

Response to Ofcom Consultation on the Market Impact of BBC Sounds

June 2021

About this response

1. AudioUK is the trade body for the audio-led production sector in the UK. AudioUK has four core priorities: Business; Representation; Community; and Excellence – and has over 125 member companies based across the whole of the UK. It produces the annual Audio Production Awards and also runs the Audiotrain craft skills training programme. Along with Radiocentre, AudioUK designed and now oversees the administration of the Audio Content Fund, which distributes a grant from the UK government to fund independently-produced public service content on commercial and community radio. As a member of the Government Broadcasting, Film and Production Working Group, AudioUK has produced guidelines for safe working in audio production during the COVID-19 pandemic.
2. We would like this response to be considered in conjunction with our earlier submission to Ofcom's call for evidence on BBC Sounds, in which we sought to summarise the extent to which the independent production sector is involved in audio production across the media sector, from TV and radio broadcasters to online platforms and audiobook publishers.
3. Given that part of the purpose of Ofcom's consultation is to address competition concerns expressed by other radio broadcasters, we have focussed on those questions which are most relevant to our members.
4. Ofcom refers to its upcoming work on the BBC-Ofcom Operating Agreement and also Ofcom's regulation of the BBC. We will be engaging with these processes and in particular we hope that Ofcom will use them to fully incorporate BBC Sounds into the regulatory framework. Although Ofcom states that BBC Sounds falls within its Public Services and within the definition of 'BBC online' it is nevertheless the case that Sounds' creation since the last Charter process and drawing up of the Agreement has allowed it to develop and grow without any specific regulatory requirements being placed upon it.
5. We will also be using those processes to put the case that the BBC's audio commissioning, along with that of the other PSBs, should be subject to regulated Terms of Trade similar to the situation in PSB television commissioning.

Question 1: Do you agree with our provisional view of the market? Please provide evidence in support of your answer.

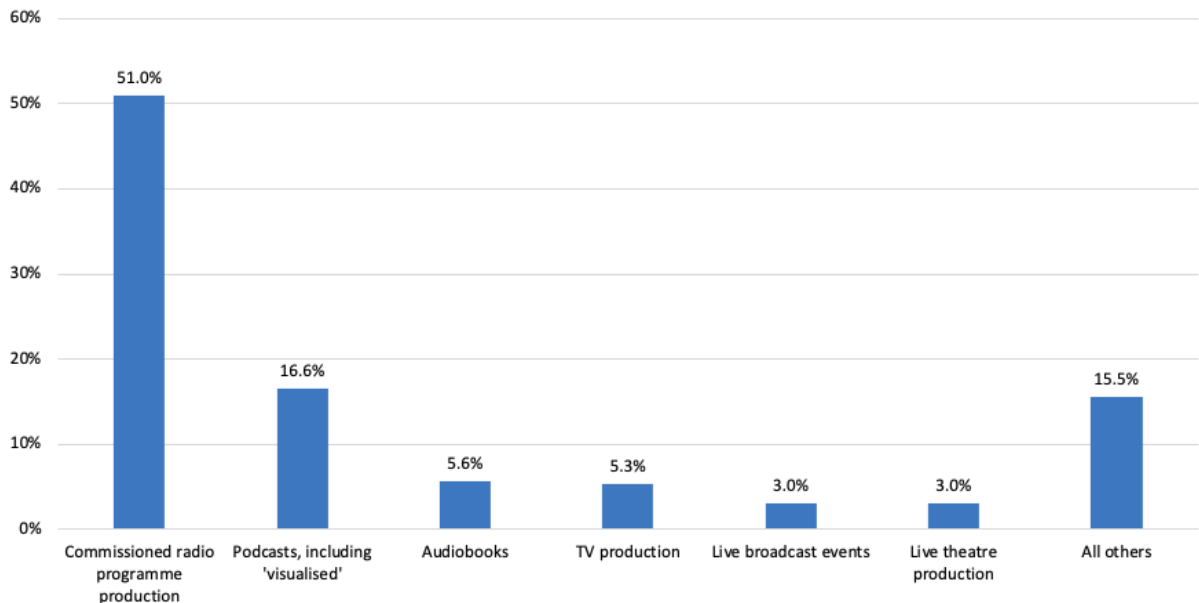
6. While we agree that there has been significant growth in alternative platforms and sources of commissioning, the BBC still remains a significant force in audio commissioning, with its c£500m spend annually on radio and audio.
7. Elsewhere, it is not clear from Ofcom's assessment that it fully understands the extent to which the UK audio production sector reaches across every type of published audio content. For example, figure 8 of Ofcom's current consultation details the different types of organisation publishing podcasts, but does not acknowledge that the publisher of that content is not necessarily the creator, which in fact can quite often be an external production company. In other words we believe Figure 8 gives a misleading impression that publishers

