of foreign music where this can be done without significant costs to UK creators or consumers
- increase revenues for the UK creative industries where this can be done without significant costs to UK users or consumers

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 0: do nothing – this is the counterfactual against which other options are assessed.

Option 1: provide broadcasting and public playing rights to foreign producers and performers on near-blanket basis, as is currently the case for foreign producers.

Option 2: provide broadcasting and public playing rights to foreign producers and performers only where the country of nationality of the producer reciprocates for UK nationals.

Option 3: apply changes in Option 1 to pre-existing recordings/performances; and apply changes in Option 2 to recordings/performances made after changes enter into force.

We do not favour Option 2. This Option may offer large savings for UK users, but under some projections it could also lead to large costs to UK labels and artists and undermine investor confidence. We are considering Options 1 and 3. Both are consistent with the copyright treaties. Option 3 could reduce costs to UK users and may result in gains for UK record labels and artists. But it could also lead to significant costs to the UK music industry. If this is the case, Option 1 may be favoured.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** Five years after implementation

Is this measure likely to impact on international trade and investment?	Yes			
Are any of these organisations in scope?	**Micro** Yes	**Small** Yes	**Medium** Yes	**Large** Yes
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)	**Traded:** N/A	**Non-traded:** N/A		

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Chief Analyst: Sam Brand Date: 25/10/2023

Summary: Analysis & Evidence — Policy Option 1

Description: Provide broadcasting and public playing rights to foreign producers and performers on near-blanket basis, as is currently the case for foreign producers.

FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year 2020	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	**Best Estimate: 0.0**

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low	TBA	10		
High	TBA			
Best Estimate	TBA		0.0	**0.0**

Description and scale of key monetised costs by 'main affected groups'

Some foreign record labels (most significantly, US record labels) would need to pay a greater proportion of UK broadcasting and public playing revenues to the artists on their recordings than under the counterfactual. We estimate this would cost US record labels £170.1 million over the period 2024 to 2033 (2020 present value). These costs would correspond to gains for US recording artists.

Other key non-monetised costs by 'main affected groups'

UK record labels and UK performers that work with affected foreign performers may face costs as they may need to share a greater proportion of their UK broadcasting and public playing revenues with those foreign performers. We are not able to monetise these costs but expect them to be small, as only a small proportion of UK sound recordings are likely to be affected.

There may be some transitional and ongoing costs to PPL, the UK body that collects and distributes broadcasting and public playing revenues in the UK, as it would need to distribute greater amounts of revenue to US performers than under the counterfactual (under which it would instead continue to pay through US music revenues largely to US record labels). These costs have not been monetised but are likely to be small.

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low	TBA	10		
High	TBA			
Best Estimate	TBA		0.0	**0.0**

Description and scale of key monetised benefits by 'main affected groups'

Some foreign recording artists (most significantly, US performers) would receive significant additional UK broadcasting revenues from their record labels under this option, relative to the counterfactual. We estimate these gains would be £170.1 million over the period 2024 to 2033 (2020 present value). These gains would correspond to costs for US record labels. There would be no benefits for UK parties, and the US-related benefits are reported here only for completeness.

Other key non-monetised benefits by 'main affected groups'

None.

Key assumptions/sensitivities/risks	**Discount rate**	3.5

We assume that this change does not lead to any overall change in music licensing prices for UK broadcasters or those that play music in public in the UK; instead, we assume that this option results only in a redistribution of revenues, primarily between certain foreign record labels and foreign recording artists. We are reasonably confident in this assumption but intend to test it at consultation.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			**Score for Business Impact Target (qualifying provisions only) £m:** 0.0
Costs: 0.0	**Benefits:** 0.0	**Net:** 0.0	

Summary: Analysis & Evidence — Policy Option 2

Description: Provide broadcasting and public playing rights to foreign producers and performers only where the country of nationality of the producer reciprocates for UK nationals

FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year 2020	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 429.4	**High:** 733.2	**Best Estimate:** 566.0

COSTS (£m)	**Total** (Constant Price)	**Transition** Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low	TBA	10	0.0	**0.0**
High	TBA		17.9	**106.1**
Best Estimate	TBA		0.0	**0.0**

Description and scale of key monetised costs by 'main affected groups'

This option will likely result in reductions in UK music licence prices paid by UK users to PPL, as some foreign music will cease to be covered by those licences. This will mainly affect certain foreign labels and artists (e.g., we expect US labels and artists to face reductions in UK licensing income of £605.9 million over 2024-2033; this is the source of the gains for UK parties set out below).

UK record labels and artists could face reductions in their UK licensing income, as PPL will administer a smaller pool of music rights but its fixed costs are unlikely to change. Depending on how music licence prices change, this could mean PPL needing to deduct a greater proportion of UK rights holder income to cover its costs. In the high-cost scenario, we estimate these costs would be £106.1 million over 2024-2033.

Other key non-monetised costs by 'main affected groups'

This option would mean restricting the protection provided to pre-existing sound recordings. Changes to this protection, after producers and performers have invested time, money and effort in their creation, could damage investor confidence in the UK music industry. While we are not able to monetise this impact, it could be significant and might undermine the creation and dissemination of new music in the UK.

This option would likely lead to licence renegotiations between users and PPL. Those negotiations would become more complex (as only some music would be in scope), which would result in upfront and recurring costs on both groups. Those costs might be passed on to UK labels and artists or might be borne by users.

BENEFITS (£m)	**Total** (Constant Price)	**Transition** Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low	TBA	10	90.2	**535.4**
High	TBA		123.5	**733.2**
Best Estimate	TBA		95.4	**566.0**

Description and scale of key monetised benefits by 'main affected groups'

We estimate that, over 2024 to 2033, this option would result in savings for UK broadcasters of £171.9 million, savings for those who play music in the UK of £194.6 million, and additional licensing revenues of £199.4 million for UK labels and artists (all 2020 present value). There are large uncertainties on these figures, and it is possible that, instead of gains, UK record labels and artists face significant costs under this option.

Other key non-monetised benefits by 'main affected groups'

The savings for UK users and, if they arise, gains for UK record labels and artists could lead to further benefits. Record labels and artists might increase their investments in new music or in marketing and promotion for UK music. Broadcasters may invest their savings into new content or choose to play more music (further increasing revenues of UK labels and artists). Those that play music in public (e.g., shops) might pass on savings to staff or customers. We have not been able to monetise any of these indirect benefits.

Licensing cost reductions may also reduce barriers to entry to the UK broadcasting industry, which could improve competition and consumer choice. More entrants could also increase demand for UK music, positively impacting revenue of UK labels and artists.

Key assumptions/sensitivities/risks	**Discount rate**	3.5

The impacts of this option depend in large part on how music licence prices adjust. Licences are negotiated between PPL and users and may be influenced by substitution effects (whether UK users choose to play less UK music in favour of the relatively cheaper US and other foreign music, which could place downwards pressure on licence prices and/or mean that fewer licences are bought).

Our central estimates assume that licence prices for broadcasting and public playing reduce by half as much as they would if they scaled linearly with the size of the music repertoire covered by the licence. This leads to savings for users and gains for the UK music industry. But other outcomes are possible. If licence prices scale linearly with changes to the size of the repertoire, this results in the costs on UK record labels and artists quantified above.

We do not specifically estimate or model the substitution effect (i.e., we implicitly assume that the cross elasticity of demand between UK music and US music is 0 – that they are not substitutes, so demand for UK music is unresponsive to a fall in relative price of US music). However, the downstream consequences of substitution effects – reductions in licence prices and overall licensing income for UK labels and artists – are potentially accounted for in our 'high cost' estimates above, which assume a larger fall in licensing prices.

We assume no change to other countries' laws regarding public performance rights (PPR). The US decision on whether to introduce PPR for producers and performers of sound recordings is assumed to be exogenous (i.e., uninfluenced by material reciprocity proposed under Option 2). If Option 2 were to encourage the US to introduce these rights, this would increase revenues flowing from the US to UK artists, but US broadcasting and public playing of music (including UK music) may decrease after licensing fees are introduced.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			**Score for Business Impact Target (qualifying provisions only) £m:** -447.2
Costs: 0.0	**Benefits:** 89.4	**Net:** -89.4	

Summary: Analysis & Evidence — Policy Option 3

Description: Apply changes in Option 1 to pre-existing recordings/performances; and apply changes in Option 2 to recordings/performances made after changes enter into force

FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year 2020	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 201.2	**High:** 343.5	**Best Estimate:** 265.2

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low	TBA	10	0.0	0.0
High	TBA		8.6	49.7
Best Estimate	TBA		0.0	0.0

Description and scale of key monetised costs by 'main affected groups'

This option will likely result in reductions in UK music licence prices paid by UK users to PPL, as some foreign music will cease to be covered by those licences (although this will be a smaller proportion of music than under Option 2). This will mainly affect certain foreign labels and artists (e.g., we expect US labels and artists to face reductions in UK licensing income of £283.9 million over 2024-2033; this is the source of the gains for UK parties set out below).

UK record labels and artists could face reductions in their UK licensing income, as PPL will administer a smaller pool of music rights but its fixed costs are unlikely to change. Depending on how music licence prices change, this could mean PPL needing to deduct a greater proportion of UK rights holder income to cover its costs. In the high-cost scenario, we estimate these costs would be £49.7 million over 2024-2033.

Other key non-monetised costs by 'main affected groups'

UK labels and UK performers of pre-existing sound recordings that involve affected foreign performers may face costs from needing to share a greater proportion of UK broadcasting and public playing revenues for those pre-existing recordings with those foreign performers. We are not able to monetise these costs but expect them to be small, as only a small proportion of UK sound recordings are likely to be affected.

This option would likely lead to licence renegotiations between users and PPL. Those negotiations would become more complex (as only some music would be in scope), which would result in upfront and recurring costs on both groups. Those costs might be passed on to UK labels and artists or might be borne by users.

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low	TBA	10	43.5	**250.9**
High	TBA		59.5	**343.5**
Best Estimate	TBA		46.0	**265.2**

Description and scale of key monetised benefits by 'main affected groups'

We estimate that, over 2024 to 2033, this option would result in savings for UK broadcasters of £80.6 million, savings for those who play music in the UK of £91.2 million, and additional licensing revenues of £93.4 million for UK labels and artists (all 2020 present value). There are large uncertainties on these figures, and it is possible that, instead of gains, UK record labels and artists face significant costs under this option.

Other key non-monetised benefits by 'main affected groups'

The savings for UK users and, if they arise, gains for UK record labels and artists could lead to further benefits. Record labels and artists might increase their investments in new music or in marketing and promotion for UK music. Broadcasters may invest their savings into new content or choose to play more music (further increasing revenues of UK labels and artists). Those that play music in public (e.g., shops) might pass on savings to staff or customers. We have not been able to monetise any of these indirect benefits.

Licensing cost reductions may also reduce barriers to entry to the UK broadcasting industry, which could improve competition and consumer choice. More entrants could also increase demand for UK music, positively impacting revenue of UK labels and artists.

Key assumptions/sensitivities/risks	**Discount rate**	3.5

The impacts of this option depend in large part on how music licence prices adjust. Licences are negotiated between PPL and users and may be influenced by substitution effects (whether UK users choose to play less UK music in favour of the relatively cheaper US and other foreign music, which could place downwards pressure on licence prices and/or mean that fewer licences are bought).

Our central estimates assume that licence prices for broadcasting and public playing reduce by half as much as they would if they scaled linearly with the size of the music repertoire covered by the licence. This leads to savings for users and gains for the UK music industry. But other outcomes are possible. If licence prices scale linearly with changes to the size of the repertoire, this results in the costs on UK record labels and artists quantified above.

We do not specifically estimate or model the substitution effect (i.e., we implicitly assume that the cross elasticity of demand between UK music and US music is 0 – that they are not substitutes, so demand for UK music is unresponsive to a fall in relative price of US music). However, the downstream consequences of substitution effects – reductions in licence prices and overall licensing income for UK labels and artists – are potentially accounted for in our 'high cost' estimates above, which assume a larger fall in licensing prices.

We assume no change to other countries' laws regarding public performance rights (PPR). The US decision on whether to introduce PPR for producers and performers of sound recordings is assumed to be exogenous (i.e., uninfluenced by material reciprocity proposed under Option 3). If Option 3 were to encourage the US to introduce these rights, this would increase revenues flowing from the US to UK artists, but US broadcasting and public playing of music (including UK music) may decrease after licensing fees are introduced.

BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:			**Score for Business Impact Target (qualifying provisions only) £m:** -209.5
Costs: 0.0	**Benefits:** 41.9	**Net:** -41.9	

Evidence Base

Background

Legislative background

1. UK copyright law gives those who produce and perform on sound recordings (e.g., recorded music and audiobooks) rights to control, or receive remuneration for, certain uses of their recordings. This includes the copying of the sound recording (e.g., to produce vinyl and CD copies of recordings) and making the recording available online (e.g., through an on-demand music streaming service, such as Spotify). The aim of these rights is to incentivise the creation and dissemination of creative works by giving those who invest effort, time, and money in creating them the exclusive opportunity to bring them to market. In turn, this benefits the public, who enjoy a wealth of high-quality music and other sound recordings.
2. In the case of broadcasting and public playing of sound recordings, UK copyright law gives the producer (which, in the case of recorded music, is typically the record label) the right to control and license these uses, while the performers involved have an unwaivable legal right to "equitable remuneration" from the producer. In the recorded music sector, industry agreement is that "equitable remuneration" means a 50% share of broadcasting and public playing revenues[1]. In other words, when recorded music is broadcast or played in public in the UK, the revenue is ordinarily split equally between the producer on the one hand and the performers on the other. This ensures that all performers enjoy a share of these revenues – in the absence of this right, whether and to what extent performers would enjoy a share of broadcasting and public playing revenues would depend entirely on their contract with the producer of the sound recording.
3. However, UK law does not provide these rights to all performers and producers on a uniform basis. The protection enjoyed by any given performer or producer depends on the country of origin of the recording or performance. This is intended to align with commitments in the international agreements on copyright and related rights to which the UK is party. These agreements set minimum standards of protection that countries must meet in their domestic law, and specify how parties are to extend these protections to nationals of other treaty countries.
4. The main conventions on rights of producers and performers of sound recordings are the WIPO (World Intellectual Property Organization) Performances and Phonograms Treaty (WPPT) and the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations. These require that parties protect sound recordings made by nationals (or residents) of other treaty parties, or that are either first published in (including any publication within 30 days of the actual first publication) or first 'fixed' (recorded) in another treaty party; parties are free to only apply only one of the publication and fixation criteria.
5. The treaties also require that parties protect performances given by nationals (or residents) of other treaty parties or that are incorporated in a sound recording that is eligible for protection. The rights of broadcasting and public playing are optional under these treaties. Where one party elects not to protect against these acts in its domestic law, other parties can respond by limiting to the same extent the protection they provide to producers and performers whose recordings are produced by nationals of that party. This is referred to as the application of 'material reciprocity'.
6. In UK law, a sound recording is eligible for protection if it is made by a national or resident of, or first published in, a qualifying country. Here, publication means the issue of physical copies and does not include, for example, making a recording available online; and 'first publication' includes any publication within 30 days of the actual first publication. Qualifying countries in this context include the UK, countries that are party to a relevant international convention (including WPPT and the Rome Convention), and countries that are specified in legislation. Since most commercially released sound recordings are first published in at least one qualifying country, UK law provides full protection to most foreign sound recordings that are of commercial significance.
7. The eligibility criteria for performances contained in sound recordings is different to that of the sound recordings themselves. Under UK law, a performance in a sound recording is eligible for

[1] As specified in Rule 10 of PPL Distribution Rules, available online at https://www.ppluk.com/tools-resources/member-policies-and-distribution-rules/.

protection if it is given by a national or resident of, or takes place in, a qualifying country (which is defined differently for performances than for sound recordings, although there is substantial overlap in the definitions). Notably, the right to equitable remuneration for broadcasting and public playing is subject to more stringent eligibility criteria. A performance originating in another country only qualifies for this right in UK law where and to the extent that UK performances enjoy similar rights in the country of nationality of the performer or the country where the performance was given – the so-called 'mirror test'.

