



AER SUBMISSION
TO THE
PUBLIC CONSULTATION ON THE
FUTURE EU 2020 STRATEGY

The Association of European Radios (AER) is a Europe-wide trade body representing the interests of over 4,500 commercially-funded radio stations across the EU27 and in Switzerland.

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AER's main objective is to develop and improve the most suitable framework for private commercial radio activity. AER constantly follows EU actions in the fields of media, telecommunications and private radio transmission, in order to contribute, enrich and develop the radio sector.

AER therefore welcomes the opportunity to express its views in the frame of the Consultation on the Future EU 2020 Strategy. The Commission Working Document (hereinafter the "Working Document") on which this consultation is based identifies "knowledge" as the "key input" to prosperity and to a new sustainable social market economy¹. Commercially-funded radios are major access providers to knowledge: they constitute a unique network of small and medium-sized enterprises (SMEs)², contributing to cultural diversity, media pluralism,

¹ Working Document, page 2

² And European Commission Vice-President Günter Verheugen, responsible for Enterprise and Industry, declared on May 6th, 2009: "If there is a way out of the economic downturn, it is the SMEs' creativity, flexibility and capacity to find solutions. Together we have already achieved improvements. But we must go further. We need more SMEs as they are the true drivers of growth and job creation". Please see here:

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/704&format=HTML&aged=0&language=EN&guiLanguage=en>

access to creativity, social inclusion. They also offer free-to-air services of general interest. Indeed:

- they evolve in highly competitive environments³
- their programmes encompass, broadly speaking, all possible formats, from debates to music-only⁴
- As for the music broadcast, within one market, as soon as there is demand expressed, it has to be fulfilled; so, most of the musical expressions are represented
- most of them are non-politically affiliated, and certainly keep the freedom to express their opinion
- their audiences are mostly local and regional, sometimes national
- they strive to develop on all possible platforms
- during natural, major or minor disasters, radio is one of the first tool to inform the public⁵

Although radio might not evoke spontaneously the most modern medium, it has, for the past 50 years at least, been granted with all its attributes: ubiquitous, mobile, simple-to-use and free-to-air. This also makes radio the most intimate medium: the features mentioned above enable our audience to cultivate a personal relationship with our programmes, our DJs, our hosts, and our brands. Our listeners thereby access programming they enjoy, and useful information⁶.

As a means of introduction to how commercially-funded radios in Europe live their current and future business environment, one should bear in mind that the latter can be dryly presented as being built on three pillars; if one of them is missing, commercially-funded radios cannot exist:

- Access to spectrum
- Access to copyrights
- Access to advertising revenues

The Working Document mainly alludes to the two first pillars. The third should therefore be shortly presented in this introduction. There is indeed a current trend in regulation leading towards more advertising restrictions, or compulsory mentions in advertising. However, commercially-funded radios know only one viable business model: FM broadcasting of content, free-to-air. This model is being reproduced online and is slowly taking up. AER

³ For example, and bearing in mind that the amount of radios in a given country depends of course on its size: Spain now has more than 2000 frequencies used across the country; similar FM overcrowded situations can be observed in France or Germany.

⁴ To give just examples, please see:

- the French AER Member, SIRT1 : <http://www.sirti.info/spip.php?page=adherents>
- the UK AER Member, RadioCentre:
<http://www.radiocentre.org/rc2008/stationSearchResults.aspx?searchType=fullmembers>

⁵ For example: in the UK in December 2009, during the Cumbria floods, to keep their communities and other media outlets informed, Commercial Radio in the area began rolling news and updates during events that occurred a fortnight ago and the on-going clean up operations. As soon as the situation started unfolding, both CFM Radio and Lakeland Radio dropped their usual formats and presenters and switched to a service of news, travel, weather updates, advice and other information to help the local community. For more details, please see here:

<http://www.radiocentre.org/rc2008/showContent.aspx?pubID=341>

The most recent example was this morning when you had to avoid constructions or a demonstration on your way to work

⁶ For instance, in the UK, London's Capital 95.8 won a Sony Award for its 'Lights Out London' initiative, which drew support from celebrities such as Justin Timberlake and politicians like the UK's former Secretary of State for the Environment, Rt Hon David Miliband MP. This involved encouraging listeners to switch off lights when they weren't needed. In Germany, Saxony's Radio PSR was awarded the 2008 central Germany radio prize by the IHK Leipzig for its feature on Climate Change: "Die Radio PSR-Klimaoffensive: Was trägt bei zum Treibhauseffekt?" Please see here:

<http://www.radiopsr.de/7719/music/news/89143>

would like to recall that European radios can only broadcast programmes free of charge to millions of European citizens, thanks to the revenues they collect by means of advertising.

