

Matthew Hill  
BBC Charter Review Team  
DCMS  
2-4 Cockspur Street  
London  
SW1

31<sup>st</sup> March 2004

**RE: British Music Rights response to the DCMS consultation: *Review of the BBC's Royal Charter***

Dear Matthew,

Please find enclosed the response by British Music Rights to the Department for Culture, Media and Sport consultation paper on the review of the BBC's Royal Charter.

As members and co-chairs of the Music Business Forum, we have also contributed to, and endorse, their response on behalf of the whole music industry to this consultation paper.

We look forward to further discussions and engagement with the review team as the consultation proceeds through to its next stages.

For further information, please do not hesitate to get in contact with British Music Rights.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Alistair Hunter'.

**Sir Alistair Hunter**

Chairman  
British Music Rights

## Executive Summary

- The review of the BBC's Royal Charter is extremely important to British Music Rights and its constituent members, and other parts of the music industry. This is affirmed by the Music Business Forum submission that acknowledges the enormous musical output which the organisation both broadcasts and commissions.
- The BBC is a cultural ambassador and has a role to act in the interests of music creators and music makers by showcasing British talent both in the UK and overseas to the widest possible audiences;
- The BBC must take the lead in demonstrating to public service and commercial competitors the proper remuneration of music creators. With respect to the BBC's archive, the BBC must ensure that rights holders are fairly paid for the additional use of their work;
- The BBC should be allowed to be creative, innovative and risk taking in its programming, and be competing on quality rather than just the pursuit of broadcasting ratings, setting the highest possible standards 'across the board' along the way;
- The BBC must continue to support and provide opportunities for new creative talent. On a local level there should be more radio broadcasts of live musical performances. The role of the BBC as the 'plus one' at the local level becomes even more important in a consolidated radio sector. Furthermore, there should be more focus on a wider, more eclectic spectrum of music genres on television for diverse tastes and ages;
- The BBC has a role as a copyright educator and should deliver in this area as part of its responsibility to media literacy;
- We doubt that the BBC should provide indirect commercial services that are not part of its core remit – this may distort the broadcasting ecology, even if unintentionally;
- British Music Rights believes that the licence fee remains the best way to fulfil its public service role while allowing the BBC to be experimental, innovative and editorially independent;
- British Music Rights believes that it is unnecessary to place all of the BBC under the ambit of OFCOM's three broadcasting tiers. OFCOM has substantial statutory duties imposed upon it already, and the Communications Act has already legislated for the appropriate level of regulation vis-à-vis the BBC and OFCOM.
- In terms of the BBC's governance, we believe that a solution may well be to separate the regulatory and strategic functions of the Board of Governors. We also believe that there should be a Governor on the board with a specific music remit because of the enormous impact that music has on the BBC's output. In addition, there should be consideration for a Performers' Representative appointed as an adviser to the Board of Governors
- We believe that the Royal Charter remains the most effective constitution for the BBC as an independent public service broadcaster. Moreover, 'music' must continue to be expressly recognised within the BBC Charter itself. We recognise that there could be more Parliamentary debate on the Charter and that a Joint Scrutiny Committee may be the appropriate parliamentary mechanism to ensure this transpires.

## **Introduction: The BBC and Music**

The BBC is the most important platform in this country for the broadcast and commissioning of British music in an accessible way to the widest possible audiences. It should celebrate the range of music genres on offer, reflecting the breadth of diversity in the UK today. British Music Rights believes that the Government must appropriately support the organisation to ensure the sustained delivery of public service obligations into the next decade.

Music has an inherent and symbiotic relationship with public service (television) broadcasting. Accordingly, Parliament has endorsed 'music' explicitly as part of the Communications Act.<sup>1</sup> Given that Parliament has legislated for the recognition of music, we urge the BBC, as the pre-eminent public service broadcaster, to both strengthen and maintain its commitment to a diverse range of quality music on its platforms. There is a more obvious correlation with music and radio broadcasting and for that reason the BBC's role is vital, particularly in a consolidated radio sector.

Music is an integral part of the BBC's programming scheduling in both television and radio, at a local, regional, national, and international level which is demonstrated and underlined by the enormous musical output which it broadcasts<sup>2</sup>. Music is a key part of the creative life of the UK and the BBC needs to recognise and respect the value of the music within its programme services.