8. This approach, based on the material reciprocity in the copyright treaties, is not applied to protections for sound recordings. This, together with the different eligibility criteria for rights in sound recordings and performances, can mean that, while producers of foreign sound recordings typically have the right to control and license the broadcasting and public playing of the recording in the UK, the performers involved may have no, or only a limited (e.g., for certain types of transmissions), statutory entitlement to an equitable share of the licensing revenue. This is typically the case for music from, for example, the United States of America. US law protects only against certain digital transmissions[2], but does not provide a general right of broadcasting and public playing. As such, US performers typically only enjoy equitable remuneration in the UK for these digital transmissions, and not for broadcasting or public playing more widely, despite US record labels typically licensing and collecting revenues for all forms of broadcasting and public playing in the UK.

9. This discrepancy is not fully aligned with the international conventions on copyright and related rights to which the UK is party. While these conventions do permit parties to apply material reciprocity in respect of the rights of broadcasting and public playing (i.e., to restrict eligibility for these rights where and to the extent that other parties choose not to provide the rights), the treaties require greater consistency between the treatment of performers and producers than UK law currently provides.

<u>Administration of rights</u>

10. Broadcasting and public playing revenues are licensed in the UK by PPL[3]. PPL is the UK collecting society for record labels and performers, a not-for-profit body that administers certain rights on behalf of its members. PPL only licenses recordings that are both protected in UK law (although, as noted above, most commercial recordings meet this condition, due to the place of publication being a route to qualification) and for which it has the mandate (which, in the case of foreign recordings, PPL arranges via partnership agreements with foreign collecting societies).

11. PPL sells these licences to users in the UK – those who wish to broadcast recorded music or play it in public. This includes radio broadcasters and shops, nightclubs and other public venues. The terms of broadcasting licences are typically determined through negotiation between PPL and the broadcaster, while PPL sets public playing tariffs that account for factors such as the size of the venue in which music is being played. Where users and PPL are unable to agree on the terms of a licence or proposed licence, users are able to refer the matter to the Copyright Tribunal, which is able to confirm or vary the terms of a licence as it determines reasonable in the circumstances.

12. From the licence fees it collects from users, PPL determines the licensing revenues associated with each recording and, after subtracting administrative costs, distributes the revenues to the associated record label and performers, ordinarily (where both groups qualify for protection) on a 50/50 basis. The performers' share is further divided between the featured artists (recording artists under whose name a recording is released, who receive at least 65% of the performers' share) and the non-featured artists (those who are engaged to provide backing vocals or instrumentals on a freelance basis, and who collectively receive up to 35% of the performers' share, depending on factors such as how many non-featured artists performed on the recording)[4].

13. However, where the performers involved in a recording do not enjoy the right to equitable remuneration, PPL pays the whole amount of the broadcasting and public playing revenues (less administrative deductions) to the record label[5].

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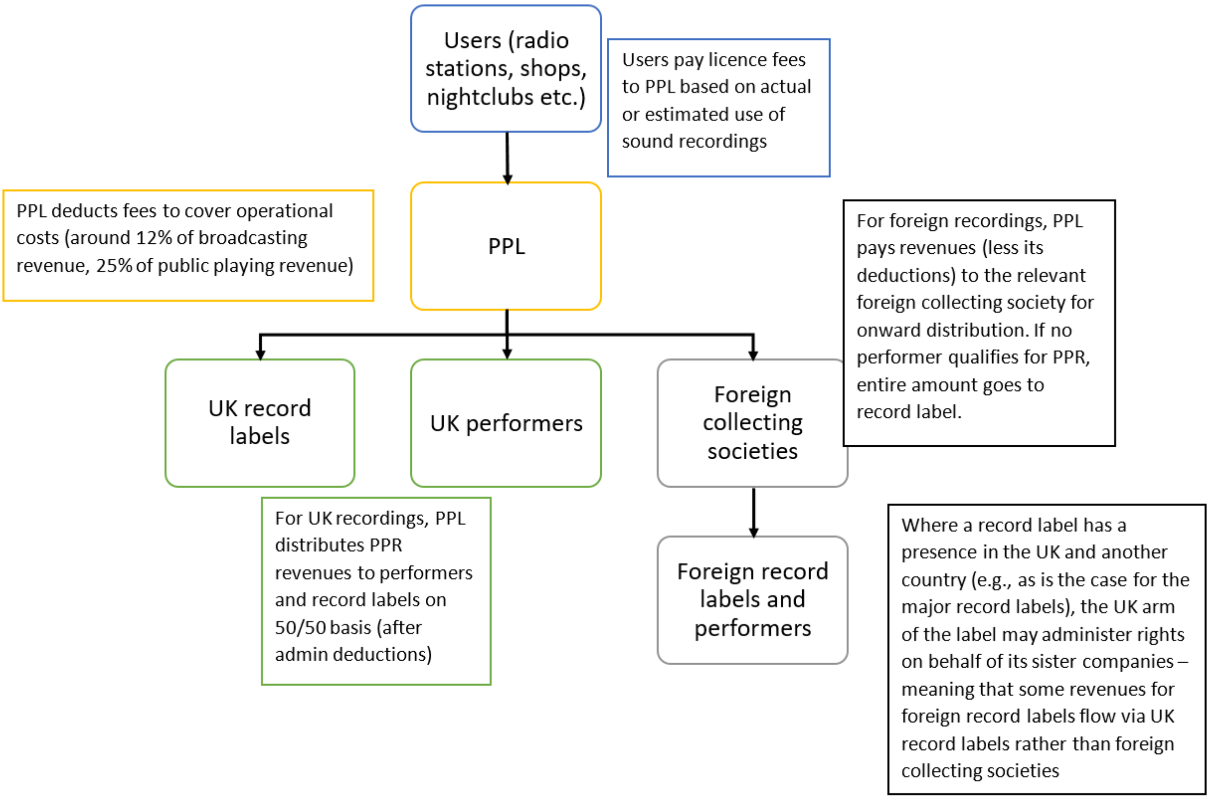
[2] E.g., live internet radio, ss.106(6) and 114 of the US Copyright Act 1976

[3] Formerly Phonographic Performance Limited

[4] Schedule 5 to PPL Distribution Rules

[5] Rule 10.2, PPL Distribution Rules.



<u>Economics of status quo</u>

14. The rights of producers and performers to control the use of their recordings and performances underpin the functioning of the music industry – it is what allowed the UK recorded music sector to secure licensing revenue of £1.32bn across all modes of exploitation in 2022[6]. Licensing for the purpose of broadcast and public playing accounted for 10.8% of these revenues in 2022[7].

15. In 2022, PPL collected £188.4 million from UK users for the public playing and broadcasting of recorded music on behalf of producers and performers[8]. Of this money, a significant portion is paid to foreign rights holders. Music made by UK artists accounts for approximately half of all music sales and streams in the UK, with the remainder being split between US artists (around 40% of total sales and streams, or 80% of sales and streams of non-UK music) and artists of other nationalities[9]. Assuming that similar consumption patterns apply to broadcasting and public playing as to streams and sales (i.e., that 40% of licensing fees for radio broadcast and public playing relate to uses of US music), we estimate that UK broadcasters and those playing music in public paid £75 million in 2022 to play US music[10].

16. These licensing costs must be borne by UK broadcasters and UK bodies that play music in public. In the case of broadcasters, these costs may be met from their public or commercial revenues (e.g., from advertising or licensing their content); and for shops, restaurants, hotels, and others playing music in public, through consumer spending and other income streams.

17. Because of the different eligibility criteria applied in UK law to sound recordings versus the performances therein, and in light of PPL's distribution guidelines, this money largely (except in the case of revenues associated with certain digital transmissions, which are likely a small portion of the total monies) accrues to the producers of the sound recordings – i.e., the US record labels (although some portion of this money is likely to be paid by the US record labels to US featured artists by virtue of their recording contracts).

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[6] https://www.bpi.co.uk/news-analysis/uk-recorded-music-revenues-rise-for-an-eighth-successive-year-in-2022/

[7] According to BPI figures, UK rights holders received £143.4 million in revenue for public performance licensing in 2022, from licensees around the world. See https://www.bpi.co.uk/news-analysis/uk-recorded-music-revenues-rise-for-an-eighth-successive-year-in-2022/

[8] PPL Annual Transparency Report 2022, page 8 (£100.0 million collected from public performance, £88.4 million collected from broadcast) available online at https://www.ppluk.com/about-us/reports-and-statements/.

[9] Based on BPI data on sales and streams of albums, BPI All About the Music 2018.

[10] 40% of the £188.4 million collected in 2022.

Problem under consideration and rationale for intervention

18. There are two main rationales to reconsider how the UK extends protection to foreign sound recordings and performances.

19. **Costs on UK users of foreign music that are of little or no corresponding benefit to UK creators or consumers and are avoidable.** UK users of sound recordings (such as broadcasters and shops, restaurants, and gyms) pay tens of millions of pounds per year to license foreign music for broadcast and public playing. These costs can be justified where they are a necessary part of securing reciprocal protection overseas for the UK creative industries. But a large proportion of these revenues are paid to copyright owners in countries that do not provide equivalent protection to UK creators, such as the US. This does not support UK creators overseas, and negates a potential incentive for those countries to introduce equivalent protection in their domestic law. These costs on UK users, as well as being significant and undesirable, are avoidable – it would be possible for the UK to apply narrower eligibility criteria to the protection of foreign sound recordings, which would reduce these costs on UK users, while still allowing the UK to comply with its international obligations.

20. **Consistency of UK law with UK international obligations.** While the UK's current approach results in protection for certain foreign sound recordings that exceeds what is necessary under the copyright treaties, the same is not true for certain foreign performances. The copyright treaties require parties to provide PPR to performers and producers on more consistent terms than UK law currently provides.

Policy objectives

21. In line with the two rationales for intervention, the policy objectives are to:
    - ensure UK copyright is consistent with the requirements of the international treaties on copyright, especially the Rome Convention and the WPPT
    - reduce costs to UK users of foreign music where this can be done without significant costs to UK creators or consumers
    - increase revenues for the UK creative industries where this can be done without significant costs to UK users or consumers

Summary of options

22. There are various ways in which we may seek to achieve these objectives. In all cases, this would involve legislative change, but that legislative change could take many forms. The options considered in this impact assessment, described below, involve taking together the rules on eligibility for the right of broadcasting and the right of public playing. It would also be possible to deal with these rights (or elements thereof) separately. The options have been chosen as, on present information, there is no compelling reason to distinguish between these rights, and a harmonised approach is consistent with existing UK law. However, other options may be considered in light of the evidence raised at consultation.

<u>Option 0: Do nothing</u>

23. This option would involve making no policy change and maintaining the status quo.

<u>Option 1: Provide broadcasting and public playing rights to foreign producers and performers on a broad basis</u>

24. This option would mean providing rights of broadcasting and public playing to the producers and performers of any sound recording that is produced by a national or resident of, or which is first published in, a country that is party to the Rome Convention or WPPT. These are the grounds on which producers of sound recordings currently qualify for these rights in the UK.

25. These changes would be applied to both new and existing performances. In practice, this would mean an expansion of rights for many foreign performers, with the owners of sound recordings of their performances (mostly foreign record labels) subject to a new statutory obligation to share UK broadcasting and public playing royalties with those performers.

Option 2: Provide rights of broadcasting and public playing to foreign producers and performers on material reciprocity terms

26. This option would mean providing rights of broadcasting and public playing to producers and performers of sound recordings only where and to the extent that the country of nationality of the producer of the recording provides PPR for UK nationals.

27. This would result in a significant narrowing of foreign producers' eligibility for these rights in the UK. It would also mean that, wherever a producer of a sound recording enjoys rights of broadcasting and public playing, so too would the performers involved in the recording, which might result in a small expansion of the pool of foreign performers who qualify for these rights in the UK.

28. These changes would be applied to both new and pre-existing recordings and performances. This would mean protection for all sound recordings being determined by reference to the new eligibility criteria, regardless of when they were made and whether they satisfied the eligibility criteria in force at the time they were made. In practice, this would mean that many pre-existing sound recordings that currently enjoy full protection in UK law, including rights of broadcasting and public playing, would cease to receive those rights after these changes enter into force.

Option 3: Apply Option 1 to pre-existing sound recordings and performances; apply Option 2 to new sound recordings and performances

29. This option would mean applying the changes in Option 1 to any sound recordings and performances made before the changes enter into force. Any sound recordings and performances made after the changes enter into force would instead be subject to the rules in Option 2.

30. This would mean that producers and performers of pre-existing sound recordings would qualify for rights of broadcasting and public playing if the recording was first published in or produced by a national or resident of a qualifying country; material reciprocity would not be applied to these rights for pre-existing recordings and performances. This would result in an expansion of rights for many foreign performers who gave performances prior to these changes coming into force, and new statutory obligations on many owners of pre-existing sound recordings to share their broadcasting and public playing revenues with those performers.

31. By contrast, producers and performers of sound recordings made after this option is implemented would qualify for rights of broadcasting and public playing only where and to the extent that the country of nationality of the producer provides for UK nationals.

