



Accessibility of on demand programme services

Statement

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About this document

This document reports on Ofcom's decisions to alter the way it collects and publishes data on how accessible On Demand Programme Services ("ODPS") are for people with hearing and/or sight impairments.

It also sets out Ofcom's plans more generally for meeting its duties to:

- a) encourage providers of ODPS to ensure their services are progressively made more accessible to people with hearing and/or sight impairments; and
- b) ensure that providers of ODPS promote programmes of European origin, known as 'European works'.

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Section 1

Executive summary

- 1.1 Ofcom strongly believes that consumers with hearing and/or visual impairments should have access to television – whether broadcast or “on demand”. Television can be vital to participation and inclusion in social and cultural life, but for many with hearing and/or visual impairments, that inclusion relies on programmes carrying subtitles, audio description, or signing (known as “access services”).
- 1.2 Ofcom has a statutory duty to encourage providers of on demand programme services (“ODPS”) to ensure that their services are progressively made more accessible to people with impairments of their sight and/or hearing. While there has been progress in the accessibility of ODPS, there are still significant gaps compared with broadcast television¹.
- 1.3 One of the key ways we encourage further progress in this area is to collect data on which ODPS – and what proportion of programmes on those services – carry subtitles, signing and audio description. This is important because it allows Ofcom (as well as the industry and consumers) to measure progress in making these services accessible. Publishing this data helps consumers to make informed decisions about which ODPS they watch and the platforms (e.g. website, app or set top box) they use to do so.
- 1.4 In 2016 we consulted² on proposals to change the way we collect and publish data on the accessibility of ODPS. The proposals aimed to bring this process in line with how Ofcom collects and publishes data on broadcast accessibility. We also aimed to ensure that the data collected is detailed enough to be meaningful to consumers.
- 1.5 Ofcom would like to thank those who responded to the consultation. Their comments are summarised in section 2, together with Ofcom’s responses to them, and our decisions. In summary, Ofcom has decided to:
- require ODPS providers to submit access service data on a twice-yearly basis in line with the current requirement on television broadcasters;
 - make it compulsory for ODPS providers to submit this data under section 368O of the Act;
 - require ODPS providers to submit data about each branded service they offer to consumers;
 - exclude providers of ‘adult’ services from the requirement to provide data; and
 - publish the collected data on a biannual basis, as currently occurs for broadcast television services.
- 1.6 This statement also sets out, for information, other ways in which Ofcom plans to encourage greater accessibility of ODPS. These include:

¹ https://www.ofcom.org.uk/data/assets/pdf_file/0010/100225/accessibility-on-demand-programme-services-report.pdf

² <https://www.ofcom.org.uk/consultations-and-statements/category-1/on-demand-accessibility>

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- continuing to work with consumer groups to identify what matters most to consumers in this area; and
- continuing to work with industry to identify obstacles to making ODPS more accessible.

1.7 We also set out for information how we plan to fulfil our statutory duty to ensure ODPS providers promote programmes of European origin, known as 'European works'. These plans include the publication of guidance for ODPS providers on the definition of 'European works' and the collection of data about production of, and access to, European works on ODPS.

Section 2

Background

What are our regulatory duties on accessibility?

- 2.1 Ofcom regulates on-demand programme services (“ODPS”) under the Communications Act 2003 (as amended) (“the Act”). ODPS regulated by Ofcom include a wide range of services, such as public service broadcasters’ catch-up services, film services, local TV archives and “adult” websites.
- 2.2 Ofcom has a duty under section 368C(2) of the Act to encourage providers of ODPS to ensure that their services are progressively made more accessible to people with disabilities affecting their sight, hearing, or both. ODPS providers can achieve this, in particular, through subtitling, signing, and audio-description (known as “access services”).
- 2.3 Broadcast television services are required by law to make a certain proportion of their programming accessible³, but there is not currently an equivalent statutory requirement for ODPS. Ofcom strongly believes that consumers with hearing and/or visual impairments should have access to television, whether it is broadcast or on demand. Therefore, in addition to our work to meet our statutory duties for accessibility on broadcast television, we work in a number of ways to encourage more widespread availability of access services on ODPS. In Section 4 of this document, we outline for information our ongoing work to encourage ODPS accessibility.

What is the current position?