always produce their own podcasts. For example, *Love Island* is given as an example of an ITV podcast but this was originally made by Folder Media, an independent production company. Also *Ffit Cymru* is made by Welsh indie Cwmni Da.

- The diagram below shows how independent audio production companies provide content to many parts of the audio landscape. This shows how the production sector is an integral part of the audio landscape in a way that is not fully recognised by Ofcom in its consultation.



- The independent audio production sector has branched out into many forms of production, as demonstrated by our 2020 Business Census, which indicates no fewer than 16 revenue streams (although not all of these are audio-related). 51% of revenue came from commissioned radio production (the same proportion as in 2015). The most striking rise is in podcasting, at 16.6%, up from 3.4% in 2015.



Source: AudioUK Business Census 2020¹

¹ Note: 'All Others' includes: Audio CD production; New media; Media training; Radio/audio production training; Studio hire; Video production; Live comedy production; Video & audio gaming; Branding / jingles; syndicated audio content i.e.

10. Our opinion is therefore that Ofcom needs to re-evaluate its perspective of the audio production to more properly recognise the source, not just the publisher, of the content. This is important because, if Ofcom is undervaluing the contribution of the independent audio production sector, it may also underestimate the market impact of BBC Sounds' activities upon the sector.

Question 4: Do you agree with our analysis and provisional conclusions about the impact of BBC Sounds on podcast publishers' ability to generate revenue? Please give evidence to support your views.

11. Ofcom's consultation states that *"Our provisional conclusion is that the distribution of BBC podcasts through BBC Sounds is not significantly hampering other podcast publishers' ability to generate revenue"* (para 4.64). We can only again emphasise the extent of the BBC's presence in the marketplace, which Ofcom itself acknowledges here: *"Looking at weekly podcast users, 40% say they use BBC Sounds, about the same amount who use Spotify (42%) but more than YouTube (31%), Apple (29%) and Amazon Prime Music (17%)."* (para 3.52)
12. Clearly such a significant BBC audience amongst podcast users means that those users are listening to fewer (or no) podcasts on commercial platforms, which in turn will have an impact on advertising and subscription revenues.
13. As we stated in our submission to Ofcom's Call for Evidence, independent production companies need to be able to project their brands as much as possible, in order to be successful in this competitive marketplace.
14. We also referenced in our response to the Call for Evidence that the BBC has many entries in the podcast charts. Ofcom references this (para 3.46) but does not acknowledge the reasons for our raising it, which were two-fold: firstly BBC podcasts are clearly competition to independently released shows and therefore have an impact on the market; secondly, where those BBC podcasts are independently produced, this is not acknowledged in listings and therefore the producer does not get the benefit of that commission as a method of strengthening its brand. It is clearly damaging to the production sector if independently-produced podcasts are seen by the consumer as 'BBC podcasts', rather than in fact being produced by an independent company.
15. Ofcom states that *"Advertising revenue generated by UK podcasts appears to be broadly comparable with other markets, although evidence is limited. UK podcast advertising revenue totalled £27m in 2019. This is lower than France (£30m) and less than half the level of Germany (£62m)"* (para 4.61).
16. We would point out that the UK has the advantage of the English language and also easier access to the US market and US content, and therefore could perhaps be expected to be outperforming other European countries in terms of take-up of commercial podcasts.
17. The UK also has higher smartphone penetration than any other European country except Germany². Given that 81% of UK podcast consumption is by smartphone³ then it seems