Monetised and non-monetised costs and benefits of each option (including administrative burden)

32. In this section, we summarise the estimated costs and benefits of each option. These costs and benefits, including the calculations underpinning them, are set out in more detail in at the end of this document. Note that, in all cases, our estimates carry large uncertainties (discussed in more detail in the following sections).

33. All figures set out in this section are expressed in actual values and in present-discounted terms with 2020 as the base year.

Option	Impact on UK users	Impact on UK music industry	Impact on foreign parties	Confidence in assessments
Option 1: Provide broadcasting and public playing rights to foreign producers and performers on a broad basis. This would result in more foreign performers qualifying for these rights. Some labels would face new obligations to share UK PPR revenues with performers.	No direct costs or benefits. Any indirect impacts likely to be small.	UK labels and UK artists of sound recordings that involve affected foreign performers might face some costs, but these are likely to be small.	Costs on US record labels of £230.2 million over 2024-2033 (£170.1 million if present-discounted to 2020). Gains for US recording artists of same amount over same period.	**Medium**. While exact impacts on foreign record labels and performers are likely to differ from our estimates, we are reasonably confident that this option is unlikely to significantly affect UK users or UK music industry (positively or negatively).
Option 2: Provide rights of broadcasting and public playing to foreign producers and performers on material reciprocity terms. This would result in UK ceasing to provide these rights to some foreign record labels, including for pre-existing recordings.	Substantial savings in music license fees for UK broadcasters, shops etc. of £496.2 million over period 2024-2033 (£366.6 million if present-discounted to 2020).	Possibility of substantial gains for UK record labels and artists (£269.9 million over 2024-2033) -- but these could be outweighed by costs to UK music, depending on how licence prices change and impacts of substitution effects.	Reductions in revenue for US record labels of £820.1 million over 2024-2033.	**Low**. This option carries significant risks of unintended consequences, including the possibility of net costs on the UK music industry, if UK users choose to play more foreign music as it would be cheaper for them to do so.
Option 3: Apply Option 1 to pre-existing sound recordings and performances. Apply Option 2 to new sound recordings and performances.	Substantial savings in license fees for UK broadcasters, shops etc. of £239.2 million over period 2024-2033 (£171.7 million if present-discounted to 2020).	Possibility of substantial gains for UK record labels and artists (£130.1 million over 2024-2033) -- but these could be outweighed by costs to UK music, depending on how licence prices change and the impacts of substitution effects.	Reductions in revenue for US record labels of £514.5 million over 2024-2033. Some of this would correspond to gains for US recording artists of £119.3 million over same period.	**Low**. This option carries significant risks of unintended consequences, including the possibility of net costs on the UK music industry, if UK users choose to play more foreign music as it would be cheaper for them do so.

Option 0: Do nothing

34. This option is the counterfactual against which other options are considered.

35. Under this option, as discussed above, UK broadcasters and other businesses would continue to pay tens of millions of pounds per year to license foreign music for broadcast and public playing, with a large proportion of these costs being both avoidable and of little or no benefit (directly or indirectly) to UK creators or consumers. These costs would be maintained under this Option.

Option 1: Provide broadcasting and public playing rights to foreign producers and performers on a broad basis

36. This option would primarily directly impact US record labels and US musicians. We estimate that, **over the period 2024-2033 inclusive**[1], **this option would result in costs to US record labels and gains to US musicians respectively of £230.2 million (£170.1 million in present-discounted terms with 2020 as the base year),** relative to the counterfactual (Option 0). This estimate carries large uncertainties.

37. **This option could result in some small costs to UK record labels and artists**, but only those labels and artists who work with affected foreign performers and who may need to share a greater proportion of UK broadcasting and public playing revenues with those foreign performers in future. We expect this to only arise for a small proportion of recorded music involving UK labels and artists.

38. **This option would not result in any direct costs or benefits to UK users or consumers of copyright works,** but there may be smaller indirect impacts. For example, the costs to US record labels may limit their investment in new music. In turn, this may result in reductions to the quality or quantity of music available to UK consumers. These impacts are challenging to assess or quantify but are likely to be limited.

39. **Familiarisation and compliance costs under this option are likely to be small.** The main affected UK party will be PPL, which would need to adjust its distribution practices for revenues from affected sound recordings. As this would involve applying the same approach already applied to other sound recordings (e.g., UK music), we expect these costs to be limited, but have not been able to quantify them.

40. **This option would ensure that UK law is consistent with the international treaties on copyright**.

Option 2: Provide rights of broadcasting and public playing to foreign producers and performers on material reciprocity terms

41. This option would mean that UK broadcasters and those that play music in public would no longer need to pay licence fees for some foreign music, including most US recorded music.

42. The impacts of this would depend on several factors. This includes how the prices of music licences negotiated between UK users and PPL change under this option. Licence prices could reasonably be expected to decrease (as those licences would now cover a smaller repertoire of music), but the extent of any decrease is unclear. This will depend in part on substitution effects -- if users choose to play less UK music in favour of the relatively cheaper US music (or there is a prospect of them doing so), this could place downwards pressure on licence prices for UK music or lead to some users not playing UK music at all.

43. We assume for the purposes of these calculations that licence prices will decrease, but only by half as much as would be expected if they scaled linearly with the size of the repertoire covered by the licence (e.g., if the size of the repertoire decreases by 40%, the price of the licence would decrease by 20%). This assumption is discussed more further on in this document.

44. Under this assumption, **we estimate that UK broadcasters would save £232.7 million (or £171.9 million in present-discounted terms with 2020 as the base year) over 2024-2033**[2]

[1] Impacts would continue beyond 2033 and would increase/decrease in proportion to growth/decline in radio and public performance revenues and changes in use of US music in the UK. We have not sought to quantify impacts beyond 2033 due to substantial uncertainties in forecasts this far ahead.

[2] As under Option 1, impacts would continue to arise beyond 2033, but we have not sought to monetise these due to difficulties in accurately forecasting relevant data this far into the future.

relative to the counterfactual, while those that play music in public in the UK would save £263.5 million (£194.6 million) over the same period.

45. **Under this assumption, we also estimate that UK record labels and artists would together enjoy gains of £269.9 million (£199.4 million) over the same period**. These gains would be because UK rights holders would enjoy a much larger proportion of a (reduced) pool of revenues. These gains would be split equitably between UK record labels and recording artists (both featured artists and session musicians).

46. However, depending on how licence prices adjust, UK record labels and artists could see greater or smaller gains, or even costs. If licence prices were to reduce in proportion to the change in size of the music repertoire covered by the licence (e.g., if 40% of music ceases to be covered by the licence, the licence price would decrease by 40%), PPL would have to meet its operational costs (which are unlikely to change significantly under this option) from a much smaller pool of revenues. This would lead to PPL needing to deduct a greater proportion of UK rights holders' revenues to meet its costs. This would mean greater savings for UK users of music but large costs on the UK music industry (£143.6 million over 2024-2033, or £106.1 million if present-discounted to 2020). It is challenging to assess the likelihood of such an outcome on present information.

47. **The gains described above would come at the expense of some foreign record labels and artists, primarily those from the US, who we estimate would face reductions in UK revenues of £820.1 million (£605.9 million) over the period 2024-2033 relative to the counterfactual**. These costs on US record labels do not depend on how licence prices adjust; they would arise under this option in all circumstances. How licence prices adjust determines only how this money is distributed among UK users and UK (and other) rights holders.

48. The scale of these gains and costs mean knock-on impacts are very likely. While we have not monetised these, they could be significant:

    a. Changes in licence prices will require new and periodically recurring negotiations between PPL and users. This will involve upfront and ongoing costs on all parties (including both initial familiarisation costs and legal costs of renegotiating licences). These negotiations could be challenging and extensive, given the scale of the revenues at stake and the complexity of the licensing under this option. This would result in costs on UK users and the UK music industry, which would likely be significant, although likely outweighed by the ongoing costs and benefits described above.

    b. If UK broadcasters and businesses that play music in public choose to play more US (and other foreign) music at the expense of UK music, this will both affect licensing income for these uses and could have wider implications, such as on the popularity of UK music in other mediums (e.g., if UK consumers hear less UK music on the radio, they may listen to less UK music on streaming services). This would be damaging to the UK music industry.

    c. The savings for UK broadcasters and those that play music in public could allow those businesses to invest more in their businesses or staff or could deliver higher profits. The savings are large in absolute terms but, in the case of those that play music in public, would be split among very large numbers of businesses. The impacts at the level of individual businesses therefore seems likely to be relatively small.

    d. Changing the eligibility criteria applied to pre-existing sound recordings might be seen as unfair and could damage investor confidence in the music industry. If so, this could damage the creation of new music in the UK, much of which depends on substantial upfront investments. While it has not been possible to assess and quantify this risk, it is worth noting for its potential impacts on both recording artists (who labels might invest less in under this option than in the counterfactual) and consumers (who might see a lower quality of music in future).

    e. The large costs on US record labels may restrict their ability to invest in new music. While this will primarily affect US musicians (rather than UK musicians), who may see less investment from their labels, this could lead to a reduction in the quality and quantity of music available to UK consumers than under the counterfactual.

<u>Option 3: Apply Option 1 to pre-existing sound recordings and performances; apply Option 2 to new sound recordings and performances</u>

49. Like Option 2, some of the impacts of Option 3 depend on how licence prices adjust under this option. Using the same assumption as under Option 2, **we estimate that UK broadcasters would enjoy savings under this option of £112.2 million (or £80.6 million in present-discounted terms with 2020 as the base year) over 2024-2033, while those that play music in the UK would save £127.0 million (£91.2 million) over the same period.** These savings would arise due to UK users not needing to pay licence fees to broadcast or play in public most US recorded music made after these changes enter into effect. Savings would be small initially but would grow over time as a greater proportion of music that is broadcast or played in public is covered by the new rules.

50. **We estimate that this option could lead to gains for UK record labels and recording artists of £130.1 million (£93.4 million) over the period 2024-2033.** Like the savings for UK users, these would be small initially but would grow over time.

51. **As noted for Option 2, the impacts on UK users and the UK music industry will depend in large part on how prices for music licences adjust under this option.** Depending on how prices change, UK record labels and artists could enjoy greater or smaller gains or could face costs.

52. These savings would come at the expense of US record labels**. We estimate that US record labels would face reductions in revenue relative to the counterfactual of £514.5 million (or £374.3 million in present-discounted terms with 2020 as the base year) over the period 2024-2033, from two sources**:

    a. owners of pre-existing US recorded music would face a new statutory obligation to share UK PPR revenues from those recordings. We estimate that these **costs on US record labels would be £119.3 million (£90.4 million) over the period 2024-2033**. **These costs would correspond to gains for US artists** involved in those recordings.

    b. owners of US recorded music made after these changes enter into force would in most cases not enjoy PPR in the UK. We estimate that **this would reduce US record label income by £395.3 million (£283.9 million) over the period 2024-2033**. These costs would be small initially but would grow over time.

53. Many of the indirect impacts noted in relation to Option 2 (e.g., upfront and ongoing administration and legal costs relating to familiarising with the changes to the law and renegotiating licences) could also arise under this option. However, given that the overall magnitude of impacts under this option is smaller than under Option 2, we would expect those indirect impacts to be similarly smaller. Additionally, unlike Option 2, this option would not involve restricting eligibility for rights in pre-existing sound recordings, and therefore does not carry the same risks to investor confidence in the UK music industry.

Assessment of options against objectives

54. Our objectives are to:

    a. ensure UK copyright law is consistent with the requirements of the international treaties on copyright, especially the Rome Convention and the WPPT

    b. reduce costs to UK users of foreign music where this can be done without significant costs to UK creators or consumers

    c. increase revenues for the UK creative industries where this can be done without significant costs to UK users or consumers

Option 0: Do nothing

55. **This option would not meet our objectives**. There would be no reduction to the costs on UK users to license foreign music and no increase to the revenues of UK creators. UK law would also continue to not be clearly aligned with the international treaties on copyright.

Option 1: Provide broadcasting and public playing rights to foreign producers and performers on a broad basis

56. **This option would not result in any reduction in costs for UK users of foreign music and would not result in any increase in revenues for the UK creative industries**. While this option avoids larger knock-on risks to UK creators (as could arise under Options 2 and 3), it does not do anything to address the one-way flow of broadcasting and public playing revenues between the UK

and certain other countries (especially the US), and therefore fails to satisfy the two latter objectives.

57. **This option would ensure consistency between UK copyright law and the international treaties on copyright.**

Option 2: Provide rights of broadcasting and public playing to foreign producers and performers on material reciprocity terms

58. **This option would result in substantial savings for UK users of foreign music**. **This option could also increase revenues for the UK music industry**, by providing UK record labels and artists a greater share of UK broadcasting and public playing revenues.

59. However, depending on how music licence prices and consumption of UK music adjust under this option, this option could instead lead to significant reductions in UK music industry revenues. This would be contrary to our first aim.

60. Additionally, this approach involves narrowing the eligibility criteria applied to pre-existing sound recordings. Changing the rules on protection for pre-existing works in this way might damage investor confidence and lead to reduced investment in the UK music industry. It is challenging to assess this risk but, if it were to be realised, this could be damaging to the UK music industry, which relies on large upfront investments by music companies.

61. **This option would ensure consistency between UK copyright law and the requirements of the copyright treaties.** But the risks to the UK music industry mean that this option does not appear to be clearly aligned with our other objectives.

Option 3: Apply Option 1 to pre-existing sound recordings and performances; apply Option 2 to new sound recordings and performances

62. **This option would result in substantial savings for UK users of foreign music** (albeit less than would be realised under Option 2). **This option could also result in substantial gains for the UK music industry**.

63. There are some risks to this option. However, unlike Option 2, this Option does not involve restricting protection extended to pre-existing sound recordings. As such, this Option does not pose the same risks to investor confidence as Option 2. Additionally, while this Option could result in a decrease in UK licensing income for UK record labels and artists, this seems less likely and any risks are likely to be of lower magnitude (because a smaller subset of foreign recordings will cease to enjoy protection in the UK under this Option than under Option 2, meaning that the scope for substitution effects is lesser). The risks under this Option therefore seem likely to be manageable.