The BBC is both a broadcaster and user of music and both elements should continue to stimulate the production and use of music through fair returns being paid to the creators and the owners of rights in the music. The BBC should take the lead by demonstrating and explaining to public service and commercial competitors the proper remuneration of music creators and rights holders. Without the incentive of proper rewards there will be less investment in music making and less risk taking which, in turn, will jeopardise the availability of diverse and good quality music for use in programming in the long term, and subsequently this will have a detrimental effect on UK culture.

We urge the Government to recognise that a significant number of music creators and music publishers have at some stage either worked for or contributed to the way in which British music is performed, licensed by, commissioned, developed, recorded for, or broadcast and otherwise distributed by the BBC.

Given the aforementioned correlation between broadcasting and music, the review of the BBC Charter will impact greatly upon music creators and publishers and their audiences. We therefore urge Government to strongly consider our community as a key stakeholder when developing the next stages of the Charter Review process.

## **British Music Rights**

British Music Rights is the consensus voice of British composers, songwriters, music publishers and their collecting societies. The members of British Music Rights are the British Academy of Composers and Songwriters, the Music Publishers Association, the Mechanical Copyright Protection Society and the Performing Right Society, which together represent over 37,500 composers and songwriters and 2,500 music publishers.

Further information about British Music Rights can be read on our website: [www.bmr.org](http://www.bmr.org)

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<sup>1</sup> Section 264, the Communications Act 2003

<sup>2</sup> For further quantitative details, please see the Music Business Forum response to the DCMS consultation on the Review of the BBC's Royal Charter.

## **British Music Rights Response to Key Questions:**

### **What do you value about the BBC?**

*1. What do you think of the BBC's contribution to the life of the United Kingdom and to the wider world? Should this change over the next decade and, if so, how?*

British Music Rights values the multifaceted role that the BBC plays with respect to its responsibility to educate, inform and entertain as a central pillar of public service broadcasting and contributor to the nation's cultural fabric. We recognise its impact beyond broadcasting in a much wider and deeper sense; to our creative life and society; to the economy; for employment; as an exporter; as a venture capitalist for creativity; a showcase for creative talent in an international context; and *the* standard setter.

The BBC is a truly *sui generis* institution, privileged by its very constitution. It is in the interests of the broadcasting ecology that the BBC pushes creative boundaries and remains at the cutting edge of television and radio, particularly in the interest of diversity. Its role over the next decade should be to continue to ensure a quality and diversity of broadcasting services (taken as a whole) that are accessible to as wide an audience as possible. We strongly feel that as part of such an ethos, it is essential that 'music' must continue to be expressly recognised within the BBC Charter itself.

The BBC is an internationally respected and trusted broadcaster provider. As a broadcasting platform, it acts as a cultural ambassador and we believe it has an important role in showcasing British talent and creative expression overseas to the widest possible audiences for economic, export, and cultural reasons.

The BBC's role in the promotion and delivery of creativity is paramount. Implicit within this should be the encouragement and development of an understanding for all audiences of the importance of copyright education. Young people should appreciate the way in which the creators of, and investors in, music and other copyright works are able to build and maintain careers in the creative industries. As part of this, the awareness of copyright and other intellectual property rights is crucial. We would therefore like to see the BBC play a central role as a copyright education facilitator because of its unparalleled access to viewers on a variety of levels. British Music Rights believes that this should be delivered as part of its remit and responsibility to media literacy, and especially with regard to the public perception of its archive material as 'free'.

*2. What value does the BBC add to the wider provision of public service broadcasting?*

Public service broadcasting must ensure a diversity of programming and creative exploration in an accessible manner. The advent and expansion of digital services has resulted in an increased fragmentation of demand amongst audiences, and in particular, younger audiences are becoming harder to reach. Consequently, the BBC has a more important role to play than ever before to ensure 'public service' programming reaches as many divergent audiences as possible.

The BBC must be allowed to be creative, innovative and risk taking in its programming in order to deliver diversity and as part of this, music is an important aspect to consider. Accordingly, it's important that the BBC competes on quality rather than just the pursuit of broadcasting ratings. The BBC should set the highest possible standards in both television and radio broadcasting, in order to maintain overall quality to viewers in a multi-channel environment, and to ensure that both commercial and public service competitors strive to 'keep up' with the BBC.