- 2.4 As catch-up and on demand services become increasingly popular⁴, Ofcom’s duty to encourage greater accessibility takes on increasing importance.
- 2.5 There has been progress in the accessibility of ODPS⁵, but there are still significant gaps compared with broadcast television. We recognise that this is a source of consumer confusion and frustration: programmes can be subtitled when broadcast, for example, but then appear without subtitles on related catch-up services.
- 2.6 One of the key tools Ofcom has at its disposal is the regular collection and publication of data on the accessibility of ODPS. Through this data, we can provide information for consumers on accessible services, while also monitoring and assessing progress, and engaging with service providers who need to improve in this area.
- 2.7 Prior to 2016, Ofcom’s co-regulator in this area was the Authority for Television On Demand (“ATVOD”). ATVOD required all providers of ODPS to report on an annual basis on their provision of access services, and published this data annually. Since

³ Sections 303 to 308 of the Act.

⁴ <https://www.ofcom.org.uk/research-and-data/cmr/cmr16/the-communications-market-report-uk>

⁵ https://www.ofcom.org.uk/data/assets/pdf_file/0010/100225/accessibility-on-demand-programme-services-report.pdf

becoming the sole regulator of ODPS in 2016, we have reviewed our future approach to ODPS accessibility data collection and reporting.

How did we collect data in 2016?

- 2.8 In 2016, Ofcom's collection of data on accessibility of ODPS continued the approach taken by ATVOD, collecting data from ODPS providers on the extent to which their on demand services carry programmes with subtitles, signing, and/or audio description. The report on this data has been published on Ofcom's website⁶.
- 2.9 This data related to the year from 1 April 2015 to 31 March 2016, in order to provide continuity with the data previously collected by ATVOD
- 2.10 Data was collected from all regulated ODPS providers. However, Ofcom excluded those providing 'adult' programming on their ODPS due to the limited consumer benefits we consider are likely to arise from access services on such ODPS (see 3.26 to 3.40 below for discussion of this as our approach in future).
- 2.11 Data was collected by service provider for each notified ODPS. Please note that a single notified ODPS can include all on demand content made available by that provider, which can be via a number of services with separate identities (see 3.25 below).
- 2.12 Data was given for each platform on which that ODPS appears. By 'platform' we mean the platform/outlet through which the service is viewed (for example, website, mobile app, connected TV app, or set top box service such as Sky Q or Virgin TiVo). Accessibility can vary across different platforms – for example, an ODPS may have subtitles on programmes when they are viewed via its website, but those subtitles may not appear if the same service/content is viewed via a connected TV app. Breaking down data by platform helps consumers who require access services to make informed choices about which services to watch, as well as highlighting those platforms on which services offer only poor levels of accessibility (whether for technical or other reasons).

⁶ https://www.ofcom.org.uk/_data/assets/pdf_file/0010/100225/accessibility-on-demand-programme-services-report.pdf

Section 3

Consultation proposals and responses

What changes did we propose?

- 3.1 We proposed changes to:
- a) the way Ofcom collects data on the provision of access services on ODPS;
 - b) the type of data we collect; and
 - c) the way we publish the data.
- 3.2 Our provisional view was that these changes would make a particularly important contribution to our section 368C(2) duty to encourage accessibility.
- 3.3 We considered alternative approaches to the collection and publication of data on ODPS accessibility, which we discussed in the Impact Assessment in Annex 1 to the consultation document (and which we substantially reproduce in Annex 1 to this statement).
- 3.4 Below we consider each proposal, detailing the proposed changes, the relevant consultation responses, and Ofcom's decision in each case. All changes will take effect from the date of publication of this statement.

Respondents

- 3.5 Ofcom received responses from:
- a) three charities: Action on Hearing Loss, the Royal National Institute of Blind People ('RNIB'), and Sense;
 - b) ten individual respondents (including one confidential respondent);
 - c) six bodies associated with provision of ODPS: BT, Channel 5, the Commercial Broadcasters' Association ('COBA')⁷; Curzon, Sky UK ('Sky'), a confidential respondent; and
 - d) Ofcom's Communications Consumer Panel and the Advisory Committee for Older and Disabled People ('CCP').
- 3.6 We have considered all these responses carefully. They have been posted on Ofcom's website, except those which are confidential.