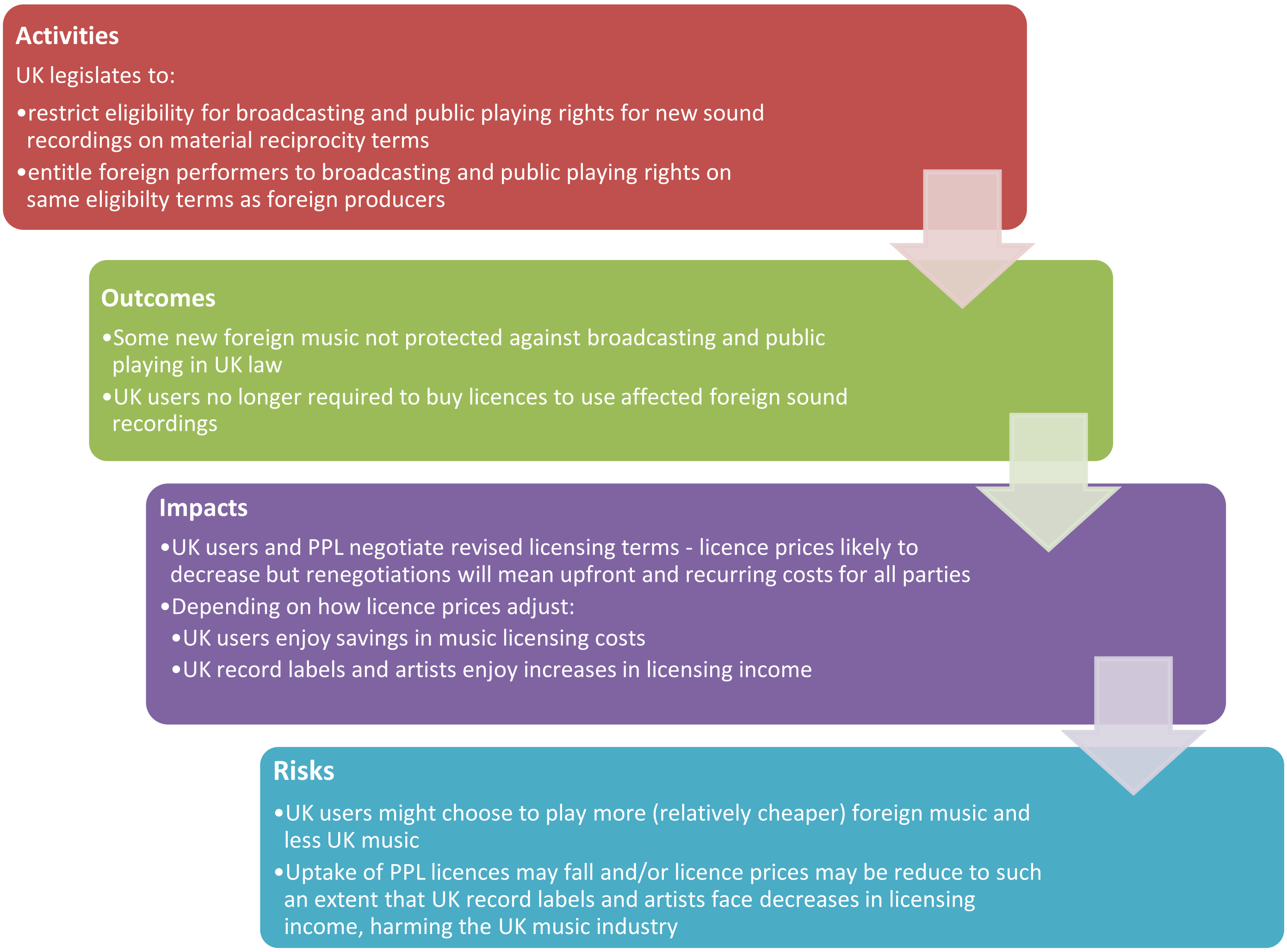
64. **This option would ensure consistency between UK copyright law and the requirements of the copyright treaties.**

Preferred approach and implementation

65. We do not favour Option 2 at this stage. Whilst Option 2 is associated with the highest monetised net present value, and therefore may offer the largest overall benefit, Option 2 also carries the risk of large monetised costs to UK record labels and artists (depending on how licence prices change and on the impact of substitution effects). Additionally, restrictions to the protection extended to pre-existing sound recordings could undermine business certainty and damage investor confidence in the UK music sector. While it has not been possible to monetise the costs associated with this, they could feasibly be large. The prospect of significant costs to the UK music industry is contrary to our objectives.

66. We are currently considering Options 1 and 3. Option 3 appears to satisfy our objectives (a logic model for this option is set out in the figure below). However, Option 3 also carries risks to the UK music industry (although these appear to be smaller than Option 2). In light of these potential risks under Option 3 (on which we will seek evidence via consultation), Option 1, which poses lower risks but offers lesser reward, might be preferable.

67. Implementing Options 1 or 3 would involve amendments to subsidiary legislation made using powers in the Copyright, Designs and Patents Act 1988.



Monitoring and Evaluation

68. The monitoring and evaluation of this intervention will involve both ongoing assessment and a formal post-implementation review (PIR), likely five years after these changes enter into effect.

69. Progress against the objectives of reducing costs on UK users and increasing revenues for the UK creative industries will involve consideration of both the costs on UK users and impacts on UK creators and consumers.

70. To assess changes in costs on UK users, we will primarily consider public data from PPL. PPL publishes data on the revenues it collects and distributes annually[3], as required under the Collective Management of Copyright (EU Directive) Regulations 2016. This data is broken down by licensing activity (e.g., broadcasting versus public performance) and includes the deductions PPL applies to the revenues it distributes and amounts paid to or received from overseas collecting societies on behalf of foreign performers and record labels. We will use this data to identify and track changes over time in i) licensing fees paid by UK users and collected by PPL for broadcasting and public performance; ii) the deductions that PPL apply to the revenues they distribute; iii) the amounts that PPL pay out to and receive from foreign performers and producers (broken down on a nationality-by-nationality basis); and iv) the amounts that PPL pay out to UK record labels and UK recording artists.

71. To assess impacts on UK creators and consumers, we will speak directly to broadcasters and other users, PPL, and the UK music industry. These parties should be able to advise on any impacts arising from this policy change on their operations. However, much of this information is likely to be commercially sensitive and confidential, such that there may be barriers to obtaining this information or to using it for public monitoring and evaluation purposes.

[3] Past years' data available online in Annual Transparency Reports on PPL's website: https://www.ppluk.com/about-us/reports-and-statements/

72. The other objective – ensuring consistency between UK law and UK international obligations – is less clearly measurable and less in need of measurement. We are satisfied that the changes envisaged in either Option 1 or Option 3 would be consistent with the UK's international obligations.

73. These changes will need to be monitored for a period of at least several years – especially if we were to implement Option 3, because the impacts under Option 3 are expected to be smaller at first and grow over time. We intend to monitor the impacts of these changes via informal, ongoing engagement with stakeholders and formally via a post-implementation review, likely after a period of five years (and potentially sooner if engagement with stakeholders reveals a strong case for this). Depending on the findings of the post-implementation review, we may commit to continuing to monitor and evaluate the impacts of this policy.

Risks and assumptions

74. The estimated impacts summarised in the preceding are founded on several main assumptions. These assumptions are set out below, and a table summarising how changes to these assumptions affect our estimates is provided at the end of this document.

<u>Provision of PPR in US domestic law</u>

75. The first assumption is that the US, to which all of the savings and costs described under Options 1-3 in some way relate, will not in future introduce comprehensive rights of broadcasting and public performance for producers and performers of sound recordings. If the US were to do so, then we would expect Options 2 and 3 to each result in very similar impacts to those envisaged under Option 1 – producers and performers from the US would then qualify for rights of broadcasting and public playing in the UK, regardless of whether UK law applies material reciprocity to eligibility for these rights.

76. The US decision of whether to introduce public performance rights for producers and performers of sound recordings is assumed to be independent of UK law on material reciprocity proposed in Options 2 and 3. While material reciprocity may encourage the US to introduce PPR to maintain protection in the UK for their nationals, we consider any incentivising effect to be small relative to the domestic policy considerations in the US.

77. If the US were to introduce comprehensive rights of broadcasting and public playing, we would expect to see a substantial increase in the revenues flowing from the US to UK artists and labels.

78. It would likely be desirable for the UK music industry that the US take this step, and legislation to introduce such rights has been tabled in the US[4]. However, the status quo remains that performers and producers of sound recordings are not entitled to royalties for these uses under US law, and we have assessed impacts on this basis.

<u>Growth of radio and public performance revenues</u>

79. The second assumption used in calculations under all three options is that PPL radio broadcasting and public playing revenue grows at its pre-pandemic (2016-2019) average rate of 5.5% per annum. If PPL revenue growth exceeds (or is smaller than) our assumptions, the impacts on all parties would be greater (smaller) in magnitude than we have estimated.

<u>Changes in music licence pricing</u>

80. A further main assumption, which is of relevance to Options 2 and 3, relates to how the price of a music licence will adjust following a change in the size of the music repertoire covered by that licence.

81. Licence prices are negotiated between PPL and users. Where agreement cannot be reached, users are able to refer the terms of a licence or proposed licence to the UK's Copyright Tribunal, which is able to confirm or vary the terms of a licensing scheme as it determines to be reasonable in the circumstances[5]. While the size of music repertoire is an important factor in determining whether a licensing scheme is reasonable, it is not the only factor[6]. Rights holders would likely argue that reducing the cost of a licence in direct proportion to the size of the repertoire would not

[4] Most recently, the (yet to be passed) American Music Fairness Act 2021.

[5] Sections 118(4), 119(4) Copyright, Designs and Patents Act 1988.

[6] Paragraph 14 of the decision in CT127/14, available online at https://www.gov.uk/government/publications/copyright-tribunal-decisions-and-orders

be reasonable, because it would have knock-on impacts on UK rights holders (as PPL would likely need to increase the deductions it applies to UK music revenues to cover the shortfall in its income arising from no longer administering rights of US labels and artists).

82. It is not possible for us to predict with confidence how licence prices will change under Options 2 and 3. While some reduction in licence prices seems likely, it seems unlikely that this would go so far as leading to prices reducing in proportion to the change in the size of the repertoire.

83. For Options 2 and 3, we have assumed that licence prices will reduce by half as much as would be expected if they varied proportionately with the size of the repertoire covered by the licence. In other words, if the size of the repertoire decreases by 40%, we assume the price of the licence will decrease by 20%. We do not claim that this assumption necessarily represents the likeliest or most desirable outcome. However, some support for this assumption might be found internationally.

84. In the Netherlands, the law previously provided these rights to foreign producers on performers on material reciprocity terms (i.e., as proposed in Option 2). In January 2021, the Netherlands amended its law to instead extend these rights on broad terms (i.e., as proposed in Option 1). This resulted in a large increase in the repertoire of music covered by broadcasting and public playing licences in the Netherlands. Sena (the Dutch collecting society for producers and performers) estimated that to pay the rights holders of this new music repertoire without reducing the pool of revenues for local performers and producers would have required increases to licence prices of 60%. In practice, Sena reports that it was able to negotiate an increase in licence fees with users who play music in public of 26.6%[7]. In other words, an increase in the size of the repertoire led to an increase in licensing fees, but slightly less than half as much as would be the case if licence fees scaled linearly with repertoire. While the situation in the Netherlands is the inverse of the situations envisaged under Options 2 and 3, this still offers some support for our assumptions of how licence prices may change in the UK under these options. However, overall, there remains significant uncertainty on this point.

85. Given the uncertainty over this assumption, we have also modelled 'high' and 'low' scenarios, where the prices of music licences change in direct proportion to the change in the size of the repertoire, and where the price of music licences changes by only a quarter as much as would be seen for a directly proportionate relationship, respectively. These are the source of the 'high' and 'low' estimates of impacts reported on the summary pages of this impact assessment. Broadly, where licence prices are more responsive to changes in the size of the repertoire, UK users enjoy greater savings in their licensing fees under Options 2 and 3, while UK rights holders experience smaller gains and even costs. Where licence prices are *less* responsive to changes in the size of the repertoire, UK users enjoy smaller savings, while UK rights holders enjoy larger gains.

86. It should be noted that this assumption affects only the distribution of savings and gains/costs between UK users and UK (and some other) record labels and artists. It does not affect our estimates of the costs on US record labels under Options 2 and 3.

<u>Consumption of music in the UK and substitution effects</u>

87. A further main assumption relates to the amounts of US and UK music that are broadcast or played in public, both under the status quo and after the implementation of any options, especially Options 2 and 3, where substitution effects may feasibly arise.

88. We assume that, under the status quo and under each option, US music (music of which the producer is a US national or US-based business) and UK music constitute, respectively, 40% and 50% (by value) of the music that is broadcast or played in public in the UK (the remaining 10% being non-UK, non-US music). These figures are based on BPI data on sales and streams of albums[8]. We use this album sales/streams data as a proxy for broadcasting and public performance activity because there is no publicly available data on the country of origin of music that is broadcast or played in public in the UK.

89. This assumption introduces two sources of uncertainty into our estimates.

[7] Sena submission to the European Commission call for feedback on remuneration of music performers and record producers from third (non-EU) countries for recorded music played in the EU, available online at https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13530-Remuneration-of-music-performers-and-record-producers-from-third-non-EU-countries-for-recorded-music-played-in-the-EU/F3346188_en

[8] BPI All About the Music 2018

90. First, it is unlikely that consumption patterns across radio broadcasting, public performance, and album sales/streams precisely align. Using this proxy introduces uncertainty into our estimates. We have therefore carried out sensitivity analysis on our estimates by instead assuming that US music accounts for 30% or 50% of music that is broadcast or played in public in the UK. Our estimates of the costs and benefits of these changes are broadly (although not precisely) proportional to the proportion of music played on the radio or in public that is US music. As such, if US music represents only 30% of the music that is played on the radio or in public, we estimate that the costs and benefits under each option are approximately 0.75 times the magnitude of the costs and benefits quoted in the preceding sections. Conversely, if US music were to account for 50% of the music that is played on the radio or in public, our estimates of the impacts of the options are approximately 1.2 times greater than the values quoted in the preceding.

91. Second, we assume that the relative consumption of UK, US, and other music by UK users does not change under any of the options. Under Option 2 and Option 3, some foreign music will cease to be protected against broadcasting and public playing under UK law, reducing the price of that music relative to the music that remains under protection. This could lead to users substituting the non-protected music for UK music, changing the profile of music that is broadcast or played on the radio in the UK, and having knock-on consequences for the UK music industry.

92. In practice, substitution effects could result in downwards pressure on licence prices for UK music and/or fewer licences being bought. This would result in decreases to the licensing income collected by PPL on behalf of UK record labels and artists, which might outweigh any gains they would otherwise enjoy under Options 2 or 3.

