



Guide to BBC inhouse agreements and BBC's clearance requirements for Radio Independents

This is a detailed guide to BBC's own practice in contracting **Actors, Writers, Musicians, and Composers**, as relevant to you, and gives detailed guidance on how to meet BBC's minimum clearance requirements. It is intended to be read in conjunction with Clause 6.2 of the General Terms and Conditions for the Production of Radio Programmes by Independent Producers, and supplements paragraphs 5 and 6 of the Starter Pack.

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Writers Agreements

Publishers' Association/ Society of Authors Agreement

If your commission is based on a literary work (eg a reading such as Book of the Week, Book at Bedtime, or a dramatisation of a novel), or if you want to include a reading of an extract from a literary work, you will need to enter into a contract with either the publisher or the writer him or herself (via an agent). Whether it's the publisher or the agent will depend on who own the radio rights under the authors contract with the agent. In most cases it is the publisher, but some authors retain the rights themselves. In any event, if you contract with the publisher, the author's rights will need to be taken into account, particularly in relation to moral rights, for which see more below.

The BBC has a new overall standard agreement negotiated with the Publishers Association and the Society of Authors, which applies whether it's publisher or author who controls the rights. This agreement sets out the rights we acquire and the minimum fees we pay. It is in two forms, one dealing with use of a complete work (eg a dramatisation or reading), the other dealing with use of extracts and poems.

The agreements are in the form of a pro-forma contract between BBC and the publisher/author, and we have created forms adapted for independents which we encourage you to use and which are available on the Business Affairs website.

The main principles relevant to independents are:

BBC's non-exclusive licence of the work subsists for the full duration of copyright and is to exercise the BBC's "Public Service Rights" subject to payment of an initial fee, repeat fees, and other use fees.

The fee structure is (for extracts and complete works):

Initial Fee to be paid on first analogue broadcast. First broadcast to be made within three years of contract. Different Initial Fees apply to main network (R3 and 4) commissions, BBC7 commissions, World Service commissions, and local radio, and there are reductions for translations. The fee table is included in Schedule 1 of the agreement which is available on the Business Affairs website.

Repeats at any time over the full period of copyright attract a repeat fee of 100% of the applicable fee, however first repeat (second transmission) can be pre-purchased for 80%, if paid on first broadcast.

Repeats on a network other than the originating network attract the repeating network rate (ie a repeat of a BBC7 commission on Radio Four will attract 100% of the analogue origination rate)

Use of an extract from a programme based on a complete work attracts a pro-rated repeat fee (ie 50% of the repeat fee if 50% of the work is used)

All other Public Service Rights (streaming, audio on demand, BBC7 repeats) should be pre-purchased for a 5 year licence (complete works) or a buy out (extracts) for 10% of the initial fee (the "New Public Services Fee"). The 10% relates to the initial fee for one broadcast – so it is 10% of the Domestic Services Rate for a Radio Four commission, and of the World Service/BBC7 Rate for WS/BBC7 commission. For complete works, after the 5 years, further 5 year cycles can be bought on payment of the currently applicable fee agreed by the PA/SOA. This replaces the previous 3% fee for audio on demand and streaming. The key difference leading to the increase is that it pre-buys BBC7 repeats (so we no longer have to clear these separately) and broadens the definition of new services, allowing BBC to develop its technology.

BBC's pre paid rights – Clause 3.2 of the Special Terms.

We want to maintain consistency between the clearance level of inhouse programmes and indies where possible, and therefore we will be asking for the following pre-clearances:

For all relevant commissions EXCEPT Radio Four's Book at Bedtime and Afternoon Reading, we will be asking you to pre-purchase 2 analogue transmissions and the 5 year Public Service Rights licence. This means paying upfront on broadcast the Initial Fee, the 80% pre-purchased repeat, and the 10% New Public Services Fee.



For Book at Bedtime and the Afternoon Reading, we will be asking independents to pre-purchase just the New Public Services Fee, but not the first repeat (as these are not habitually repeated). So this means paying upfront on broadcast the Initial Fee and the New Public Services Fee.

This will be reflected in Clause 3.2 of the Special Terms of your production agreement.