⁷ COBA represents commercial multichannel broadcasters

Changes to the way we collect data

Ofcom's proposal

Frequency of data collection

- 3.7 Ofcom proposed that ODPS providers be required to submit access service data on a twice-yearly basis in line with the current requirement on television broadcasters. This would increase the frequency from the annual submissions previously required by ATVOD and by Ofcom in 2016.

Requirement to submit information

- 3.8 Ofcom proposed to make it compulsory for ODPS providers to submit the above data, continuing the practice previously adopted by ATVOD. We proposed the use of our powers under section 368O of the Act, which mean that Ofcom can impose a financial penalty for failure to respond⁸. Ofcom would require only the information we consider necessary to fulfil our statutory duties to encourage progressively more accessible ODPS.

Consultation responses

- 3.9 BT, the CCP, Sky, a confidential respondent, all three charities, and all individuals who responded to this proposal agreed with it. RNIB believed that reporting will ensure that data is available to consumers and will help them make viewing and purchasing decisions. Sense suggested that clarity and consistency is important regardless of how content is received by viewer.
- 3.10 Three industry respondents felt that twice yearly data collection would present a disproportionate burden on ODPS providers.
- 3.11 COBA emphasised that most of their members operate VOD services at a loss or on low margins. A confidential respondent argued for an exclusion for smaller providers. Curzon similarly expressed concern about cost and resources and felt it appropriate to distinguish small, medium and large providers. Curzon also believed that the time allowed for gathering the required information should be 60 days rather than 30.
- 3.12 Both COBA and Channel 5 questioned the efficiencies that could be gained by the alignment of ODPS and broadcast data collection, Channel 5 suggesting that the data for on demand and broadcast services does not necessarily sit in the same place within companies. Channel 5 also questioned the idea that Ofcom would be able to take action as a result of more frequent updates.
- 3.13 Channel 5 therefore felt that linear and on demand data collection should be brought into line by reducing the frequency with which linear broadcasters report (rather than increasing the reporting obligations on ODPS providers).
- 3.14 No respondents commented on the proposal to require this information under section 368O of the Act. However, both Action on Hearing Loss and an individual respondent

⁸ Section 368O(7) states that a failure to provide required information would be treated as a breach of section 368D, which details the duties of ODPS providers under the Act, including the duty to provide information as required under section 368O. This means sections 368I and 368K also apply, including the ability for Ofcom to impose a financial penalty for failure to respond.

expressed a preference for a legislative requirement to ensure parity between the provision of on demand and broadcast access services.

Ofcom discussion and decision

- 3.15 Ofcom acknowledges that the proposed change represents an increase on the current requirement. However, our view is that the increase is not likely to be substantial, as all relevant data would need to be collected in any case for annual submission. While some companies may not benefit from the alignment of broadcast and on demand data collection, others (particularly smaller companies with less scope for separating workflows) are more likely to see some efficiencies as a result of aligned data submission.
- 3.16 Ofcom appreciates the concerns of smaller service providers. However we do not currently have the necessary industry approved robust measurements of ODPS audience share or turnover to provide a means of excluding particular services. Indeed, proving eligibility for exclusion based on scale could in itself be burdensome for ODPS providers.
- 3.17 We also consider that 30 days is an adequate period for responding to these data requests. Information relating to on demand accessibility has been required of ODPS providers for the last three years, and therefore such providers should have systems in place to produce the required information.
- 3.18 We do not agree with Channel 5 that there is little benefit to increased updates. Information on which services and outlets are providing access services is vital for Ofcom to be able to direct its efforts to encourage accessibility (as further outlined in section four below), for example through targeted engagement with those service providers who are making less progress.
- 3.19 In our view, combined data collection will (or should) encourage those providers with both broadcast and on demand services to view accessibility on each as equally important. That is consistent with the alignment of other regulatory work on ODPS with that on broadcast television, and in line with the Audiovisual Media Services Directive 2010 (the “AVMS Directive”).⁹ In particular, in relation to the importance of a level playing field for providers of broadcast and on demand services (Recital 10), and the rights of persons with a disability and the elderly to participate in social and cultural life which are inextricably linked to the provision of accessible ODPS (Recital 46).
- 3.20 Ofcom has therefore decided to require ODPS providers to submit access service data on a twice-yearly basis in line with the current requirement on television broadcasters.
- 3.21 Ofcom will make it compulsory for ODPS providers to submit this data under section 368O of the Act. We consider it is necessary in this case to use formal powers rather than a voluntary survey as the latter risks enabling those with a poor record of access service provision to avoid provision of data, and could result in patchy information for consumers on ODPS accessibility, and significantly reduce the impetus for ODPS to progressively increase provision.