93. We have not specifically estimated or modelled the impacts of a reduction in demand for UK music by UK users under Options 2 and 3. In other words, we implicitly assume that the cross-elasticity of demand between UK and US music is 0 (i.e., they are not substitutes, so demand for UK music is unresponsive to a fall in the relative price of US music).

94. We have chosen not to model this effect because of a lack of data on which to base any modelling, rather than because we expect that substitution effects will not arise.

95. However, there are reasons to consider that substitution effects might be limited. First, broadcasters are likely to base their music choices on audience preferences. Music tastes and habitual behaviour may mean that listeners are unwilling to accept a substitution of US music for UK music by broadcasters, who may therefore find it profitable to continue to play UK music to avoid a fall in listener figures. UK broadcasters are also less likely to substitute UK music for US music if licensing costs account for a small percentage of their income, and therefore cost savings of substituting UK for US music are relatively small. Additionally, the BBC (one of the most significant broadcasters of music) commits under its Charter to play certain proportions of UK music, meaning that its ability or inclination to substitute for other music is likely to be small.

96. Additionally, those users that play music in public (e.g., a shop playing a radio) typically license the rights in recordings and the rights in musical compositions under a single joint licence from PPL-PRS, a joint venture between PPL and PRS for Music, the collecting societies for record labels/performers and publishers/songwriters respectively. Under all options, users will still need to purchase licences for the rights in the composition (even if, under Option 2, a user chose to play only US music, for example). This will mean they will still need to purchase a licence via PPL-PRS. These users' abilities to entirely opt-out of the licensing process by changing the music they play will therefore be constrained, and users might be inclined to maintain their existing practices.

97. In any case, while we do not specifically model substitution effects, we have modelled various changes in the price of music licences for UK music, which is one of the main potential indirect impacts of substitution effects. The 'high' benefit/cost scenario reported on the summary pages of this assessment for Options 2 and 3 (in which we assume that licence prices will decrease more sharply than under our 'best estimate' calculations, and which results in net costs on UK record labels and artists) might therefore be taken as implicitly reflecting one of the potential impacts of substitution, even though we have not specifically modelled substitution effects.

98. The uncertainty around both the make-up of music played that is broadcast or played in public under the status quo and the possibility of substitution effects mean that there is a significant uncertainty around our estimates of the costs and benefits of all options, including our favoured

approach. We will seek data from stakeholders on these issues in the course of public consultation.

PPL operational costs

99. In calculations of monetised costs and benefits, we assume that PPL's operational costs are fixed, and therefore that they do not change under the policy options. This is a simplifying assumption that means that, despite PPL distributing UK licensing revenue to a smaller pool of rightsholders under options 2 and 3, its operational costs would not change.

100. This assumption seems reasonable. Under all options, PPL would continue to license music to the same number of users, which would involve negotiating those licences and undertaking enforcement where appropriate. PPL would also need to maintain the physical and digital infrastructure to support its activities. These costs are unlikely to be responsive to changes in the size of the music repertoire PPL represents. Instead, the main changes in PPL's activity under Options 2 and 3 would be in how it distributes revenues once it has collected them. While these distribution activities involve costs for PPL, and could be more responsive to changes in the size of music repertoire and the numbers of rights holders PPL represents, these costs seem likely to be a relatively small proportion of PPL's total expenditure. Additionally, those options that result in a smaller music repertoire are also likely to result in more complex licensing negotiations for PPL and users, which will impose additional operational (legal) costs on PPL. As such, we would not expect the changes in music repertoire in Options 2 and 3 to result in significant savings in PPL's operational costs, but we will test this at consultation.

101. Operational costs are deducted from estimates of revenue collected by PPL, for distribution to rightsholders, following a statement made in PPL's Transparency Report (page 8): "All costs incurred during a financial year are deducted from the subsequent distribution of revenue for that year".

Rationale and evidence to justify the level of analysis used in the IA (proportionality approach)

102. The analysis we have undertaken for this impact assessment is largely based on sector-level figures (e.g., total UK broadcasting and public performance revenues). Copyright licences are private contractual arrangements and are typically commercially sensitive and subject to confidentiality. As such, it has not been possible to estimate costs or benefits at the level of individual businesses or rights holders. However, the aggregate estimates of savings and costs we have produced offer a reasonable and proportionate view of the overall impacts of these policy options.

Impact on small and micro businesses

103. We expect Option 1 to have minimal impacts on UK parties, including small and micro businesses in the UK. This is because we expect the impacts to be concentrated among certain foreign performers and certain foreign record labels (although those performers – who would enjoy gains as a result of this option – may be considered to be (foreign) micro businesses; and those record labels – who would face costs under this option – may comprise (foreign) small and micro businesses, although the costs would likely be concentrated on larger enterprises, because it is larger record labels and distributors that are likely to own the commercially successful music that is broadcast or played in public in the UK).

104. Option 3 would result in savings for many small and micro businesses relative to the counterfactual (Option 0). We estimate that Option 3 will result in savings of £127.0 million (or £91.2 million in present-discounted terms with 2020 as the base year) over the period 2024-2033 for shops, restaurants, nightclubs and others that play music in public, many of which (although not all) will be small and micro-businesses. At the level of individual businesses, the saving is likely to be on the order of hundreds or thousands of pounds per year (as any saving will be a proportion of total music licensing costs for the business, which are typically themselves in the hundreds or thousands of pounds).

105. While the impacts on small and micro-businesses that play music in public are likely to be small at the level of individual businesses, those impacts should be positives for those businesses.

106. Similarly, many UK recording artists, producers, and even record labels are small and micro-businesses. We expect the preferred option to result in additional revenues for these businesses relative to the counterfactual. However, the gains for these groups under the preferred option are likely to be concentrated among larger, more established businesses, as any gains will arise in proportion to an artist's or label's broadcasting and public playing revenues. Music that generates larger broadcasting and public playing revenues tends to be owned by more established record labels, which are less likely to be small or micro-businesses. Overall, the net effect on small and micro-businesses in the UK music industry is likely to be positive, although, as noted previously, the impact will depend on how licence prices adjust following this change.

Wider impacts

107. Wider impacts are explored in detail in the section 'Basis for estimates of costs and benefits'. The wider impacts of Option 3 may include:

a. **Savings for consumers**. Businesses that play music in public, such as shops, nightclubs, and hotels are likely to enjoy savings under Option 3 relative to the counterfactual. We estimate that, across all bodies that play music in public, these savings would approximately £127.0 million for the period 2024-2033, with savings continuing beyond this, with a substantial portion of these savings accruing to businesses (as opposed to, for example, charities and public sector organisations, although those groups should also benefit from this change to the extent that they license music). Those businesses may pass on those savings to consumers in the form of lower prices for their goods and services. However, we would expect these impacts to be small. The savings enjoyed by businesses are likely to be spread among tens or hundreds of thousands of businesses, such that savings at the level of any individual business are likely to be small relative to other factors influencing prices.

b. **Impacts on charities and public sector organisations**. Like for-profit enterprises, charities and public sector organisations require licences to play music in public and would therefore enjoy a share of savings arising from a reduction in the price of those licence fees. However, for similar reasons as above, we would expect the impacts of these savings to be small at the level of individual charities or public sector organisations.

c. **Less investment by US record labels in music enjoyed by UK consumers.** Our preferred option would result in substantial decreases in the revenues flowing from the UK to US record labels relative to the counterfactual: £119.3 million for those US record labels that own pre-existing sound recordings and £395.3 million for those that produce recordings after these changes enter into effect (all figures for period 2024-2033). This is likely to lead to substantially less investment by those record labels in new music than would take place under the counterfactual. While the main parties missing out on that investment are likely to be US artists (rather than UK artists), this could result in less music, or music of a lesser quality, to be enjoyed by UK consumers. It is hard to assess the extent of this impact, but it seems likely to be small. UK PPR revenues are only one (relatively small) source of income for US record labels, and other factors are likely to dominate investment decisions.

108. We would not expect the proposed approach to have any significant impacts on competition within the music industry or among users of recorded music, nor on innovation more broadly.

109. We would expect the wider impacts of Option 1 to be limited, given that this option would be expected to have minimal impacts on UK parties. However, Option 1 would result in a reduction in revenue for US record labels, which might lead to similar wider impacts as set out in relation to Option 3 in paragraph 107(c).

A summary of the potential trade implications of measure

110. Option 3 would result in a reduction in the revenues flowing from UK businesses and (indirectly) UK consumers to US (and, to lesser degrees, certain other nationalities') record labels and recording artists. We estimate this reduction (the combined savings of UK broadcasters and those in the UK that play music to the public) as being worth £239.2 million (or £171.7 million in present-discounted terms with 2020 as the base year) over the period 2024-2033 (but it would continue beyond this point).

111. This could in turn act as an incentive for the US, and other affected countries, to introduce equivalent rights of broadcasting and public performance. If the US were to do so, this would have substantial positive benefits for the UK music industry (in the form of new revenues flowing from the US to UK artists and labels) and would mean that UK users would again need to pay licence fees to broadcast or publicly play US music (as is currently the case and as would be the case under Options 0 and 1). However, the extent to which US record labels and artists qualify for rights in other countries (such as the UK) is only one factor in any decision on the part of the US to introduce new statutory rights. Any incentive arising under our Option 3 is likely to be secondary to the domestic impacts in the US of amending the law.

Basis for estimates of costs and benefits

Option 1: Provide broadcasting and public playing rights to foreign producers and performers on a broad basis

Direct impacts

112. The immediate impact of this option would be that many owners of sound recordings (in particular, those which have engaged certain foreign performers, which will typically be foreign record labels) would for the first time be subject to a statutory obligation to pay an equitable (50%) share of broadcasting and public playing royalties to the performers involved in those recordings. The practical impacts of this change would be concentrated on US record labels, given the popularity of US music in the UK and the fact that most US performances do not qualify for the relevant rights at present (as a result of the current mirror test in UK law and the limited equivalent protection in US law). Direct impacts on non-US record labels and associated performers are likely to be very small relative to impacts on US parties. Using 2017 album sales data as a proxy, US music represents approximately 40% of all music consumed in the UK, second after UK music at approximately 50%. After these nationalities, Canadian music represents around 4% of music, Irish, German, and Swedish music each represent 1-2%, and no other nationalities represent more than 1%[9]. Recordings and performances from Canada, Ireland, Germany, and Sweden will not be materially impacted by these changes as performances originating in these countries in most cases already qualify for full rights in UK law. As such, to a good approximation, we can focus solely on impacts arising in relation to US music.

113. In 2022, we estimate that UK users of sound recordings paid £75.3 million for the broadcasting and public playing of US sound recordings (40%[10] of the £188.4 million[11] collected by PPL in 2022 for broadcasting and public playing).

114. Not all of this would have been paid through to the owners of those recordings. PPL, which administers broadcasting and public playing of sound recordings in the UK, deducts its operational costs from the revenues it collects and distributes. In 2022, PPL deducted 11% of broadcast revenues and 22% of public playing revenues to meet its operational costs[12]. Where those revenues are distributed to foreign rights holders via a foreign collecting society, the revenues may be subject to further administrative deductions by the foreign collecting society[13]. Assuming that PPL applied these deductions to revenues associated with US recordings, we estimate that PPL transferred £62.7 million[14] onwards to US rights holders for broadcasting and public playing in 2022. In some cases, these monies were paid by PPL direct to the relevant rights holders (e.g., certain US record labels that also have a presence in the UK), while in others these monies were paid by PPL to US collecting societies for onward distribution to rights holders (in which case the revenues may have been subject to further administrative deductions, reducing the total amount reaching US rights holders).

115. Had US performers enjoyed full rights to equitable remuneration for radio broadcasting and public playing, as they would do under this option, they would have received 50% of this £62.7

[9] BPI All About the Music 2018

[10] Based on BPI data on sales and streams of albums, BPI All About the Music 2018.

[11] Page 8, PPL Annual Transparency Report 2022 (£88.35m broadcast revenue plus £100.023m public performance revenue).

[12] Page 8, PPL Annual Transparency Report 2022.

[13] PPL, for example, deducted 7% of the revenues it received from international sources for distribution to UK rights holders in 2021 (Annual Transparency Report 2021); those revenues were presumably also subject to administrative deductions by the collecting societies in the countries of origin.

[14] (£88.35m – (£88.35m*11%) + £100.023m – (£100.023m*22%)) * 40% = £62.7m.

million in 2022, or £31.3 million (subject to any further deductions by the relevant US collecting societies). Some of this would have been paid to non-featured artists and some would have been paid to featured artists[15].

116. The gain this would represent for US performers (and the corresponding cost to US record labels) depends on how much US performers were paid under the status quo.

117. In 2022, PPL paid £1.7 million for distribution to US non-featured artists[16] and £1.1 million for distribution to US featured artists[17]. We assume these amounts relate to digital transmissions of music for which US performers currently enjoy rights in UK law.

118. In addition to these amounts, US featured artists are likely to have received a share of revenues directly from their record labels. Featured artists are typically paid via a combination of upfront advances and ongoing royalties. Royalty rates vary and depend on factors such as the popularity (and therefore negotiating strength) of the artist and the value of the label's upfront investment. Record deals are private and typically confidential matters. If we assume an average royalty rate of 20%[18], we estimate that US featured artists received £12.5 million in UK PPR revenues under their contracts with their record labels.

119. Had US non-featured artists and featured artists qualified for full PPR in UK law in 2022, we estimate that they would have enjoyed an additional £16.1 million relative to the status quo[19]. These gains would have corresponded to a reduction in revenue for US record labels of an equal amount.

120. These gains/costs would vary (and likely increase in magnitude) in future. We forecast these using historic growth rates of radio broadcasting and public playing licence fees in the UK between 2016 and 2019[20], which grew at 5.5% annually. We assume that:

- Broadcast and public playing royalties continue to grow at 5.5% annually from their 2022 baseline.
- Digital transmissions over which US performers currently enjoy rights in the UK would continue to represent the same proportion of overall broadcasting and public playing revenues under the counterfactual (Option 0)
- US music continues to represent approximately 40% of music consumption and revenues in the UK

121. Based on this, we estimate annual costs to US record labels and gains to US performers relative to the counterfactual (Option 0) as set out in the table below. We estimate that, over the period 2024-2033[21], with standard discounting of 3.5% annually and using 2020 as the base year for present-discounting, this option would result in costs to US record labels and gains for US performers of £170.1 million (or £230.2 million in the absence of discounting). How this gain would be distributed between US featured artists and US non-featured artists would depend on the particulars of each recording (e.g., how many non-featured artists were involved).