AER supports the overall idea of enabling consumers to make a well-informed purchase decision. But AER believes that there are more appropriate and efficient communication channels to deliver the consumer with detailed and extensive information: it is perceived to be much more useful at a later stage than when advertising, i.e., through websites, in information brochures or at the point of sale – when the decision is taken to perform the purchase⁷.

When considering information requirements in advertising and their likely effects, AER furthermore believes that the specificities of each medium needs to be properly taken into account. Radio is a non-visual linear medium, which concretely means that, if detailed messages are to be communicated in an advertisement, these are to be broadcast in an added time-space to the latter. This increases the amount of time, hence the price, of the considered commercial message. In addition, needless to say, it lessens the commercial impact of the advertisement. These combined effects impact broadcast media, and radio in particular, even more than any other media and constitute factors that can deter advertisers away from using radio.

As a result, any constraint on radio advertising severely endangers AER members' ability to pursue a viable economic activity. From this perspective, the Working Document states that: "The EU needs to provide more attractive framework conditions for innovation and creativity, including through incentives for the growth of knowledge-based firms. Access to credit is a particular problem, not only in the aftermath of the crisis but because some new sources of growth such as the creative industries need new types of financing adapted to their business models"⁸. AER would like to underline that it might be easier in certain cases to sustain the existing effective business-models, and thereby for media in general, and radios in particular, avoid increasing the amount of regulatory restrictions on advertising. The latter are to the detriment of radio listeners across Europe, since advertising revenue is essential in making the programmes and content which listeners really enjoy⁹. These should reach listeners (I) after being produced (II).

I. Radios need access to spectrum

It should first be once again highlighted that, in Europe, the only viable business model for radio is based on analogue FM broadcasting free-to-air programmes, on Band II: on-air or internet-based commercially-funded digital radio has not yet taken up. These two means of transmission will be part of the patchwork of transmission techniques for commercially-funded radios in the future, but it is hard to foresee when.

So, now and for a foreseeable future, commercially-funded radios need guaranteed access to spectrum.

⁷ Listeners tend to "tune out" when such additions to commercial messages are broadcast

⁸ Working Document, page 5

⁹ This can lead to dramatic consequences; e.g., in the UK, 14 commercially-funded radio stations have closed down since the beginning of 2008; please see here:

<http://www.guardian.co.uk/media/2009/apr/30/utv-closes-valleys-radio>. A recently published independent report into UK local radio, commissioned by the UK government, predicted that at least 50 local commercially-funded stations could close down by the end of 2010

Radio plays a fundamental role in today's society: it is often quoted as the most trusted medium by citizens¹⁰ and is entrusted with many public interest obligations¹¹. It therefore needs exclusive access to spectrum, managed by EU Member States.

Spectrum is currently efficiently managed by EU Member States and this should remain the case: national radio frequency landscapes and national radio broadcasting markets are different, with divergent plans for digitization, diverse social, cultural and historical characteristics and with distinct market structures and needs. EU Member States already coordinate their views through existing international fora, such as the International Telecommunications Union (ITU) or the European Conference of Postal and Telecommunications Administrations (CEPT).

Investments into radio broadcasting have been and will be extremely high. Therefore, regulation must be tailored to local needs in order to allow the best possible development. In that sense, individual national licences with an adequate period of time (at least fifteen years), provide the necessary certainty to engage in viable business models for free-to-air broadcasting. It should also be recalled that commercially-funded radios are SMEs, and are in no position to compete for access to spectrum with other market players. So, market-based approaches (such as service neutrality or secondary trading) should not be enforced in bands where commercially-funded radios broadcast or may broadcast.

As a reminder, radio is broadcast all through Europe on the Band II (87.5-108 MHz), Long waves (148.5-283.5 kHz) and Medium waves (520-1,610 kHz). Radios' plans to broadcast digitally could use the Band III (174-230 MHz), the L-Band (1452-1492 MHz) and / or Band II, depending on the EU Member States. Band II remains and will remain for the next years the main band used by radios.

Going on with securing access to spectrum in Band III and L-Band for digital radio is still paramount for its development on-air. This access was secured by EU Member States in international fora, such as ITU and CEPT, and should be respected. In that sense, the Working Document indicates that "Internet access is becoming necessary for citizens to play a full part in daily life"¹²; radio is already part of this daily life, fulfilling its part in social inclusion, also in the rural area.

To sum up, AER would like to underline that it is crucial that EU Member States can allocate spectrum exclusively or with priority to broadcasting, and, especially to commercially-funded radio broadcasting; harmonized approaches, are not the appropriate answer: there is no one-size-fits-all solution. EU Member States should retain the freedom to assign frequencies to radio broadcasters through individual licences for an appropriate amount of time (at least fifteen years).