⁹ Directive 2010/13/EU

3.22 In practical terms, we have revised the planned dates for data submission and publication as below (see table 1). ODPS providers' data submissions in April 2017 would need to cover the period from 1 January 2016 to 31 December 2016 (the slight overlap with the most recent data request is to allow comparison with broadcast data). The shaded dates align with those for broadcast television and we propose continuing on the same basis in subsequent years.

Table 1: Data submission and publication plan

Data period	Data collection	Data published
1 Jan – 31 Dec 2016	By 8 May 2017	May/June 2017
1 Jan – 31 July 2017	By 31 August 2017	Sept / Oct 2017 (half year report)
1 Aug – 31 Dec 2017	By 31 January 2018	March / April 2018 (full report)

Changes to the type of data we collect

Ofcom's proposal

By branded service

3.23 Ofcom proposed that ODPS providers submit data about each branded service they offer to consumers, rather than (as previously) relating to the sum of their on demand content. By 'branded service', we mean services which are distinct from the consumers' point of view. A given service provider (e.g. Channel 5 Broadcasting) may offer a number of different branded services (e.g. 'All Day Milkshake', 'My5'). As at present, data would be further broken down by outlet; so the levels of accessibility for 'My5' would be given for each outlet on which it is available (e.g. website, YouView, mobile apps, and so on).

3.24 We made this proposal on the basis of our provisional view that consumers are more likely to be aware of ODPS in the context of a particular branded service they can access, rather than by service provider. Accordingly, data broken down in this way would be more helpful for consumers wishing to use an accessible service, and more helpful for Ofcom in assessing the progress being made in this area.

Adult services

3.25 Ofcom also proposed not to require 'adult' services to provide data on accessibility. By 'adult' services in this context we mean pornographic services which fall within the BBFC's¹⁰ definition of a 'sex work'¹¹, i.e. those "whose primary purpose is sexual arousal or stimulation". This includes those services principally offering specially restricted material as defined under section 368E of the Act and which are required to operate an age verification system to ensure access is prevented for under 18s.

¹⁰ The British Board of Film Classification

¹¹ <http://www.bbfc.co.uk/what-classification/18>

- 3.26 Our engagement with consumer groups and industry stakeholders had indicated insufficient demand for access services on these ODPS. We therefore proposed that such providers should not be subject to the administrative burden (albeit a relatively small one) that data collection would impose on them and Ofcom.

Consultation responses

By branded service

- 3.27 BT, the CCP, Sky, all three charities, and all individuals who responded to this proposal broadly agreed with it. Channel 5 offered no objection.
- 3.28 In supporting the proposed changes, Action on Hearing Loss welcomed pragmatic steps to facilitate consumer choice, including the breakdown of data by branded service. Sense commented that the distinctions between broadcasters, branded services, platforms, and devices are not always clear and hence information about each element is important.
- 3.29 An individual respondent suggested that data should be further broken down, differentiating sign-presented and sign-interpreted content, as British Sign Language users understand TV content better if it is sign-presented.
- 3.30 However, Curzon, a confidential respondent and COBA disagreed with the proposed changes, suggesting that they would place a significant and disproportionate burden on providers. Curzon felt that smaller providers who are not also broadcasters would not be able to compete on a level playing field with larger VOD providers and broadcasters in terms of accessibility, and therefore that data would show them in an unfavourable light.

Adult services

- 3.31 RNIB and Sense expressed reservations on the proposal to exclude adult service providers from the data provision requirements. RNIB felt that the demand for access services on adult services could not be accurately assessed in the absence of examples of accessible services, and that the social stigma relating to adult services could deter people from asking for accessibility in this area. RNIB also suggested that where adult service providers do provide access services they should get the recognition for doing so. Sense expressed a preference for treating all providers in the same way, but appreciated the arguments for an approach which prioritises action where consumers will benefit most.