Year	**Estimated costs on US labels / gains on US performers (£m)**	**Costs/gains with discounting (£m)**

15 PPL's distribution rules provide for up to 35% of the performers' share of equitable remuneration to be paid to non-featured artists. However, this is only the case where there are five or more non-featured artists. Where a recording involves fewer non-featured artists, the featured artist will enjoy a larger proportion of the performers' share. Schedule 5, PPL Distribution Rules.

16 Via the AFM & SAG-AFTRA Intellectual Property Rights Distribution Fund, the US collecting society for non-featured artists, PPL Annual Transparency Report 2022

17 Via SoundExchange, the US collecting society for featured artists and record labels, PPL Annual Transparency Report 2022.

18 This figure seems reasonable; in 2021, record deals with the UK major record labels involved average royalty rates of 26% (Final report of the Competition and Markets Authority market study into music and streaming, https://www.gov.uk/government/publications/music-and-streaming-market-study-final-report). Older contracts typically involve lower royalty rates. 20% is likely to offer a reasonable approximation for our purposes.

19 50% of £63 million, or £32 million, less the £14.9 million we estimate they received through their collecting societies and contracts.

20 We do not use data for 2020-2022 for this forecast. Revenues in these years were significantly affected by pandemic-related restrictions – meaning a drop and subsequent rebound in growth rates that are unlikely to be representative of future years. There are some risks in using data for 2016-2019. Changes in consumption habits that are likely to accelerate in future (e.g., consumers choosing to stream music rather than listen to the radio) mean that true growth rates might be lower than those seen in 2016-2019, potentially leading to an overestimate of future costs and gains.

21 We report costs and gains from 2024 onwards (as opposed to 2023) as these changes are unlikely to enter into force before 2024. We forecast impacts up to 2033 only as forecasting further into the future is likely to increase greater uncertainties.

2024	17.9[22]	15.6
2025	18.9	15.9
2026	19.9	16.2
2027	21.0	16.5
2028	22.1	16.8
2029	23.4	17.1
2030	24.7	17.5
2031	26.0	17.8
2032	27.5	18.2
2033	29.0	18.5
Total	**230.2**	**170.5**

122. These benefits and costs would affect performers and labels according to the popularity of their music in the UK. This would mean costs and gains being concentrated among the most successful record labels and artists, but there would likely be a long tail of less successful record labels and performers that are affected by these changes to lesser degrees. We are unable to quantify with any precision the numbers of labels or artists affected by this.

123. There may also be equivalent (although much smaller) costs on UK record labels and UK artists that have produced and performed on sound recordings involving affected foreign performers. Under this option, those UK labels and artists may need to share a greater proportion of UK broadcasting and public playing revenues with those foreign performers. We have not been able to monetise this impact, but we expect it to be small, given that only a small proportion of UK music is likely to be affected. For example, music produced by a UK record label is likely to have been recorded in the UK (with all performances taking place in the UK); where this is the case, all performances contained in the recording will already qualify for PPR under the counterfactual (even if they were given by a US national) and the revenues associated with that recording will be unaffected by this option.

Indirect impacts

124. Although the costs and benefits described in the preceding fall largely on US record labels and US performers, these could result in some knock-on effects on other parties, including UK creators and consumers of recorded music.

125. The increased costs on US record labels would need to be met through reduced spending by those labels elsewhere (e.g., reduced investment in artists), increased revenue (e.g., by increasing the licensing fees they charge users) or through reductions to their profits.

126. It seems unlikely that this change would result in increased licensing fees for UK users. Record labels are not able to unilaterally increase the broadcast and public playing licensing fees for their music in the UK, both because it is PPL, rather than individual labels, that licenses music on behalf of all record labels and performers (many of which will be unaffected by the changes under this option) and because any proposed licence is subject to negotiation between the copyright owners and the users, with users able to refer licence terms to the Copyright Tribunal where a dispute arises. A change in how revenues are distributed between a subset of record labels and their artists would not change the value of the recordings to broadcasters and other users. It therefore appears unlikely that this option would result in an increase in licence fees for the broadcasting and public playing of music in the UK.

127. If the affected record labels were nevertheless successful in gaining an increase to licence fees to at least partially offset their increased costs, this would mean additional costs for UK broadcasters and those businesses that play music in public (e.g., restaurants, gyms, nightclubs). In turn, those users may seek to pass those costs further down the chain. For broadcasters this

[22] Calculated by first calculating US performer remuneration under status quo. Assuming a 20% average royalty rate is paid by record labels to featured artists, and applying this to 2022 revenues paid through to US rights holders after PPL admin deductions, 20%*£62.7m = £12.5m. Adding £1.087m revenues paid to US featured artists by PPL in 2022 (PPL Annual Transparency Report 2022, pg. 13, payments to SoundExchange (performer)) and £1.664m revenues paid to US non-featured artists by PPL in 2022 (PPL Annual Transparency Report 2022, pg. 13, payments to The Fund), this gives total estimated US performer remuneration of £15.3m in 2022. Under option 1, assuming performers receive 50% of revenues, 50%*£62.7m = £31.3m. Applying pre-Covid average yearly growth in PPL revenues (5.5%) implies 2024 performer remuneration of £17.0m under status quo, and £34.9m under option 1. Taking the difference implies gains on US performers (/costs on US labels) of £17.9m in 2024.

could include seeking to charge more for advertising. In the case of other UK businesses who hold a license to play music publicly, for example nightclubs or restaurants, it could include increasing prices for consumers.

128. Alternatively, affected US record labels might seek to reduce their spending elsewhere to meet these costs. This could mean reduced investment in new artists (e.g., less spending on advances, production costs, or marketing), which in turn may reduce the quality or quantity of music being produced for enjoyment by consumers (including those in the UK). These impacts could be significant given the scale of the anticipated costs on US record labels. However, these costs should be considered against overall recording industry revenues in the US, which reached $15 billion (£12.5 billion) in 2021[23]. It therefore may be argued that these costs, while significant in absolute terms, should not drastically affect investment by US record labels in new music or, therefore, the enjoyment of music by UK consumers.

129. There would also be opportunity costs under this option (as is the case under the counterfactual, Option 0). UK broadcasters and other businesses paid tens of millions of pounds in 2022 to license foreign music for broadcast and public playing, with a large proportion of these costs (including much of the £75.3 million estimated to be paid to in respect of US music) being both avoidable and of little or no benefit (directly or indirectly) to UK creators or consumers. These costs would be maintained under this option. That money might otherwise be spent by broadcasters and those that play music in public in investing in their businesses or in passing on savings to customers.

<u>Option 2: Provide rights of broadcasting and public playing to foreign producers and performers on material reciprocity terms</u>

130. Under this option, many foreign sound recordings, especially US sound recordings, would cease to enjoy protection against most acts of broadcasting and public playing under UK law. This would mean that a UK broadcaster that wishes to play a US sound recording, or a shop that wants to play US music in public in the UK, would in most cases not need to seek the permission of or pay a licence fee to the owner of the sound recording.

131. Other rights and other acts would be unaffected by this change; a person wishing to broadcast or play music in public would still need to obtain a licence to use the musical composition (typically administered in the UK by PRS for Music) and would still need permission to use UK and many other foreign sound recordings; and a person wishing to sell physical copies of a US sound recording or make it available for on-demand access over the internet would still need to obtain a licence from the owner of the sound recording and the owner of the musical composition, as is the case at present.

132. US music (and some other foreign music) ceasing to be covered by PPL licences would mean a substantial reduction in revenues for US record labels (and, to the extent that US featured artists share in those revenues under their contracts, US featured artists).

133. However, the impacts on UK users and the UK music industry would depend largely on how the prices of PPL licences adjust following this change. As discussed in the preceding section on ‘Risks and assumptions’, we assume for the purposes of our central estimates that licence prices would reduce under this option by half as much as would be expected if licence prices scaled linearly with the size of the repertoire, while our ‘high’ and ‘low’ estimates assume that licence prices scale linearly with changes in the size of the repertoire, and that licence prices scale by a quarter as much as would be seen for a linear relationship, respectively[24].

134. In 2022, we estimate that UK users paid £75.3 million[25] in 2022 to license US music for broadcasting and public playing. Following this change, US sound recordings would only be protected against forms of broadcasting and public playing that are protected in US law (certain

[23] https://www.riaa.com/reports/2021-year-end-music-industry-revenue-report-riaa/

[24] In other words, in our central estimate, a 40% reduction in the size of the repertoire results in a 20% reduction in the price of the licence. In our high estimate, the same change in repertoire results in a 40% reduction in price. In our low estimate, the same change in repertoire results in a 10% reduction in price.

[25] Calculated taking 2022 rights revenue collected from broadcasting and public performance (£188.473m, 2022 PPL Transparency Report), and assuming 40% attributable to US rights holders (£75.35m), based on 2017 album sales data.

digital audio transmissions such as internet radio). We estimate that UK users paid £6.2 million for those uses of US music in 2022[26].

135. Based on these figures and our assumptions on how licence prices would adjust, we estimate that UK users would have saved £34.6 million in licensing fees in 2022 had US music not been protected against broadcasting and public playing other than certain digital transmissions[27]. We estimate that this change would have also resulted in a gain for non-US record labels and artists of £22.6 million[28], of which UK record labels and artists would have gained £18.8 million[29], which would be split equitably between UK record labels and UK artists. This gain arises because if licence prices adjust downwards less than one-to-one with the drop in music repertoire covered by a licence, then there will be more revenue to distribute among remaining (non-US) rightsholders, even if we assume that PPL's operational costs are fixed[30] and must be deducted from these distributions[31].

136. To forecast impacts into the future, we assume that:

a. Broadcast and public playing royalties continue to grow at 5.5% annually from their 2022 baseline.

b. Digital transmissions over which US performers currently enjoy rights in the UK (and for which record labels and performers would continue to enjoy rights under this option) continue to represent the same proportion of overall broadcasting and public playing revenues.

c. US music continues to represent approximately 40% of music consumption and revenues in the UK.

d. The US does not in the near future introduce full rights of broadcasting and public playing in its domestic law. If the US did do this, then its nationals would enjoy full protection under UK law by virtue of the mirror test envisaged under this option. If this were to happen, the impacts would become very similar to those predicted under Option 1.

137. Based on this, we estimate the future savings for UK users of US music, the reduction in revenue for US rights holders, and the gains for UK record labels and artists, all relative to the counterfactual. As under Option 1, we limit our forecast to the period 2024-2033.

138. This gives cumulative savings for UK broadcasters and those that play music in public of £232.7 million (or £171.9 million in present-discounted terms with 2020 as the base year) and £263.5 million (£194.6 million) respectively, and gains for UK record labels and artists together of £269.9 million (£199.4 million). These gains for UK parties would come at the expense of US record labels (and, to the extent that they would enjoy a share of remuneration under their contracts under the counterfactual, US featured artists), who would face reductions in revenue of £820.1 million (or £605.9 million in present-discounted terms with 2020 as the base year). The annual gains and losses across this period (without any present-discounting) are presented in the table below.

Year	Savings in licensing fees for UK broadcasters (£m)	Savings in licensing fees for those playing music in public (£m)	Reduction in income for US record labels and artists (£m)	Additional revenue for UK rights holders (£m)

[26] To arrive at this estimate, we take the amounts paid by PPL to US collecting societies for performers in 2022 (£1.66 million to AFM SAG-AFTRA and £1.09 million to SoundExchange) and assume that this corresponds to the performer share (50%) of revenues for digital transmissions. Total revenues paid through for these uses of US music are therefore estimated to be £5.5 million (the performer share plus an equal record label share). The amount paid through is the amount paid by users minus the administrative deductions made by PPL. In 2022, deductions were 11%. We therefore divide £5.5 million by 0.89 (100-11%) to arrive at £6.2 million as the amount paid by UK users for these digital uses of US music.

[27] This figure arrived at by subtracting £6.2 million from £75.3 million to obtain the non-digital transmission user fees in 2022 and multiplying this by a factor of one half.

[28] Because we assume that licence prices will reduce by half as much as would be expected if licence prices scaled linearly with changes in the size of the repertoire covered by a licence, this means there will be more revenue to distribute to remaining rightsholders, after fixed costs are deducted.

[29] We assume UK music accounts for around half of all music broadcast or played on the radio in the UK. If US music (around 40% of consumption) is excluded, UK music therefore accounts for 50/(100-40)% or 5/6 of music.

[30] This seems a reasonable assumption. While the repertoire covered by PPL's licences would change significantly under this option, this seems unlikely to lead to any significant reduction in its operational costs.

[31] Page 8 of PPL's 2022 Annual Transparency Report states: "All costs incurred during a financial year are deducted from the subsequent distribution of revenue for that year".

2024	18.1[32]	20.4[33]	63.6[34]	20.9[35]
2025	19.1	21.6	67.2	22.1
2026	20.1	22.8	70.9	23.3
2027	21.2	24.0	74.8	24.6
2028	22.4	25.3	78.9	26.0
2029	23.6	26.7	83.2	27.4
2030	24.9	28.2	87.8	28.9
2031	26.3	29.8	92.7	30.5
2032	27.8	31.4	97.8	32.2
2033	29.3	33.2	103.2	34.0
Total	**232.7**	**263.5**	**820.1**	**269.9**

139. We consider each of these impacts in more detail below.

Benefits to UK users

140. The impacts on businesses and other organisations that play music in public will be spread across many thousands of bodies – any shop, salon, gym, hotel, nightclub, office, or other place that plays music to the public would be affected. The cost of a licence under the status quo, and therefore the scale of savings that may be realised, depends on the nature and size of a business or organisation, but licence costs are typically in the hundreds or thousands of pounds per year, and savings will be in proportion to this. Given the wide-ranging and cross-sector nature of the businesses and other organisations affected by this change, it is difficult to assess the knock-on impacts of any savings on these bodies' operations. However, given that savings will in many cases be on the order of hundreds or thousands of pounds per year or less, the potential for this to result in, for example, noticeably lower prices for consumers, higher profits for businesses, or higher wages for staff seems likely to be small – although impacts could be significant at the aggregate level.

141. The savings for UK broadcasters will depend closely on their licensing costs under the status quo and to the proportion of the music that they play that originates from the US or other affected countries (which likely varies across broadcaster depending on the audience and mission). Revenues for the UK radio broadcasting sector were £638 million in 2021[36]. In this context, savings of around £20 million per year are notable but relatively small. These savings could result in broadcasters being able to, and choosing to, invest more money in other content, in increased profits for commercial broadcasters, and/or decreased costs for those advertising on the radio and television.