The cultural role of the BBC as both a broadcaster and distributor channel is greatly valued in the music community and to audiences who watch or listen to music related output. The commitment to live music is also vital. We point to the BBC road shows as an excellent example of the pivotal role that a broadcaster can play in taking music directly to audiences.

In a wider sense, the BBC adds great value to the encouragement and expression of cultural diversity. A European Parliament report<sup>3</sup> recently reaffirmed the importance of public services in preserving cultural diversity. In particular, the report stressed that “public service broadcasting plays an important role in safeguarding cultural diversity and identity, democratic dialogue, media pluralism and access for all citizens to quality content and knowledge for their successful participation in the information society”. We support and reiterate these comments in relation to the BBC’s role in particular.

Without a publicly-funded service such as the BBC, it is doubtful whether the huge range of music that is made and listened to across the UK would have a broadcasting platform. Such a commitment to diversity but also equality of access would almost certainly not be guaranteed if all broadcasting were to be provided on a wholly commercial basis.

*3. How well has the BBC met its purposes over the Charter period? What evidence do we have that the way in which the BBC does this is successful compared to other broadcasters?*

Broadly, the BBC has met its commitments over the last Charter period so far as its obligations to ‘inform, educate and entertain’.

The BBC is the biggest commissioner of music in the world as far as programming scheduling is concerned. A Music Business Forum submission to this DCMS consultation lists the transmission hours for music and arts programming from the BBC, thus demonstrating the substantial commitment made by the BBC in this area.

The organisation has contributed deeply to music making developments in the UK over the last Charter period. The BBC is the largest employer of orchestras in the world running five regional symphony orchestras, and the BBC Singers, the only professional choir in the country. Such commitments to the cultural ‘good health’ of the nation must be applauded and preserved.

The BBC has the ability to promote a ‘public service’ ethos to the community which is intrinsic to its role as a broadcaster, which is unique. As an example, the BBC has appointed education officers to all of the BBC’s performing groups, who are designed to bring new audiences from a range of diverse communities to live music. This affords new opportunities for composers of different cultural groups to commission new music. This illustrates the BBC setting best practice.

Given that music is such a vital part of the BBC's work, British Music Rights believes that it is necessary to preserve the express references to music within the current Charter and build upon this with the new Charter.

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<sup>3</sup> European Parliament report: *Preserving cultural diversity; the role of the European regions and international organisations such as UNESCO and the Council of Europe* (December 2003) – Committee on Culture, Youth, Education, the Media and Sport (Rapporteur, Christa Prets)

*4. What is it about the BBC that makes it unique? How do we make sure that it is distinct from other broadcasters? Are there better ways to deliver some of the contribution that we have traditionally relied on the BBC to provide?*

The BBC plays both vertical and horizontal roles. On a vertical level, it has the ability to reach audiences at all levels - whether it's on an individual, local, regional, national, or at an international level. In terms of its horizontal function, it has the capability to provide for all genres. This puts the BBC in a special and privileged position so far as its ability to supply radio and television programming 'across the board' to numerous audiences.

We acknowledge the BBC has increased its commitment to popularist programming in recent times and recognise that the BBC must sometimes be allowed to enter such areas, but would encourage it not to do so. Instead, the organisation should be leading the market with more distinctive and original programming, not following the precedent of others.

We also recognise the BBC's active commitment to the community, such as the regional tour buses reaching out to deprived communities, thus demonstrating the BBC's interactive 'public service' role.

*5. How well does the BBC serve the constituent parts of the United Kingdom, including Scotland, Wales, Northern Ireland and the English regions? What changes, if any, would you like to see?*

BBC public services should provide effective platforms for the broadcast of British music in the most accessible way to the widest possible audience.

As the Internet and digital radio stations erode our existing geographical broadcasting boundaries as we know them, the role of local and regional radio will become increasingly significant. The BBC is an important local and regional platform and should maintain its commitment to regional services and local cultural expression.