Ofcom discussion and decision

By branded service

- 3.32 Ofcom acknowledges that requiring data per branded service will involve an increased burden on providers. However, this increase need not be significant. Under the current approach, some providers already submit data per branded service, presumably because this is how they have collected it. As several respondents pointed out, the programming on different branded services is often taken from the same larger pool of programmes. This means that the data about individual programmes (i.e. data on whether or not they carry each access service) will be replicated across branded services. Again, we would encourage providers to ensure that they have systems in place in order to collate the required information.

Accessibility of on demand programme services

- 3.33 On the basis of our qualitative assessment of the value of collecting the data as proposed, as set out in this statement and in our impact assessment, and bearing in mind the important objectives pursued, we consider that the benefits of collecting this data outweigh the small increase in regulatory burden. We believe consumers are more likely to be aware of on demand content in the context of a particular branded service they can access rather than by service provider. Data broken down in this way will therefore be more helpful for those wishing to use an accessible service, and more helpful for Ofcom in assessing the progress being made in this area.
- 3.34 Ofcom has therefore decided to require ODPS providers to submit data about each branded service they offer to consumers. Data for each branded service will still be required for each platform on which it appears. We will also request that providers (voluntarily) differentiate figures relating sign-presented and sign-interpreted content where they can.

Adult services

- 3.35 Ofcom acknowledges that the scale of demand for access services on adult services is currently hard to measure with any certainty, for the reasons outlined by the RNIB. We receive consumer complaints about the lack of accessibility of non-adult services but not adult services. In part at least this may be because those who wish to access adult services are more reluctant to complain when they cannot do so. However, we consider that it is appropriate to take a targeted approach which uses Ofcom's resources in this area to maximum benefit for audiences, based on our current understanding of audience requirements – that is, where we do have evidence of demand (such as complaints).
- 3.36 It is also important that we continue to consider how we can identify which ODPS should be subject to the data provision requirements. This includes consideration of financial and administrative burden on providers and Ofcom. We agree with Sense that in the longer term the criteria used for broadcast services would be preferable, for example using measures of audience share and service size. For the time being though, as stated at 3.17 above, there is currently a lack of robust measurements of service significance and size such as audience share and ODPS-specific turnover.
- 3.37 Ofcom has therefore decided not to require 'adult' services to provide data on accessibility. Where data on accessible programming is provided voluntarily by adult service providers we will include this in our reports.
- 3.38 This is a developing industry where market shares, nature of output, and available measurements can change rapidly, and from time to time we will need to re-assess whether it would be appropriate for any other services or types of services to be excluded from routine provision of the data.

Changes to the way we publish data

Ofcom's proposal

Frequency of publication

- 3.39 Ofcom proposed to publish the collected data on a biannual basis, as currently occurs for broadcast television services.

Consultation responses

- 3.40 BT, the CCP, Sky, a confidential respondent, all three charities, and all individuals who responded to this proposal agreed with it.
- 3.41 Action on Hearing Loss, the RNIB, Sense, and one individual also commented on the accessibility of the resulting data as published. This included where Ofcom makes this information available and the extent to which the published reports are themselves accessible to those with hearing and/or sight disabilities (for example using screen readers, zoom functionality, Braille and large print).
- 3.42 Channel 5 echoed its comments on the proposals on collection of data, agreeing that on demand and broadcast data should be published at the same time, but once a year only.
- 3.43 Curzon felt that the proposals on publication of data required further discussion, particularly on how small providers are compared to large media groups, which it felt could have significant commercial impact and brand consequences, if negative.

Ofcom discussion and decision

Frequency of publication

- 3.44 We have considered the responses carefully. Notwithstanding those which objected to our proposals, as outlined at 3.19 and 3.20 above we believe that increased frequency of data collection and reporting will enable Ofcom to more rapidly and accurately direct its efforts to encourage accessibility. It will allow consumers, representative groups, and industry stakeholders easily to compare progress in accessibility on ODPS and broadcast television services. These points are consistent with our duty to encourage ODPS providers to ensure their services are progressively made more accessible to people with sight and/or hearing disabilities.
- 3.45 Ofcom has therefore decided to publish the collected data on a biannual basis, as currently occurs for broadcast television services.
- 3.46 In making this decision, Ofcom agrees with Curzon that differences in levels of accessibility can be more fully understood in the wider context of service provision, including the nature of particular services and service providers. The current requirement to provide data includes an optional question on the key barriers to providing programmes with access services. We will continue to encourage responses on this point, and publish a summary of such responses in the resulting report.
- 3.47 Ofcom is keen to ensure that its reports on accessibility are themselves accessible. To this end we have worked with consumer groups to ensure that the latest report can, as far as possible, be accessed by those using screen readers. We always consider reasonable requests for our publications in different formats (for example in Braille or signed). For more information on Ofcom's approach to accessibility more generally please see our website¹².