Entertainment News; Consultancy; Radio ads; audio rights consultancy; Sound for animation; Sound installations; New Creatives BBC/Arts Council England Initiative; events non-broadcast

² <https://newzoo.com/insights/rankings/top-countries-by-smartphone-penetration-and-users/>

³ Ofcom Podcast survey 2021 figures – Devices used (all regular podcast listeners) as reported by Adam Bowie: <https://www.adambowie.com/blog/2021/04/ofcom-uk-podcast-survey-2021/>

reasonable to suggest that again the UK has more potential to grow and the advertising market could therefore be expected to have grown further than it has under normal circumstances.

Question 6: Do you agree with our view above on when changes to BBC Sounds might raise competition issues?

18. We agree with Radiocentre's concerns, cited in the consultation (para 5.12) of 'scope creep' and are not clear that Ofcom's proposed approach would be sufficient to guard against this. We note Ofcom's outline of its approach in para 5.11: *"Changes to the content available on BBC Sounds may be more difficult to assess. However, it is unlikely that the addition of small amounts of content, similar to that already available on BBC Sounds, would raise concerns. In contrast, we would expect the addition of new types of content or of content pertaining to a new or embryonic market area to be more likely to require closer scrutiny"*.
19. The wording "small amounts of content" sounds vague and also ignores the fact that even introducing a 'small' amount of content which is commissioned in a different way or takes a new approach can have significant impacts further down the line.
20. As an illustration of this, we would like Ofcom to note that the BBC was until recently reporting BBC Studios audio commissions as 'external' in its calculation of how many hours of audio content it was commissioning. AudioUK asked the BBC to correct its reporting and the BBC has now agreed to do so. While the amount of hours as a percentage of overall BBC commissioning was very small, the principle was clearly that it was content produced by a vertically-integrated fully owned subsidiary of the BBC. Although a 'small amount' of content was in question, had this gone unchallenged that proportion may have grown over time to be significant and therefore distorted greatly the amount of hours which appeared to be being commissioned externally.

Question 7: What further detail, if any, would you expect to see in the BBC's Annual Plans and public announcements to enable stakeholders to meaningfully comment on its plans for BBC Sounds?

21. In general the Annual Plan needs to be less focussed on large amounts of text which discuss a strategic development by way of providing a few programme examples accompanied with further text on its good intentions going forward. It should be far more focused on precise agreed actions, specific outcomes and deadlines for delivery.
22. We gather from our discussions with the BBC that BBC Sounds will be working towards the 60% minimum competition level for non-news radio programming. We would welcome their reporting of progress towards that in the Annual Plan and public announcements. In the future we would like this to be formalised and monitored by Ofcom. We recognise that is a matter for Government as it relates to the Charter and Agreement, however it still lies within Ofcom's remit to make a recommendation on this matter to Government.
23. Given the BBC's 'Across the UK' initiative, which very much includes radio and audio, we would like to see commitments for BBC Sounds' commissioners to engage with out-of-London production companies in a systematic fashion. We welcome that the BBC has within its Across the UK plans talked about some major BBC strands going outside London and these need to be made available for competition from independent production companies from outside the M25.

24. Clear timetables for annual engagement with Out of London producers should also be set out in the BBC annual plan.
25. Lastly it would be useful to see a firmer and more specific commitment regarding incorporating third-party content on BBC Sounds. Given BBC-produced podcasts feature heavily on other platforms, it would help to level the market up if the BBC were to publish third-party podcasts on BBC Sounds.

Question 8: Do you agree that further collaboration between the BBC and other players could bring benefits to the UK radio and audio sector?

26. Any collaboration between the BBC and others can only be successful if the BBC is required to fully recognise those other players' need to promote their brands and not prevent them from operating in the wider market.
27. The BBC needs to act in a genuine spirit of collaboration in terms of making sure it builds into any agreement elements such as IP protection and prior consultation before making any additional use of content or branding created as part of the partnership.