Making on-demand services accessible

What should regulations look like?

Contents

1. Overview

Television viewing is shifting from traditional broadcast television to catch-up and on-demand services. But people with sight or hearing impairment are missing out because these new services often do not provide essential accessibility features like subtitles, audio description and signing.

This statement gives our recommendations to Government on drafting regulations to improve the accessibility of regulated video on-demand programme services ("ODPS"). We want to ensure that they can be used and enjoyed by the widest possible audience, regardless of disability, enabling full participation and inclusion in social and cultural life.

What we are recommending – in brief

Regulations

Our goal is regulations which effectively increase the accessibility of on-demand content while being flexible enough to apply now and in future to the developing and diverse on-demand industry.

We recommend that the regulations follow the approach established for broadcast accessibility: a system of stretching targets with flexible exemptions. We recommend that the regulations require the following:

a) Within 4 years of the regulations coming into force, ODPS providers to offer subtitling on 80% of their catalogue, audio description on 10% and signing on 5%.

b) An interim 2-year target of 40%, 5% and 5% respectively

c) Exemptions from, or reductions in, these targets (or alternative arrangements) on the basis of: i) Audience benefit ii) Affordability iii) Technical difficulty

To make this work we will need regular comprehensive reporting from on-demand providers. We recommend that ODPS providers are required to report annually to Ofcom on the extent to which / how they have met the requirements, and on their plans to continuously and progressively make their services more accessible. We also recommend that ODPS providers are required to report on measures they have taken to ensure that the required access services are of sufficient quality and can be used effectively by their intended audiences.

Ofcom code

The regulations will be complemented by an Ofcom code of guidance setting out how ODPS providers should meet the requirements. Ofcom will consult on this code before publication and providers will be required to have regard to it in complying with the regulations.

We acknowledge that achieving on-demand accessibility can be complex. We anticipate that Ofcom's code will set out (among other things) how Ofcom will assess exemptions from (or reductions in) the required targets. The code will also set out how the requirements are to be met in relation to services available across multiple platforms (including prioritising the accessibility of services on specific platforms, taking account of the likely benefit to audiences).

We believe that this is an opportunity to ensure that on-demand providers consider not just the quantity but also the quality and usability of their access services. We anticipate that Ofcom's code will include guidance on ensuring that access services can be used effectively by their intended audiences, including by means of (a) provision of information about the availability of access services; and (b) ensuring access services are of sufficient quality.

This overview outlines our key recommendations. For more detail on each point, follow the links above to the relevant sections of the statement, where you will find a summary of the consultation responses, Ofcom discussion, and more detailed recommendations.

Why are we making recommendations?

1.1   Recent years have seen a huge shift in our television viewing habits, with the introduction of catch-up television services and on-demand subscription services (like Amazon Prime and Now TV). But while these services offer more choice than ever, key groups are missing out. For those with hearing and/or sight impairments, access to (and enjoyment of) television can depend entirely on subtitles, signing or audio description (collectively known as 'access services').

1.2   Traditional broadcast television channels are obliged by law to make a certain proportion of their programmes accessible. But there is no legal requirement to provide access services for on-demand programme service ("ODPS") and on-demand accessibility lags behind that of broadcast television.

1.3   The Digital Economy Act 2017 paves the way for a requirement (in the form of statutory regulations) that on-demand services are made more accessible. Ofcom was asked by the Secretary of State to consult those likely to be affected by such requirements. Our public consultation closed on 3 April 2018 and this statement constitutes our report back to the Secretary of State on the outcome of that consultation and any other matters that we think should be taken into account in the regulations.

Next steps

1.4   Subject to regulations being made by the Secretary of State, Ofcom anticipates putting forward proposals for consultation on a code giving guidance to ODPS providers on meeting the new requirements.

2. Background

What's the current situation?

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 (like ITV Hub), subscription services (like Amazon Video), and "adult" websites. Whether an on-demand service is regulated by Ofcom depends on a number of factors including whether it includes 'television-like' content and whether it is within UK jurisdiction[1] (Netflix, for example, is not currently within jurisdiction)[2].