Other rights and terms

We would also ask that you ensure that the licence you obtain will allow BBC to exercise its 10 year licence in our production agreement with you (and any extensions), on payment of the repeat fees above. We'd suggest that you mirror our agreement on the term and take a licence for the duration of copyright. We would also ask that you use our broad definition of BBC Public Service rights which allows for technological development. In this way BBC's rights are truly "clearable", that is with no need to negotiate individual future use payments.

We acknowledge that some agents and publishers will want to negotiate out some of these terms, when dealing with BBC or independents, and that sometimes it will be impossible to obtain the above package of cleared rights. If an agent or publisher isn't willing to agree to the BBC's standard terms, please let Business Affairs know, so that we can discuss it further.

One issue that has come up is the waiver of moral rights from the author that some agents are unhappy with. It is important to us so please contact us if it is being resisted, so we can discuss.

The terms for exploitation of your own commercial rights in the Programme are for you to agree. It is possible that agents and publishers will want the terms for commercial exploitation to match the BBC's terms – and if BBC Worldwide is your preferred distributor, then they will also be keen for you to reflect the BBC's terms, we would also ask that you obtain these terms for the distribution rights granted to the BBC under the new Terms of Trade - BFBS rights and the right to sell the programme as part of the sale of an entire network. For complete works, our agreement obtains international radio distribution rights for a royalty of gross receipts of 1.5% and 5% for undramatised straight reading. For extracts, there are buy-out percentages for different means of distribution. This latter was agreed as a sensible approach to reduce future administration for all parties.

Writers' Guild of Great Britain/ Society of Authors/ Personal Managers' Association Agreement

On 1st January 2006 BBC concluded an agreement with the Writers Guild, the Society of Authors and the Personal Managers' Association setting out agreed terms for the contracting of original plays for radio, drama series, dramatisations, dramatised features (or drama documentaries), and dramatic adaptations of books and existing plays.

Other kinds of original commissioned writing (documentaries, abridgements, sketches, gags) aren't covered by this agreement, and are commissioned on different terms – for details see below.

Similarly to the published works agreement, this now grants BBC a licence to use the programme incorporating the script in all media for the duration of copyright – in this case the licence is exclusive, as BBC has commissioned the script.

From this exclusive licence, other rights in the script are then addressed. - these are the prequel/sequel/spin-off, changed format, television transfer, print and publication, stage and theatric film rights. Some of these are controlled by BBC, some by the writer, and some shared. In respect of our production agreement, BBC only requires that you are able to meet your obligations to us in respect of future series and television transfer (Clauses 22 and 12.7), and subject to that, the agreement you reach on format is up to you. Our standard format fee to a format creating writer for episode scripts not written by her/him is 10% of the highest script fee for the series, and if we are commissioning a series from you created by a writer, we'll take that in account in budgeting.

This duration of copyright licence is subject to a fee structure and use payments as follows:

Initial Fee. The basic initial fee is called the "Two Transmissions Fee" and pre-buys two transmissions on Radios 1,2,3,4 or 5live. This is used for all commissions on those networks and World Service Commissions except adaptations of plays and dramatised features where the One Transmission Fee is used.



For Nations commissions a lower One Transmission Fee of 60% of the Two Transmission Fee can be used (plus the new public services fee below) Only one transmission is pre-purchased and a repeat fee is paid on the second transmission.

Again similarly to the Publishers Association agreement, we have agreed an increased “new public services” fee of 10% of the one transmission fee, which buys all uses other than Radio Four repeats for 5 years (streaming, audio on demand, BBC7 repeats, and extract uses).

BBC's Pre Paid Rights

For a Radio Four commission of a play or series other than an adaptation of an existing play or dramatised feature, you should budget to pay the writer the Two Transmission Fee plus the 10% New Public Services Fee.

Other terms.

You should acquire an exclusive licence in the script for use on the BBC's Public Services, in perpetuity to allow for BBC's possible extensions of the Licence Period in our production agreement with you, and set out the repeat rates also in the schedule, so there is no negotiation if we wish to repeat after the second transmission.

As with published works, the terms for commercial exploitation are for you to agree, though if BBC Worldwide is your preferred distributor, they will expect terms to be no more favourable than these. The agreed royalties for commercial exploitation are set out in Schedule 3 of the agreement.