142. However, as noted above, these estimates are based on two assumptions that may not hold true.

143. The first is that proportion of music played on the radio or played in public would remain steady at approximately 40%. However, under this option, as noted in the preceding section on 'Risks and assumptions', there would be a clear incentive for broadcasters and those that play music in public to shift their usage towards US recordings and other music that is not protected

[32] Calculated taking 2022 rights revenue collected from broadcasting and public performance (£188.473m, 2022 PPL Transparency Report). Assuming 40% attributable to US rights holders (£75.35m),and deducting £6.2m attributable to digital transmissions (see paragraph 124), implies £69.2m non-digital transmission user fees in 2022. Applying pre-Covid average yearly growth in PPL revenues (5.5%) gives 2024 non-digital transmission user fees of £77.0m. Assuming licence fees paid for new US music decline by half the reduction in music repertoire covered by the licence, this implies savings in licensing fees for UK broadcasters of £38.5m in 2024. Assuming 2022 proportion of PPL revenue attributable to broadcasting (47%) implies £18.1m savings for UK broadcasters in 2024, and £20.4m savings for bodies playing music in public.

[33] See footnote 33.

[34] Calculated taking 2022 rights revenue collected from broadcasting and public performance (£188.473m, 2022 PPL Transparency Report). Assuming 40% attributable to US rights holders (£75.35m), deducting admin fees (11% on broadcast revenue, 22% on public playing revenue) gives 2022 US rights holder revenue of £62.66. Deducting estimated 2022 revenues paid to US labels and performers by PPL for relevant digital audio transmissions protected by PPR in US law (from page 13, 2022 PPL Transparency Report, 2*(1.087+1.664) = £5.5m), gives £57.2m 2022 US rights holder revenue, associated with transmissions not protected by PPR under US law. Applying pre-Covid average yearly growth in PPL revenues (5.5%) gives 2024 US rights holder revenue of £63.6m, no longer payable under option 2.

[35] Calculated taking income no longer distributed to US record labels and artists in 2024 under option 2 (£63.6m) and deducting savings in licensing fees for UK broadcasters (£18.1m) and those playing music in public (£20.4m). This leaves £25.1m additional revenue for PPL members in 2024 under option 2, because licensing fees are assumed to decline by half the reduction in music repertoire covered by the licence. Assuming UK share of music consumption in the UK is 50%, and US share of music consumption in the UK is 40%, UK share of additional revenue is calculated as £25.1m * 0.5 / (1 – 0.4) = £20.9m.

[36] Figure 67, OFCOM Media Nations: UK 2022, available online at https://www.ofcom.org.uk/research-and-data/tv-radio-and-on-demand/media-nations-reports/media-nations-2022.

under UK copyright law against broadcasting and public playing, in order to limit their licensing costs. This could increase the savings for UK broadcasters and bodies that play music in public at the expense of reduced licence fee income for UK and other record labels and performers. Those further savings and corresponding lost licensing incomes could feasibly reach millions or tens of millions of pounds per year.

144. However, it is not clear to what extent this possibility would be realised. While cost is likely to be an important consideration for broadcasters and others playing music in public, so too is audience preference, and this may counteract any incentive to drastically change the profile of music that is broadcast or played in public. But if, as would be the case under this option, the costs associated with broadcasting or playing US music were significantly lower than the costs associated with broadcasting or playing UK music, some change in consumption by broadcasters and businesses cannot be ruled out, and this could have significant knock-on consequences for UK artists and record labels in the form of reduced licensing income.

145. The second assumption relates to how licence prices would adjust under this option. As discussed in the section on 'Risks and assumptions', there is little basis for our assumption that licence prices would reduce by half as much as would be expected if licence prices scaled linearly with changes in the size of the repertoire covered by a licence. Depending on how licence prices adjust, the savings estimated in this option for UK users could be substantially greater or smaller than the amounts quote here. This places a large uncertainty on our monetised estimates.

146. In addition, the process of renegotiating licences under this option is itself likely to result in upfront costs for both users and PPL. Those costs are likely to be significant, especially if the matter is referred to the Copyright Tribunal. These costs could undermine the gains that might be realised by users and UK rights holders under this option in the period immediately following its implementation.

Impacts on UK music industry

147. This option could result in substantial gains for UK record labels and UK artists. UK record labels might invest this into new music (e.g., increased marketing or touring for their artists to reach new audiences or increased spend on the production of new recordings) and/or may enjoy higher profits as a result of this change. UK artists might use increased income to support themselves as they create new music or develop their skills.

148. However, as noted above, the impacts on UK record labels and artists under this option would depend on how licence prices adjust. In the more extreme scenarios, where licences prices scale in proportion to, or nearly in proportion to, changes in the size of the repertoire covered by a licence, UK record labels and artists would face costs under this option.

149. Those costs would arise because we assume PPL's operational costs, which it meets by deducting from the revenues it collects[37], are fixed. For a substantially smaller pot of PPR revenues (as would be the case if licence prices reduce in proportion to changes in the size of the music repertoire covered by the licence), PPL would need to deduct a greater proportion of the revenues of UK and other foreign music. This would mean less money being paid through to UK record labels and artists. The costs this would represent for UK record labels and artists could be large in the worst-case scenario. If licence prices are assumed to adjust proportionately to change in music repertoire, and PPL costs are assumed fixed, it is estimated that UK record labels would face costs of £106.1m[38].

150. Costs of this scale on UK record labels and artists would be damaging for the UK music industry. They would mean less investment in new UK artists, which could make UK music less competitive internationally. We consider these extreme outcomes unlikely, but we cannot on present information rule out outcomes under this option that might be harmful to the UK music industry.

[37] Page 8, PPL 2022 Annual Transparency Report: "All costs incurred during a financial year are deducted from the subsequent distribution of revenue for that year".

[38] Calculated taking PPL fixed costs allocated to US rights holder revenue in 2022, of £12.7m (11% allocated to broadcast revenue, 22% allocated to public playing revenue). Assuming UK share of music consumption in the UK is 50%, and US share of music consumption in the UK is 40%, the increase in fixed costs deducted from UK revenue is calculated as £12.7m * 0.5 / (1 – 0.4) = £10.6m. Applying pre-Covid average yearly growth in PPL revenues (5.5%) gives 2024-2033 PPL costs allocated to US rights holder revenue of £143.6m. Applying discounting to 2020 base year gives £106.1m.

Costs on foreign copyright owners

151. Gains for UK users of foreign sound recordings and the UK music industry under this option would primarily correspond to a reduction in licensing income for certain foreign record labels and featured artists, largely those from the US.

152. As noted in the table above, we estimate that US rights holders (record labels and, to the extent that they enjoy a share of UK PPR revenues under their contracts at present, featured artists) would face a reduction in licensing income over the period 2024-2033 of £820.1 million (or £605.9 million in present-discounted terms with 2020 as the base year) relative to the counterfactual.

153. As discussed under Option 1, a reduction in income for US record labels must be offset by reduced spending elsewhere, increased prices for users, or a reduction to label profits. The scale of the costs under this option, while still small relative to total US recording industry revenues ($15 billion, or £12.5 billion, in 2021[39]), are substantial enough that some knock-on impacts seem unavoidable. This is likely to involve at least some reduction in spending by those labels on their artists. This would predominantly affect US artists, rather than UK artists (except potentially where a label operates in both territories and cross-subsidises its activities or where UK artists are engaged by US record labels), but this could lead to a lower quality or quantity of music for UK consumers.

154. This reduction in revenue could incentivise the US to introduce rights of broadcasting and public playing in its domestic law, in order to allow its record labels and performers to qualify for these rights in the UK. If the US were to take this step, the impacts within the UK of this option would become similar to those seen in Option 1 – but, importantly, UK artists and labels would also enjoy significant additional revenues when their music is broadcast or played in public in the US, with those gains likely to be in the region of tens of millions of pounds per year[40]. However, any incentivising effect is likely to be limited; the domestic impacts on US stakeholders (US broadcasters, businesses that play music in public, and the US recorded music industry) would be much larger than (and be of correspondingly greater influence on any decision to introduce new rights in the US than) the potential revenues that might flow from the UK to US record labels and performers.

<u>Option 3: Apply Option 1 to pre-existing sound recordings and performances; apply Option 2 to new sound recordings and performances</u>

155. The main impacts of this option, relative to the counterfactual (Option 0), would be:

a. **Additional costs for some foreign record labels (primarily US labels) that own pre-existing sound recordings** (i.e., recordings made before these changes enter into force), and **corresponding gains for the foreign performers involved in those pre-existing recordings**. These costs and gains would arise as a result of those foreign record labels being subject to a new statutory obligation to pay an equitable share (50%) of UK broadcasting and public playing revenues to the performers involved.

b. **Reductions in licensing income for some foreign record labels (primarily US labels) for sound recordings made after these changes come into effect,** and **corresponding savings for users in the UK that broadcast or play those recordings in public and gains for the UK music industry.** These impacts would arise as a result of broadcasting and public playing rights for new sound recordings being subject to narrower eligibility criteria than under the counterfactual, which would result in most new US sound recordings not qualifying for these rights in the UK. This impact is similar to that envisaged under Option 2, but in this option would apply only in respect of new sound recordings and performances (those made after the changes enter into force).

156. The overall impact would be a combination of these factors, and some knock-on impacts, and would depend on the level of usage by UK users of sound recordings made before and after these changes come into force – which, if implemented, would likely be in 2024.

[39] https://www.riaa.com/reports/2021-year-end-music-industry-revenue-report-riaa/

[40] Given that, even under the US's existing limited system of rights for broadcasting of sound recordings, PPL reported receiving in excess of £10 million in 2021 from US collecting societies, a large proportion of which is likely attributable to those existing broadcasting rights.

157. To estimate the impacts in a given year, we therefore need to estimate the level of use of pre-2024 and post-2024 sound recordings. To do so, we use data on the age distribution of sound recordings used in past years and assume that the same distribution will apply in future.

158. We are not aware of any publicly available data on the age distribution of sound recordings that are broadcast on radio or played in public in the UK. However, data is available on the age distribution of music that was streamed in the UK in 2021[41]:

Year(s) music was made	% of total streams
1940s	0.07
1950s	0.43
1960s	2.66
1970s	5.04
1980s	6.34
1990s	6.48
2000s	12.31
2010s	38.66
2020	13.4
2021	14.6
Total	100

159. We then make the following assumptions:

a. That this distribution can be generalised and applied to future years. In other words, we assume that, in any given year in the future, 14.6% of streams will correspond to music from that year, 13.4% of streams will correspond to music from the preceding year, 38.66% of streams will correspond to music from the decade before the preceding year, etc. This seems to be a reasonable assumption. While consumption will vary year by year, depending on factors such as the popularity of music released in particular years, it seems likely that the age distribution of music will be similar across years.

b. That, where figures are available only for a decade rather than specific years, the share of streams can be modelled as varying linearly by year (i.e., that it is reasonable to use linear interpolation between the above data points to estimate the share of streams for music from any given year).

c. That the age distribution of music streamed in the UK is a reasonable proxy for the age distribution of music played on the radio or played in public in the UK. This introduces uncertainty to our estimate, as it is unlikely that music consumption on streaming platforms aligns closely with music use on radio and in public. However, it seems reasonable to assume that the profile of music listened to by consumers on streaming services and the music played on the radio or in public are similar enough to allow us to make reasonable estimates of the impacts of this option.

160. Based on this, we estimate the share by value of music that will be played on the radio or in public in the UK in 2024 to 2033 is as set out in the table below.

Year	Share by value of music played on radio or in public made in 2024 or later (%)	Share by value of music played on radio or in public made in 2023 or earlier (%)
2024	14.6	85.4
2025	28.0	72.0
2026	36.3	63.7
2027	43.2	56.8
2028	48.7	51.3
2029	52.8	47.2
2030	55.6	44.4
2031	58.2	41.8

[41] BPI All About the Music 2022: Recorded Music in the UK: Facts, Figures & Analysis, as reported in Table 1.1 of Rights reversion and contract adjustment research report, available online at https://www.gov.uk/government/publications/economics-of-streaming-contract-adjustment-and-rights-reversion

2032	60.6	39.4
2033	62.8	37.2

161. We now use these figures to estimate the impacts arising from the changes applied to pre-existing sound recordings and performances; and the impacts arising from the changes applied to future sound recordings and performances.

Direct impacts relating to pre-existing sound recordings and performances

162. As noted above, this option would result in many foreign record labels (primarily US record labels) that own pre-existing sound recordings (i.e., those made in 2023 or earlier) becoming subject to a statutory obligation to pay an equitable share (50%) of the UK broadcasting and public playing revenues with the performers involved in those recordings.

163. The immediate impacts of this would be costs on those record labels. Under Option 1, which would apply this change to all (pre-existing and future) sound recordings, we estimated that this would result in discounted costs to US record labels of £170.1 million for the period 2024-2033 inclusive, and corresponding gains for US artists (featured and non-featured).

164. Under the present option, these costs and gains would only arise in relation to sound recordings made in 2023 or earlier. Initially, this would constitute the vast majority of sound recordings played on the radio or in public. Over time, as new music is released, usage of pre-2024 recordings would decrease, thus limiting the impacts associated with them. We estimate that the costs to US record labels and gains for US artists arising in relation to pre-2024 sound recordings under this option in the table below.

Year	Costs/gains for US record labels/ US artists for pre-2024 recordings (£m)	Costs/gains for US record labels/US artists for pre-2024 recordings w/ discounting to 2020 (£m)
2024	15.3	13.3
2025	13.6	11.4
2026	12.7	10.3
2027	11.9	9.4
2028	11.4	8.6
2029	11.0	8.1
2030	10.9	7.8
2031	10.9	7.5
2032	10.8	7.2
2033	10.8	6.9
Total	**119.3**	**90.4**

165. Over the period 2024-2033, we estimate total costs on US record labels that own pre-existing sound recordings of £119.3 million (or £90.4 million in present-discounted terms with 2020 as base year), which would correspond to gains of the same amount for the artists who performed on those pre-existing US sound recordings.

166. These impacts would accrue to US labels and artists according to the popularity of their music, with the costs and gains relative to the do-nothing approach therefore being concentrated among those US labels and performers that own or have performed on respectively the most popular music, but there would likely be a long tail of labels and performers affected to lesser degrees.