2.2   In contrast to the statutory regime for broadcast television services, there are no statutory requirements for access services in relation to ODPS, although Ofcom does have a duty under section 368C(2) of the Act to "encourage" providers of ODPS to ensure that their services are progressively made more accessible.

2.3   The requirements for broadcast television services are set out in Ofcom's Code on Television Access Services (the "broadcast accessibility code"). Since the requirements for broadcast television services were introduced in 2004, there has been significant improvement in accessibility. This year (2018) 84 UK channels were required to provide access services, accounting for over 90% of broadcast television viewing in the UK. By way of contrast, the accessibility of ODPS lags behind: in the first half of 2018, 45% of ODPS providers did not make any access services available and where access services were available, provision varied according to the platform on which the service was viewed. For more information, see our latest report on accessibility and paragraphs A3.7 and A3.8 of our Impact Assessment.

2.4   This lack of consistent progress means that consumers with sight and/or hearing impairment are being left behind as catch-up and on-demand services become increasingly popular[3]. A 2017 study[4] by the Communications Consumer Panel found that on-demand programmes have much lower usage among those with hearing and visual impairments than in the general UK population, and attributes this to significant issues around availability and awareness of access services.

2.5   Ofcom strongly believes that consumers with hearing and/or visual impairments should have access to television, whether it is broadcast or on-demand. To date we have worked in a number of ways to encourage more widespread availability of access services on ODPS. For instance, last year we published a statement on how we are changing our approach to

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[1] See Ofcom's Guidance notes on who needs to notify

[2] A list of ODPS currently notified to Ofcom can be found here

[3] See Ofcom's Communications Market Report 2017

[4] Research by the Communications Consumer Panel: Access to broadcast and on-demand content: Time to catch up!

collecting data about on-demand accessibility[5]. However, we also recognised that greater statutory powers were needed in order to ensure increased accessibility of these services.

The Digital Economy Act

2.6   The Digital Economy Act 2017[6] ("DEA") introduced new provisions into the Act enabling the Secretary of State to make regulations to impose requirements on providers of ODPS for the purpose of ensuring that their services are accessible to people with disabilities affecting their sight and/or hearing. The requirements that may be imposed include requirements for programmes in ODPS to be accompanied by subtitles/signing/audio description (collectively known as 'access services'). Ofcom is to draw up a code of guidance on the requirements set out in the regulations and other steps to be taken by ODPS providers (the "ODPS accessibility code"). See Annex 1 for the new provisions in s.368BC of the Act, as introduced by s.93 of the DEA.

2.7   In accordance with the new statutory framework, Ofcom received a formal request from the Secretary of State on 18 December 2017 asking us to consult stakeholders likely to be affected by regulations in this area and to inform them of the outcome of our consultation and any other matters we consider should be taken into account for the purposes of the regulations. The Secretary of State's request specifically asks that recommendations be made regarding:

   a. The scope of services and programmes to be subject to the accessibility requirements in the regulations, including exempted services;
   b. Targets for the amount of content in on-demand programme services that must have accessibility features and, if required, timescales for meeting them; and
   c. Any penalties or incentives relating to non-compliance and implementation periods.

The letter notes that DCMS will not consult separately on the policy or the regulations.

2017/18 consultation

2.8   Ofcom's consultation was published on 19 December 2017 and closed on 3 April 2018. We received 30 responses in total: 12 from individuals and the following responses from organisations:

   a) Groups representing consumers: Action on Hearing Loss ("AHL"); Communications Consumer Panel ("CCP"); National Association of Deafened People ("NADP"); and the Royal National Institute of Blind People ("RNIB");

   b) Groups representing industry: Commercial Broadcasters Association ("COBA") and the Television on-demand industry forum ("TODIF");

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[5] The statement is available here
[6] Digital Economy Act

   c) ODPS providers: BBC; BT; British Sign Language Broadcasting Trust ("BSLBT"); Channel 4; Sky UK ("Sky"); UKTV; Viacom ("VIMN");

   d) Provider of access services[7]: Red Bee Media; and

   e) Four confidential respondents.