We acknowledge that digital radio has the ability to reshape the market. However, we expect that its impact will still take some years to develop. Whilst larger numbers of people may listen to digital radio stations broadcast on satellite, cable and terrestrial digital television platforms, these are normally national digital radio services, not local services. Other new technologies, particularly Internet radio, have strong long-term prospects but are unlikely to affect the local radio market within the next three to five years.<sup>4</sup> This emphasises the importance of the BBC's role at the local level, especially in the short to medium term.

*6. Is the current balance between national, regional and community level programming right? Does current regional and community content reflect the diversity of the regions and communities served, and deliver what you want? If not, what should be changed?*

There should be continued and maintained support and opportunities for local music creators for the broadcast of live musical performances. We would like to see community programming given the opportunity to be introduced into the mainstream. There is a wealth of 'untapped' talent and diversity which deserves the opportunity to be widely heard – it's partially the responsibility of the BBC to aspire to reach out, engage and deliver by making use of such potential.

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<sup>4</sup> OFT report: Completed acquisition by Vibe Radio Services Ltd of Eastern Counties Radio Ltd and Galaxy Radio Wales and The West Ltd

The BBC's regional production of music programmes plays an important role in enabling new talent to be heard and for local creative economies to be sustained and for regional culture to be supported. One of the BBC's functions should be to act for the benefits of communities and regions at a grass roots level to discover and train creative talent that sustains our country's broadcasting and creative expertise at all levels. This should be continued as advancements in digital technology enable regional output to be accessed outside geographical areas, thus generating new opportunities.

*7. How should the BBC adapt to cope with changes in technology and culture? How should the BBC respond to the development of new technologies and to changing viewing and listening habits?*

The BBC's free-to-air service should adapt to the adoption of new technologies by setting clear standards with a public service ethos. The BBC's digital broadcasting is welcomed, and in particular, its role in Freeview, which has allowed a sizeable audience to access digital broadcasting in a way that only a publicly-funded broadcast service could. We acknowledge its efforts have contributed to the Government's own digital strategy, and that the BBC has a leading responsibility to ensure take up in this area.

We do however wish to outline our key concerns regarding the BBC's archiving. If new technologies allow past programming to be accessed by viewers in new ways then it is essential for the BBC to ensure that the implementation of such an initiative includes the provision for rights holders to be fairly paid for the additional use of their work through access to archives. This applies whether in the form of repeat broadcasting fees, extensions of the collective bargaining agreements in place for the payments of revenue for secondary uses, or through the negotiation of clearance for the right to exercise new rights on individually negotiated commercial terms.

Likewise, if new technologies allow consumers in their homes to have flexibility in reproductions or recordings made from BBC broadcasts, then consideration must be also given to the rights involved in such activities with a view to the interests of rights holders being properly observed. As the DCMS Charter Review document points out, new technologies in the homes of consumers mean that as technologies develop, digital rights management continues to be of immense importance. British Music Rights members have experience in this area and would like to be part of any future discussions in this area.

We reiterate that the BBC has an important role to play in helping improve public awareness of the role that intellectual property plays in the stimulation and development of the creative and cultural life of the UK. There must be the legal framework against which creators are able to get paid for their work to recoup the (financial and creative) efforts made in the formation of work in the first place.

*8. What do you think of the publicly-funded services provided by the BBC, on television, radio and online? What changes, if any, would you like to see? How well do the BBC's publicly-funded services deliver its core purposes?*

As previously mentioned, music often has an inherent and symbiotic relationship with the services provided by the BBC. In terms of being a distribution mechanism, the BBC is crucial platform for music creators, listeners and audiences. It is therefore vital that fair returns are paid to the creators and the owners of rights in the music, sound recordings and the music videos broadcast for the benefit of those audiences.

With respect to television specifically, we conclude that there should be more creativity in music programming and better scheduling times awarded to such broadcasts. We believe that the BBC focuses too much attention on current pop and should deliver an eclectic spectrum of music genres and for diverse tastes and ages. Furthermore, there is a place for divergent musical tastes on the mainstream channels as well as the new digital channels. Beyond specific programming *per se*, it is important to recognise the role of music in programmes themselves and also the commissioning of theme tunes, background music and idents.