Direct impacts relating to new sound recordings and performances

167. Under this option, sound recordings made after the changes come into effect would be subject to narrower eligibility criteria for protection than under the counterfactual. Sound recordings from countries that do not provide rights of broadcasting and public playing, or that only provide these rights to a limited degree, such as the US, would enjoy correspondingly restricted protection. The result would be that most sound recordings made in the US (and certain other countries) after these changes enter into force would not be protected against most acts of broadcasting and public playing (except certain digital transmissions, such as internet radio). US record labels would face a reduction in licensing income for those recordings relative to the counterfactual and, to the extent

that featured artists' involved in those recordings enjoy a contractual entitlement to a share of those recordings, a reduction in US featured artists' income. These reductions in income could correspond to savings for UK broadcasters and bodies that play those recordings in public and additional licensing income for UK record labels and recording artists.

168. Under Option 2, we estimated the impacts of applying these changes to all (pre-existing and future) sound recordings. Under the present option, these impacts would arise only in respect of recordings made after these changes enter into force – which, if implemented, will likely take place in 2024. Initially, this will only correspond to a small (but significant) proportion of music played on the radio or in public. Over time, as new music is released, the proportion of music licensing activity subject to these changes would increase, increasing the magnitude of the impacts associated with this change.

169. We estimate the savings for UK users (broken down for broadcasters and bodies playing music in public,) and the corresponding costs for US record labels and US featured artists and PPL, all relative to the counterfactual and all limited to impacts associated with sound recordings made in or after 2024, as in the table below (all figures in present-discounted terms). From this, we estimate that, over the period 2024 to 2033, we would expect the following cumulative costs and benefits, relative to the counterfactual (Option 0):

a. savings for UK broadcasters of £112.2 million (or £80.6 million in present-discounted terms taking 2020 as the base year)

b. savings for UK bodies that play music in public of £127.0 million (£91.2 million)

c. gains for UK record labels and artists of £130.1 million (£93.4 million)

d. reductions in licensing income for US record labels (and US featured artists) that own (or perform on) recordings made after these changes come into force of £395.3 million (£283.9 million)

Year	Savings for UK broadcasters (£m)	Savings for bodies playing music in public (£m)	Reduction in income for US record labels and featured artists (£m)	Gains for UK record labels and artists (£m)
2024	2.6[42]	3.0[43]	9.3[44]	3.1[45]
2025	5.3	6.0	18.8	6.2
2026	7.3	8.3	25.7	8.5
2027	9.2	10.4	32.3	10.6
2028	10.9	12.3	38.4	12.6
2029	12.5	14.1	44.0	14.5
2030	13.9	15.7	48.8	16.1
2031	15.3	17.3	53.9	17.8
2032	16.8	19.0	59.3	19.5
2033	18.4	20.8	64.8	21.3

[42] Calculated taking 2022 rights revenue collected from broadcasting and public performance (£188.473m, 2022 PPL Transparency Report). Assuming 40% attributable to US rights holders (£75.35m),and deducting £6.2m attributable to digital transmissions (see paragraph 124), implies £69.2m non-digital transmission user fees in 2022. Applying pre-Covid average yearly growth in PPL revenues (5.5%) gives 2024 non-digital transmission user fees of £77.0m. Assuming 14.6% of music broadcast and publicly played is new music (see paragraph 150), this implies 2024 non-digital transmission user fee savings of £11.2m, after new US music is no longer covered by PPR. Assuming licence fees paid for new US music decline by half the reduction in music repertoire covered by the licence, this implies savings in licensing fees for UK broadcasters of £5.6m in 2024. Assuming 2022 proportion of PPL revenue attributable to broadcasting (47%) implies £2.6m savings for UK broadcasters in 2024, and £3.0m savings for bodies playing music in public.

[43] See footnote 43.

[44] Calculated taking 2022 rights revenue collected from broadcasting and public performance (£188.473m, 2022 PPL Transparency Report). Assuming 40% attributable to US rights holders (£75.35m), deducting admin fees (11% on broadcast revenue, 22% on public playing revenue) gives 2022 US rights holder revenue of £62.66. Deducting estimated 2022 revenues paid to US labels and performers by PPL for relevant digital audio transmissions protected by PPR in US law (from page 13, 2022 PPL Transparency Report, 2*(1.087+1.664) = £5.5m), gives £57.2m 2022 US rights holder revenue, associated with transmissions not protected by PPR under US law. Assuming 14.6% of music broadcast and publicly played is new music (see paragraph 150), this implies 2022 US rights holder revenue of £8.3m no longer payable under option 3. Applying pre-Covid average yearly growth in PPL revenues (5.5%) gives 2024 US rights holder revenue of £9.3m no longer payable under option 3.

[45] Calculated taking income no longer distributed to US record labels and artists in 2024 under option 2 (£9.3m), and deducting savings in licensing fees for UK broadcasters (£2.6m) and those playing music in public (£3.0m). This leaves £3.7m additional revenue for PPL members in 2024 under option 2, because licensing fees are assumed to decline by half the reduction in music repertoire covered by the licence. Assuming UK share of music consumption in the UK is 50%, and US share of music consumption in the UK is 40%, UK share of additional revenue is calculated as £3.7m * 0.5 / (1 – 0.4) = 3.1m.

Total	**112.2**	**127.0**	**395.3**	**130.1**

Overall impacts and assumptions

170. We can estimate the overall impacts of this option by summing the costs and benefits for each year going forward for each group. This involves several assumptions, which are explored below.

UK broadcasters and bodies that play music in public

171. UK users of copyright works would not be directly affected by the changes to eligibility criteria for rights in pre-existing performances. The main effects on these users would be the savings in relation to sound recordings made after these changes enter into force, which we estimate could be £112.2 million for UK broadcasters (or £80.6 million in present-discounted terms with 2020 as the base year present value) and £127.0 million (£91.2 million) for UK bodies that play music in public, over the period 2024-2033. We could expect these savings to grow over time (although at diminishing rates) as music that is released after 2024 constitutes an increasing proportion of the music that is broadcast or played in public.

172. These savings are substantial, although smaller than those estimated under Option 2. As noted in the discussion of that option, the impacts on businesses and other organisations that play music in public will be spread across many thousands of organisations, and for most users will likely be on the order of hundreds or thousands of pounds per year. While this could result in, for example, reductions in prices for consumers, higher profits for businesses, or higher wages for staff, the limited impacts at the level of individual users makes it likely that any knock-on impacts at the level of individual businesses will be small.

173. The savings for UK broadcasters will depend closely on their licensing costs under the status quo and the counterfactual and on the proportion of music they broadcast that originates in the US or other affected countries. These savings could lead to, for example, increased investment in other content, increased profits for commercial broadcasters, or lower prices for advertisers.

174. However, these savings might be undermined by costs on users of negotiating new licences. Negotiating new licence prices could involve significant costs on users (and PPL), especially if agreement cannot be reached and references are made to the Copyright Tribunal, which would give rise to substantial legal costs for both users and PPL (and therefore rights holders). These costs might be particularly pronounced under this option, given that the proportion of recorded music covered by PPL licences would change significantly over time, which would likely prompt more frequent and more complex renegotiations under this option than under the counterfactual, and even relative to Option 2. While it is not possible to estimate the costs associated with negotiating new licences, these seem likely to be significant and would periodically reoccur.

175. As discussed with respect to Option 2, these estimates of savings for UK users rely on several significant assumptions (in addition to those already discussed).

176. The first assumption is that these changes would not in themselves affect which recordings users broadcast or play in public. However, as discussed under Option 2, there would be a clear incentive for those in the UK that broadcast or play music in public to use recordings that, following this change, do not require permission or the payment of licensing fees (i.e., recordings made from 2024 onwards in countries that do not provide equivalent protection, such as the US), in order to make greater savings on music licensing fees. Any such increase in savings would correspond to missed licensing income for UK record labels and artists, as well as labels and artists of other nationalities (including US record labels that own recordings made before these changes enter into effect). Those reductions in income for UK record labels and artists, relative to the counterfactual (Option 0), could feasibly reach millions of pounds per year.

177. However, it is not clear to what extent this possibility would be realised. As noted in the discussion of Option 2, while cost is likely to be an important consideration for broadcasters and others playing music in public, so too is audience preference, and this may counteract any incentive to drastically change the profile of music that is broadcast or played in public. But if, as would be the case under this option, the costs associated with broadcasting or playing new US music were significantly lower than the costs associated with broadcasting or playing UK music or pre-2024

US music, some change in consumption by commercial broadcasters and businesses cannot be ruled out, which could have significant knock-on consequences for other artists and record labels (especially UK artists and labels) in the form of reduced licensing income.

178. The second assumption, as noted with respect to Option 2, is that prices for music licences would adjust in the way set out in the section above on 'Risks and assumptions'. However, there is little basis on which to make this assumption, and other outcomes are possible. Different changes in licence prices could lead to substantially greater or smaller savings for UK broadcasters and those that play music in public.

UK record labels and artists

179. We estimate that this option would lead to gains for UK record labels and artists of £130.1 million over the period 2024-2033. This would be divided equally between record labels and performers (meaning a gain of £65.0 million for each group). These gains would accrue to UK record labels and artists according to how much their music is broadcast or played in public. The benefits would therefore be concentrated among those labels and artists who own or performed on popular music.

180. These gains might lead to increased investment in new music, development and training of artists, promotion and marketing, or touring for UK artists.

181. As noted above, however, these benefits might be undermined by i) costs on PPL, which would need to be met from record label and artist revenues, of renegotiating licences with users following these changes, both initially and on an ongoing basis; and ii) changes in the types of music that are played on the radio or played in public, if users choose to play more foreign music that is not protected, which might lead to falls in PPL licensing income and therefore the amounts paid through to UK record labels and artists.

182. It has not been possible to assess the scale of these impacts, but they could be significant, and could undermine any gains that might otherwise be realised for UK record labels and artists under this option.

US record labels

183. US record labels would, collectively, face two costs under this option relative to the counterfactual: the costs of paying an equitable share of remuneration to the performers involved in recordings made before these changes are implemented; and the reduction in UK broadcasting and public playing revenues for recordings made in or after 2024.

184. We have estimated in the preceding that the first of these costs would be £119.3 million over the period 2024 to 2033. We have estimated the second of these costs to be £395.3 million for the same period (although a portion of this loss might properly be attributed to the US featured artists working with those record labels, where those artists' contracts would have entitled them to a share of UK broadcasting and public performance revenues under the counterfactual). This gives a total cost to US record labels for the period 2024 to 2033 of £514.5 million (or £374.3 million in present-discounted terms, taking 2020 as the base year).

185. These costs will not affect all US record labels equally. Those owning pre-existing recordings will face costs in paying an equitable share of UK broadcasting and public playing revenues to their performers but will retain a 50% share of revenues (after any administrative deductions by PPL). Many US labels that will own recordings made in or after 2024 will not receive any revenue for most UK broadcasting and public playing of those recordings. As catalogue (i.e., older) music will likely be disproportionately owned by established and larger record labels, the combined effect of these changes could be to reinforce existing imbalances among record labels – in other words, the more established and successful record labels might face smaller proportional costs than smaller record labels. However, this might be outweighed by the fact that these reductions in income will only arise for those labels whose artists are played on the radio or in public in the UK – which will typically only be the most successful labels. Costs will only arise for labels whose artists are actually played on the radio or in public in the UK – which will not be the case for many smaller and less successful record labels.

186. These costs on US record labels would likely grow in future as recordings made after 2024 constitute a larger share of music played on the radio or in public, and would have to be met through reductions in spending (e.g., reduced investment in artists), increased revenue (e.g., through

higher licensing fees elsewhere), or reduced profits. The scale of the costs under this option, while small relative to total US recording industry revenues ($15 billion, or £12.5 billion, in 2021[46]), are substantial enough that some knock-on impacts cannot reasonably be avoided. This is likely to involve at least some reduction in spending by those labels on their artists. This would predominantly affect US artists, rather than UK artists (except potentially where a label operates in both territories and cross-subsidises its activities). This could have some limited impacts on the creation and dissemination to UK users of music.

<u>Artists involved in foreign recordings</u>

187. Artists involved in pre-existing recordings who do not currently enjoy a right to equitable remuneration in UK law (such as many US artists) will enjoy an increased share of UK PPR revenues under this option relative to the counterfactual. This will benefit both non-featured and featured artists who performed on tracks recorded before these changes come into force. Over the period 2024-2033, this would result in total gains for performers involved in US recorded music of £119.3 million in present-discounted terms.

188. Non-featured artists who perform on US recorded music produced after these changes come into force would see no costs or gains under this option relative to the counterfactual, as they would not enjoy a share of most UK PPR revenues in both scenarios.

189. Featured artists who perform on US recorded music produced after these changes come into force would likely face a significant reduction in UK PPR income under this option relative to the counterfactual. In the counterfactual, US record labels would hold rights in UK law allowing them to collect broadcasting and public playing revenues. Many featured artists involved in those recordings would be entitled to a share of those revenues under their contractual arrangements. Under this option, US record labels would cease to receive most UK PPR revenues. As such, there would be little to be paid through to the featured artists on those recordings. The scale of this reduction in revenues would depend on contractual arrangements under the counterfactual, but it would likely reach tens of millions of pounds over the period 2024-2028.

Annex – Effects of changes to assumptions

190. The effect of relaxing assumptions on estimates by stakeholder group are tabulated below. A 'user' refers to broadcasters and shops and other venues that publicly play music.

		Impact of relaxing assumption on estimates by stakeholder group				
Relaxed assumption	Relevant options	UK users	UK artists	UK record labels	Foreign record labels	Foreign artists
PPL broadcasting and public playing revenue grows at a rate below the pre-pandemic average (i.e., <5.5%)	Option 1	No change	No change	No change	Costs (reduction in licensing income from UK market) smaller than estimated	Costs (reduction in licensing income from UK market) smaller than estimated
	Options 2 and 3	Savings (in licensing fees) lower than estimated	Gains (in licensing revenues) lower than estimated	Gains (in licensing revenues) lower than estimated		
US music constitutes a lower share of UK broadcasting and public playing than assumed (i.e., <40%)	Options 2 and 3	Savings (in licensing fees) lower than estimated	Gains (in licensing revenues) lower than estimated	Gains (in licensing revenues) lower than estimated	Costs (reduction in licensing income from UK market) smaller than estimated	Costs (reduction in licensing income from UK market) smaller than estimated

[46] https://www.riaa.com/reports/2021-year-end-music-industry-revenue-report-riaa/

Licence prices are less responsive to change in licensed music repertoire than assumed	Options 2 and 3	Savings (in licensing fees) lower than estimated	Gains (in licensing revenues) greater than estimated	Gains (in licensing revenues) greater than estimated	No change	No change
UK and US music are substitutes (cross elasticity of demand > 0)	Options 2 and 3	Savings (in licensing fees) greater than estimated	Gains (in licensing revenues) lower than estimated	Gains (in licensing revenues) lower than estimated	No change	No change