Making recommendations

2.9   Having considered the responses we received, sections 3-6 of this document set out Ofcom's report on stakeholders' views and our recommendations both on the scope of regulations and what requirements we consider they should contain, taking into account the specific effectiveness and audience benefits of any particular intervention (see the impact assessment in Annex 3). It also sets out our recommendations on other key issues, including implementation and enforcement. In making our recommendations we have also drawn on the following:

   a) Data collected from ODPS providers on the accessibility of their services and obstacles to providing access services;

   b) Experience in relation to the statutory requirements for broadcast accessibility, including enforcing the code on television access services; and

   c) Conversations with industry[8], consumers and consumer groups, and access service providers.

   d) Complaints received from consumers.

2.10   In making our recommendations we have also taken account of the role and impact of the ODPS accessibility code and how guidance on the regulations and the steps to be taken by ODPS providers could potentially be framed to help ensure that ODPS services are made progressively more accessible to people with disabilities affecting their sight and/or hearing.

2.11   Our approach throughout the recommendations has been to ensure that we reflect Ofcom's regulatory principles that regulatory intervention should be evidence-based, proportionate, consistent, accountable and transparent in both deliberation and outcome.

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[7] By this we mean a company which is involved in the creation and sometimes distribution of subtitles and/or audio description and/or signing.
[8] Including the Television on Demand Industry Forum (TODIF) working group on access services.

3. Which services should the regulations cover?

3.1   Government asked us to provide recommendations on the scope of services and programmes to be subject to the accessibility requirements in the regulations, including exempted services.

3.2   This section looks at the broadcast model, where some services are treated differently to others, and considers whether ODPS should be similarly differentiated (and on what grounds).

The broadcast model

3.3   The broadcast accessibility provisions in the Act set out targets for the proportion of programming that must be accompanied by subtitles, signing and audio description. The Act also includes criteria for Ofcom to determine whether individual programmes or services as a whole should be exempt or required to comply with reduced requirements9. Our consultation looked at whether a similar framework would be appropriate for ODPS. We suggested the following grounds for differentiating requirements:

a) audience benefit (to what extent would an increase in accessibility features on this service/content have a positive impact for consumers?)

b) cost / affordability (would the associated financial burden on the ODPS provider be proportionate?)

c) practicability (are there technical/operational difficulties in implementing the requirements on this service / content?)

3.4   In responding to our consultation, the NADP expressed the view that the broadcasting regulations are a dated model because costs of subtitling were much higher when it was introduced. It is now reasonable to expect everyone – including smaller channels – to make their content accessible, without exceptions. The NADP felt that we should therefore be asking not 'what' is subtitled but 'how' it is subtitled.

3.5   Other respondents emphasised the need to ensure that regulations are proportionate. Channel 4 felt that any regulation and subsequent action taken by Ofcom should not restrict innovation or impose overly burdensome requirements or costs on ODPS providers.

3.6   Those who supported a similar model to broadcast felt that it constituted established and familiar grounds and is a useful starting point (TODIF, ✂). However, these respondents felt that the complexities of the VOD landscape mean that ODPS providers should have more

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9 See Ofcom's Code on Television Access Services, which also gives guidance on how to meet the requirements and guidance on how broadcasters should promote the understanding and enjoyment of their services by those with hearing and/or sight impairments.

flexibility to focus their efforts and resources on the programmes / services / platforms with the greatest audience impact.

3.7   The BBC suggested that the requirements for on-demand "should be designed to co-exist easily with the existing framework for broadcast" and should "avoid duplication and apply the principles that best fit the current consumption and content supply of a service." Similarly, some ODPS providers who are also broadcasters suggested an approach in which broadcast requirements are mapped more directly onto 'catch-up' content (see section 4 below). These providers (e.g. VIMN) noted that this approach would by default reflect the exemptions currently in play for linear services.

Ofcom discussion

3.8   We agree with the NADP that the starting assumption has to be that consumers with sight or hearing impairment are able to watch any television they want to. However, regulatory intervention must be 'proportionate' and 'consistent'. Our impact assessment (Annex 3) suggests that requiring all ODPS to provide access services would involve disproportionate expense for some of them.