¹² <https://www.ofcom.org.uk/about-ofcom/website/accessibility>

Section 4

Plans for encouraging accessibility

- 4.1 This section outlines, for information, Ofcom's other ongoing work to encourage increasingly accessible ODPS.
- 4.2 Ofcom works with industry, consumer groups, access service providers and other stakeholders to encourage ODPS accessibility. The delivery of access services to consumers involves collaboration between numerous different parties, notably content providers (e.g. ITV, Channel 4, Discovery) and platform¹³ operators (e.g. Sky, Virgin, YouView). There is continued debate over technical issues associated with delivering access services to multiple platforms, and the relative responsibilities of content providers and platform operators in overcoming these issues.
- 4.3 In the light of these issues, Ofcom is supporting the Television On Demand Industry Forum¹⁴ in its establishment of an access services policy working group. Ofcom considers that this group can provide an effective means for content providers and platform operators to share experience and technical know-how with a view to increasing accessibility.
- 4.4 Ofcom also meets major platform operators individually to help ensure that they are able to deliver access services to viewers.
- 4.5 In addition to the requirements for data collection set out in this document, Ofcom is also exploring new ways to report to consumers on ODPS accessibility. We want to ensure consumers have the right information to make informed choices on which on demand service or platform to use for access services. For example, this might mean collaboration with consumer groups or others to publish information in a manner which reaches more of the relevant consumers.
- 4.6 Ofcom's overall approach to encouraging accessibility on ODPS aims to bring the most benefit for relevant consumers. Ofcom will therefore focus its efforts on the following services/service providers:
- ODPS providers who already have broadcast television access services obligations (for example, ODPS which are 'catch-up' services);
 - high profile services; and
 - significant / popular platforms.
- 4.7 This is not an exhaustive list of areas, but in our experience, the above types of service tend to have the greatest reach. Through our focus on the above areas, consumers with hearing and/or visual impairments will benefit from increased access to the most popular content/services. Additionally, those services with existing broadcast television access services obligations already procure subtitling, audio-description and signing for their broadcast services, so do not begin from a standing start when making previously broadcast material available on ODPS.

¹³ By 'platforms' we mean any websites, apps, portals, smart TVs or set top box platforms on which the content is available.

¹⁴ The Television on Demand Industry Forum (TODIF) is a forum to facilitate two-way communication between the video on demand industry and Ofcom in its role as regulator for editorial content on UK ODPSs.

Section 5

Plans for European works

- 5.1 This section outlines, for information, Ofcom's plans for the promotion of European works on ODPS. 'European works' are programmes of European origin. For more detail on what constitutes a 'European work' see Ofcom's website¹⁵.
- 5.2 Ofcom has a statutory duty, under section 368C(3) of the Act, to ensure that providers of ODPS promote, where practicable and by appropriate means, production of and access to European works.
- 5.3 In contrast to section 368C(2) on access services, there is not a specific reference to an intention that the level of provision will necessarily rise over time (as there is with the words "progressively made more accessible" in relation to access services). Ofcom considers that this can be reflected in a lighter touch approach than for access services, albeit one which promotes European works where practicable and appropriate.
- 5.4 Ofcom's intention is to continue to discharge this duty in broadly the same manner as its previous co-regulator, ATVOD.
- 5.5 We will therefore publish on our website guidance for service providers on the definition of 'European works', which derives from Article 1(n) of the AVMS Directive. We encourage ODPS providers to read and take note of this guidance in light of the Directive's objectives.
- 5.6 Like other member states, the United Kingdom provides information to the European Commission every four years on European works. To support this, ATVOD collected data every two years from ODPS providers and submitted a report on the data received to UK Government via Ofcom. The most recent data was collected by ATVOD in 2015 and related to the period from 1 January to 31 December 2014.
- 5.7 Ofcom will continue to collect data from ODPS providers every two years relating to the extent to which ODPS promote production of, and access to, European works. We will collect the following data from service providers:
- type of service (i.e. 'catch up' or 'archive' or 'mixed');
 - nature of access (i.e. 'free to view' or 'conditional on user payment' or 'mixed');
 - nature of funding (i.e. 'subscription' or 'pay per view' or 'advertising' or 'public grant' or 'mixed');
 - geo-restriction ('yes' or 'no');
 - hours of 'European works' made available; and
 - percentage of total hours of programming comprising 'European works'.