With respect to radio, we are particularly keen that radio is given the support and prominence it deserves within the BBC. Due to the consolidation of the radio sector allowed by the Communications Act, the role of the BBC as the 'plus one' at the local level becomes even more important.

The BBC must continue to allow support and provide opportunities for new creative talent. We support Radio 1 running ONE MUSIC, the online service providing support for aspiring bands and performers. In addition, we welcome the station providing airplay to unsigned acts and trust that these initiatives will be maintained and hope that they will be developed even further. In terms of its eclectic approach to music, BBC Radio 1 is an excellent example of how a non-commercial approach can exploit the cultural impact of a mass medium still valued by large numbers of young people. It is difficult to evaluate Radio 1's contribution to Britain's popular music culture and talent base, and a market led approach would find it problematic to acknowledge the creative benefits which are scarcely measurable.<sup>5</sup> We therefore highlight such a factor against OFCOM's market based approach to decision making and suggest that there could be considerations for the regulator to undertaking some qualitative analysis in this area for evaluation.

We fully support SOLD ON SONG in particular, the Radio 2 song-writing initiative which provides advice to aspiring songwriters<sup>6</sup> and endorse the New Generation Artist Schemes which helps young musicians in the early stages of their careers. In addition, it is important to recognise that Radio 3 is the biggest commissioner of new music in the world and that BBC Concert Orchestra commissions and arranges several new arrangements.

With respect to BBC Online, we recognise the quality of the service provided, and that there is a role for the BBC to play here in terms of a news and entertainment provider. However, whilst acknowledging its contributions, we recognise that there should be a focus on providing support for the programmes and activities which relate to the services provided by the BBC. Separately, although the profiling of British content online is important, we urge that rights are considered at every stage of the development in this area, particularly when extending any services which allow the downloading of content by users for particular services.

*9. In what way should the BBC's services differ from those of commercial public service broadcasters and other purely commercial broadcasters in order to add value? To what extent should the BBC provide 'something for everyone'?*

It is the range and the diversity of BBC services that are provided within an effective public service remit which helps to provide a secure and strong focal point for a breadth of cultural opportunity and the development of creative growth. This is a key component which should drive the BBC's output 'over and above' its commercial competitors.

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<sup>5</sup> Quote from Steve Barnett (University of Westminster) - From Public Service Broadcasting to Public Service Communication, IPPR, January 2004.

<sup>6</sup> One of our constituent members, the British Academy of Composers and Songwriters are involved in this programme.

The BBC must be allowed to be creative, innovative and risk taking in its programming. The editorial remit should be pushing creative boundaries and a wide range of coverage with newly composed music given an opportunity for airplay.

As previously mentioned, the BBC should be competing on quality rather than just the pursuit of broadcasting ratings. Furthermore, the organisation should be setting the highest possible standards in its actions, across the broad range of its activities.

*10. Should the BBC run commercial services? Do you think the BBC should continue to run commercial services alongside its licence fee-funded services? If the BBC should continue to run commercial services, how should we ensure that the relationship between the public and commercial services is fair to the BBC's commercial competitors? Should there be any limits on what the BBC is allowed to do commercially and, if so, what should those limits be?*

The BBC should be encouraged to exploit its core assets in TV and radio production as much as possible. However, we doubt that the BBC should provide indirect commercial services that are not part of its core remit – this may distort the broadcasting ecology, even if unintentionally. BBC commercial activities should have clear links to the content of the BBC's public service activities and programmes.

We believe that it is imperative that rights owners and contributors to the BBC programmes and ancillary works commissioned by the BBC are able to negotiate fair terms for the use of their works on a free market basis.

The BBC must act with integrity in its commercial dealings and guidelines on practice should continue to be publicly available.

*11. 'How should we pay for the BBC?' Does the licence fee remain the best way to pay for the BBC's public services? If not, what alternatives would you like to see explored?*

We believe that the BBC should be an independent broadcaster that is able to deliver free to air, high quality programmes and services with cultural and creative freedom, available to all UK citizens. British Music Rights believes that the licence fee remains the best way to fulfil its public service role while allowing the BBC to be experimental, innovative and editorially independent.

If people do not have the easy opportunity to experiment with new viewing and listening experiences within free to air broadcast public services, subscription conditions may act as a barrier to experimentation and accessibility to the more unusual or challenging aspects of the BBC output.