II. Radios need access to copyright protected works

Commercially-funded radios constantly use pieces of music for all produced content. This raw material is almost always protected by copyrights: one of AER's members' primary expenses, with respect to both time and money, remains that of copyright clearance. Radio

¹⁰ For example, a recent survey in Czech Republic shows that 67% of the population trusts radio and 27% do not: Czech Public Opinion Research Centre (Centrum pro vyzkum verejného mínění - CVVM) – September 22nd, 2009.

¹¹ Obligations to broadcast a certain amount of local news, of local artists, of programmes in the local language

¹² Working Document, page 6

broadcasters across Europe pay over €2.6 billion per year for content, mostly music rights¹³, and payment for these rights is negotiated on a regular basis. Therefore, AER is constantly striving to ensure the best possible copyright regulatory framework for its members¹⁴.

Commercially-funded radios are increasingly developing services online. It is at the same time an exciting opportunity and an obligation: radio only exists where listeners are, and the latter are increasingly spending most of their time on the internet. This evolution nevertheless does not change what radio is: the provision of free sound programmes in a scheduled manner.

AER would therefore like to stress certain important elements: first, radio's business model is not based on the sale of music. It should be underlined, although this might seem redundant, that solutions found for music retail on the internet cannot be applied *mutatis mutandis* to radio broadcasting / transmission on the internet. In addition, AER calls for the application of similar rules for online and offline environments: for commercially-funded radios, transmission of programmes on the internet is still only a necessary complementary element to free-to-air broadcasting on FM. Multiplication of regulatory remedies for a single reality cannot be an appropriate solution: the creation of rules for the online world should be an opportunity to build a new all-encompassing framework for both online and offline copyrights users' access, with the extension and a better implementation of existing rules in the field of copyright law¹⁵.

From this perspective, the role of collecting societies is extremely important, and AER does not debate this. They facilitate the collection and distribution of music royalties in a way that would be extremely difficult if left to individuals. However, their organization can and should be challenged: competition amongst collecting societies is necessary to reduce administration costs. AER supports a one-stop-shop model where radio broadcasters can clear rights through single bodies which deliver access to European or worldwide repertoire, for online and offline use.

As rightly underlined in the Working Document, "The single market has evolved considerably since its original launch. It was conceived before the arrival of Internet, before ICT became one of the main drivers of growth and before services became such a dominant part of the European economy [...]. The Commission considers that to achieve the EU 2020 priorities, there is a pressing need to overcome fragmentation that currently blocks the flow of on-line content and access for consumers and companies"¹⁶. This statement is true for both on-air and online copyright access.

To sum up, AER members need actions to facilitate the clearance of rights from a single source as the current structure of multi-payments and multi-clearance is unviable. Commercially-funded radio broadcasters should be able to clear the usage of rights through one-stop-shops, delivering access to worldwide repertoire, for online and offline use: a user should be allowed to purchase whatever rights he requires for whatever purpose wherever

¹³ Figure for the European Economic Area, please see presentation on "*The production of broadcasts and remuneration of rights: a business perspective*" by Godfrey McFall, Senior Associate, Oliver&Ohlbaum Associates delivered at the World Intellectual Property Organisation Standing Committee on Copyrights and Related rights' meeting of May 25th, 2009

¹⁴ Further and more comprehensive information on this issue can be found in AER's submission to the European Commission's Consultation based on the document on "Creative Content in a European Digital Single Market: Challenges for the Future" of January 2010; please see here: http://www.aereurope.org/content/view/654/44/lang.en_GB/

¹⁵ For example, by extending the scope of the Satellite and Cable Directive of 1993 to online delivery of sound content; in other words, clearing rights in the EU Member State of origin should enable use in all

¹⁶ Working Document, page 10

he wishes to exercise them from any collective rights' management organisation in the EU against clear, published, comparable tariffs. The latter should fulfill similar transparency requirements; i.e., any organisation providing access to music rights should publish its tariffs (including split costs of both rights usage and administration fees), the licensing conditions, administrative requirements and the destination of the monies received. Finally, dispute resolution mechanisms should be enabled as appropriate in every EU Member State in order to prevent abuse of a dominant position by any organisation providing access to music rights.

To end up with, AER would like to recall that, in order take part actively in the shaping of a vigorous knowledge-based economy, commercially-funded radios need and will need:

- Access to spectrum
- Access to copyrights
- Access to advertising revenues

AER remains available to explain this position in further details, should this be helpful to the European Commission.

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