¹⁵ https://www.ofcom.org.uk/_data/assets/pdf_file/0032/58487/european_works_guidance.pdf

Annex 1

Impact Assessment

- A1.1 The analysis presented in this section of our consultation document represented an impact assessment, as defined in section 7 of the Communications Act 2003 (“the Act”). We gave respondents to the consultation chance to comment on it by the consultation closing date. We also had due regard to our obligations under the Equality Act 2010, noting that effective encouragement of the provision of access services tends to remove some of the disadvantages suffered by individuals with disabilities affecting sight or hearing (including many older people), to meet the needs of those individuals related to their protected characteristics under the Equality Act, and to encourage participation in activities enjoyed by other members of the public.
- A1.2 Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making. This is reflected in section 7 of the Act, which means that generally we have to carry out impact assessments where our proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom’s activities. However, as a matter of policy Ofcom is committed to carrying out and publishing impact assessments in relation to the great majority of our policy decisions. For further information about our approach to impact assessments, see the guidelines, Better policy-making: Ofcom’s approach to impact assessment, which are on our website: http://www.ofcom.org.uk/consult/policy_making/guidelines.pdf
- A1.3 Ofcom has considered alternative approaches to collection and publication of data on ODPS accessibility, including maintaining the current approach, substantially reducing data collection, or adopting enhanced data collection and publication processes as outlined in Section 3 of our consultation document.
- A1.4 It is Ofcom’s view that a reduction or discontinuation of data collection (other than in the limited case of ODPS offering ‘adult’ content as noted in our consultation document and this statement) would not be sufficient to discharge its duties in this area under the Act. The collection and publication of data on accessibility is a vital tool, giving consumers information on which on demand services are accessible to them, and encouraging progressively more accessible ODPS. It also allows Ofcom to measure progress in this area. As more consumers use ODPS, the importance of accessibility, as stated in paragraph 2.4 of the consultation document, is growing, and does not support a relaxation in Ofcom’s data collection in this area.
- A1.5 It is Ofcom’s view that the current frequency of data collection is insufficiently regular to provide a full and timely picture of progress in relation to ODPS accessibility. With the timeframes previously used, data on accessibility in April of a given year would not be made public until December of the following year – a period of 20 months. At this stage in the development of access services on ODPS (noting that DCMS has confirmed progress has been made but further work still needs to be done), we consider that this is too long to allow Ofcom, ODPS providers, and consumers to respond promptly to progress (or lack of progress) in ODPS accessibility.
- A1.6 Furthermore, the current approach provides information on the combined accessibility of all an ODPS provider’s services but does not provide such information broken down by ‘branded service’. It is our view that this is not as helpful as it could

be in assisting consumers to make informed decisions about which services to watch, and in identifying those services which are not making sufficient progress on accessibility.

- A1.7 The current approach, in requiring information from all service providers, also placed some regulatory burden on ODPS offering 'adult' content, where the current evidence of consumer demand for accessibility is likely to be low.
- A1.8 The proposals for enhanced data collection and publication outlined in Section 3 of the consultation document, and now decided upon as set out in this statement, will deliver timely data of sufficient detail to provide Ofcom with a realistic view of progress in this area, enabling consumers to make informed choices about on demand services and allowing all stakeholders to compare progress on access service provision on ODPS with that on broadcast television.
- A1.9 We recognise that there is potentially an additional burden for ODPS providers in reporting twice yearly and in further breaking down data by branded ODPS. However, we note that aside from the collection of data by 'branded service', ODPS providers will continue to collect the same data, with a change only to the frequency of reporting to Ofcom on that data. We also believe that the proposed level of detail required (by branded service) is not only more useful in relation to Ofcom's duties and consumers' choices, but also more closely reflects the services as identified and marketed by ODPS providers themselves.