Equity Agreement

The BBC has an agreement with Equity covering most BBC engagements of actors for radio – actors in drama, dramatic readings including single dramatic readings, sketches, and sitcoms. The fee structures are:

Main network (Radios 1,2,3,4, 5Live) or World Service commissions – a “two transmission” fee is used for all commissions other than single dramatic readings and pilots. This fee allows 2 broadcasts on the main network. Repeats after the first two transmissions are paid at one third of the original fee, subject to an escalator after three years (for details see the Equity Agreement available on the Business Affairs website)

For main network and World Service commissions of single dramatic readings and pilots – the one transmission fee (two thirds of the basic two transmission fee) is used. Repeats after the first transmission are paid of 50% of the original fee. For World Service commissions, the transmission is in fact a transmission cycle of unlimited transmissions in different World Service regions over 8 days.

Both these fees cover one simultaneous transmission overseas and/or one deferred broadcast within a year by EBU members.

BBC7 commissions – the one transmission fee is used, which buys 9 transmissions over 3 years.

BBC7 transmissions other than original BBC7 commissions (and repeats of commissions after the 3 years) are cleared by BBC’s blanket licence with Equity. This covers independents – we would ask that you include the following wording referring to this in your actors’ agreements:

“The BBC may also use the recording(s) of the Artist’s performance hereunder in accordance with the terms of any agreement between the BBC and Equity which may for the time being be in force and applicable”

All of these engagements are also subject to a further payment of 3% of the applicable fee to cover audio on demand for up to 14 days. We’ll require this fee to be paid in all circumstances.

The “Artists” box in Clause 3.2 of the General Terms will, for example, have a subsection “Actors” which may say “2 Radio Four transmissions plus Primary New Media Rights”.



Music Agreements

Musicians Union Agreement

If you're a drama or documentary producer, it's less likely that you will be engaging musicians than actors or writers; if you are making a specialist music programme incorporating live music then hiring musicians is likely to be one of your largest tasks and specialist advice may be required. However, as general guide, these are BBC's terms for engaging professional musicians to record for radio programmes, agreed with the Musicians Union:

Fees are calculated by session length – for details see the Musicians' Union agreement available on the Business Affairs website. If you're recording a public concert then different fees apply, please contact Business Affairs for details

The session fee buys the following initial rights:

One transmission on a core service (Radios 1,2,3,4, 5Live)

Three transmissions on Radio 3's "Through the Night" service

One world service transmission cycle (unlimited transmissions over 8 days)

Non-theatric rights throughout the world

EBU transmissions within one year.

Repeats:

Core service repeats are paid at 50% of the basic recording fee, 35% if the repeat is pre-purchased (paid with the engagement fee).

World Service repeats are paid at 15% of the basic recording fee, 10.5% if pre-purchased.

Audio on demand and other rights:

"Non Core Public Service Uses" can be bought out for 3% of the basic recording fee for one year, 5% for 3 years, 10% in perpetuity.

Non Core Public Service uses means any licence fee or Grant In Aid (World Service) funded service including, but not limited to, digital radio (BBC7/6), and on demand access.

If you are engaging musicians for a drama, then we will specify how many BBC transmissions we require to be bought out and the term of the Non-Core Public Services pre-payment agreed and budgeted for. The "Artists" box in Clause 3.2 of the General Terms may have a "Musicians" sub-section which will say, for example "1 Radio Two transmission plus 3 years Non Core Public Service Uses"

Music Composition Agreements

If you are engaging a composer to write original music for your programme, then BBC has some straightforward precedents you may use – please email your Business Affairs contact.

There are two main ways to hire a composer. One is to contract them to deliver a finished musical soundtrack which will be "electronically realised", that is performed by the composer themselves by electronic means not by live musicians. The other is to deliver the composition which you will then arrange to have performed by musicians (and engage the musicians). The first is the cheapest and most common. In the first case you will be contracting the composer to deliver a sound recording, which is a piece of music copyright in its own right, in the second they will be delivering the music, ie the notes on the page.

In both cases BBC typically takes a licence to use the music in the programme in perpetuity via all media, subject to royalties or payments as may be set by the Music Copyright Protection Society or the Performing Rights Society – so all royalties and transmission fees are handled by them, rather than BBC.