*12. Does the BBC deliver value for money? Does a grant-in-aid via the FCO remain the best way to pay for BBC World Service?*

In terms of delivering value for money for the consumer, cultural life, the creative development in the UK, the BBC provides astonishing value for money. As a general comment with respect to the value / cost relationship, the BBC should be reflected alongside its commercial broadcasting competitors that arguably offer less diversity and higher (subscription) costs to the consumer.

*13. Is the BBC organised in the most effective and efficient way? How should the BBC be organised to deliver its functions and services? Should it continue to operate as a single organisation?*

Whilst we acknowledge that the internal mechanisms could be improved, the BBC should continue to be structured in terms of production and commissioning as it is at present in order to maintain the economies of scale that currently exist.

We believe that BBC in house training is crucial and perceive that BBC restructuring in this area has led to a loss of creative competence and commissioning experience. Therefore, we would like to see an increased focus and funding by the BBC to industry training as part of an improved approach and a key component of its role as 'venture capital' for UK creativity.

*14. Does the BBC broadcast the right balance of independently produced and in-house productions? How important is it that the BBC makes programmes as well as commissioning them?*

The BBC's role as a commissioner of music is important to the UK music making in terms of fostering new talent, supporting music economies and ensuring that music is at the heart of our cultural lives.

The BBC should continue to make programmes. This is a key element of the BBC's role. We do not think that there should be increased provision for independent productions because of the likely impact and effect on other creators, composers and creative talent.

*15. How should we ensure that the BBC continues to foster world-class broadcasting talent?*

The BBC can deliver by keeping music centre-stage. Furthermore, by supporting diversity and access through responding to the needs of both music-makers and listeners and by ensuring new talent is heard and existing talent recognised and valued.

We reiterate our earlier comments concerning commissioning and BBC in-house training.

*16. How should the BBC be governed and regulated? Do you think that, in the regulation of the BBC, there is the right balance between the Governors and Ofcom?*

We endorse the comments of the Secretary of State for Culture, Media and Sport, Tessa Jowell MP in her foreword to the DCMS Review - "that the Government is committed to "the continuation of a strong BBC, independent of Government, both now and in the future."

With regard to the regulation of the BBC and its relationship with OFCOM, British Music Rights believes that it is unnecessary to place all the BBC's functions under the ambit of OFCOM's three broadcasting tiers. Not only does OFCOM have substantial statutory duties imposed upon it already, but the Communications Act has already legislated for the appropriate level of regulation vis-à-vis the BBC and OFCOM.

In terms of the BBC's governance, we believe that a solution may well be to separate the regulatory and strategic functions of the Board of Governors.

Given the unquestionable link between music and broadcasting, we propose there should be a Governor on the board with a specific music remit because of the enormous impact that music

has on the BBC's output. In addition, there should be consideration for a Performers' Representative appointed as an adviser to the Board of Governors.

*17. Does a Royal Charter continue to be the most appropriate basis for the establishment of the BBC?*

British Music Rights considers the Royal Charter remains the most effective constitution for the BBC as an independent public service broadcaster. We believe that a ten year Charter Review allows the organisation to retain its capacity for long term strategic planning.

OFCOM's review of public service broadcasting, to be held at least every five years, is a suitable mechanism to report on television services, though we believe that there should also be further consideration for a review of radio services as well.

*18. How do we ensure that the BBC is properly accountable to the public and Parliament? Is the BBC sufficiently responsive to its viewers and listeners and to Parliament? What improvements, if any, could the BBC make?*

We recognise that the role of Parliament in the review process could be strengthened. Beyond the Culture, Media and Sport Committee's forthcoming inquiry, we would like to see a Joint Scrutiny Committee overview the Charter Review following the publication of the White Paper so to add further recommendations.

We believe that there could be improved internal structures in the BBC to ensure a continual dialogue between the organisation and its constituent interests, such as music creators. From our experience, developments are very much of an ad hoc nature and dependent on relationships which are already in place. The BBC should be permanently in listening mode and should formally offer 'out-reach' engagement opportunities to formalise dealings with interested parties as part of an obligation to be more accessible and transparent to interested stakeholders.