3.9   We believe that while the regulations must acknowledge the complexities of the on-demand landscape, they must also be relatively simple to implement, relying on principles which can be clearly understood by industry and consumers alike. From an industry perspective this helps planning and reduces administrative costs. From a consumer perspective this helps people to know what to expect and where.

3.10   We acknowledge below that it may not be possible for on-demand accessibility regulations to be implemented in the same way that the broadcast accessibility rules are. However, we believe that the basic principles are the same, for example the idea that all services should be made accessible unless there are good reasons why not. In the following section we consider why a service might be treated differently (including being exempted from the full requirements), taking as our starting point the grounds outlined at 3.3.

Why might we treat some on-demand content differently?

Audience benefit

Public service broadcasters (PSBs)

3.11   Despite changes to the way people watch television, public service broadcasters (such as the BBC and Channel 4) remain at the heart of the UK's television viewing experience[10]. Such services arguably have a special role to play in modelling best practice when it comes to providing accessible content to all viewers.

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[10] See Ofcom's PSB Annual Research Report 2017

3.12   Channel 3 (ITV and STV) and Channel 4 (but not currently Channel 5) are required under the Act to meet stricter broadcast accessibility requirements than other broadcasters. The BBC's obligations are set out separately in the BBC Charter and Agreement.

3.13   We therefore asked respondents whether the regulations should impose more stringent requirements on public services broadcasters' ODPS than on ODPS provided by others.

3.14   Some respondents (Action on Hearing Loss, NADP) suggested that PSBs should be role models in relation to accessibility and perhaps subject to increased requirements. NADP commented that its members have higher dependence on timely and accurate news items which tend to be provided by PSBs. However, other respondents (RNIB) felt it more important to prioritise the most popular services.

3.15   Some respondents (Channel 4, COBA, UKTV,✂ ,✂) felt that increased requirements would be fair only for services with a statutory public service remit, and which therefore receive commensurate statutory benefits such as EPG prominence. This is not the case for the PSB-broadcaster-provided ODPS currently notified to Ofcom.

Ofcom discussion

3.16   We understand the particular importance for the public of having access to PSB content and note that the reasonable expectation placed on public service broadcasters as 'role models' (aside from any statutory requirements) applies not just to their broadcast television services but to their activities more widely.

3.17   However, we acknowledge that (with the exception of the BBC) the current ODPS provided by PSB broadcasters are not subject to the same system of obligations and benefits that applies to their public service linear broadcasts. We therefore do not think it would be appropriate at this time to require these services to meet additional requirements, particularly as our latest data shows that these services are already providing high levels of access services on certain platforms – for example Channels 4 and 5 both provide over 90% of content with subtitles across a number of platforms including their websites, smart TV apps and some set top box services.

3.18   It is entirely conceivable that in the future there will be public service ODPS which <u>are</u> more firmly embedded in the public service framework of obligations and benefits. We recommend that the regulations give scope for review of this point at a later date.

3.19   Accessibility requirements for the BBC more generally are set out in the BBC Agreement[11]. Broadcast accessibility requirements are not set out in the Act but derive from the Agreement. We suggest that Government considers whether a similar arrangement should apply in relation to BBC ODPS (currently, iPlayer). As an ODPS, BBC iPlayer would be

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[11] See schedule 3 part 9 of the 2016 BBC Agreement which requires the BBC to observe a code drawn up by Ofcom giving guidance on how its UK public services should promote the understanding and enjoyment of programmes by those hearing and/or sight impairments. Until such a code is agreed, the existing arrangements remain in place under part 59 of the 2006 Agreement (which considers only the BBC's broadcast television services). We are currently considering the nature of arrangements under the new Agreement (for instance, what obligations should apply to BBC ODPS) with a view to consulting on this in 2019.

subject to the requirements of s.368BC of the Act (as amended by s.93 of the DEA) unless specified otherwise (e.g. under 368P of the Act).

Catch-up content

3.20   Through conversations with consumer groups, and complaints received directly from consumers, Ofcom is aware that one key source of confusion and frustration is the discrepancy between the accessibility of broadcast television programmes and that of those same programmes when viewed on catch-up services. A consumer who relies on subtitles, for example, can watch one episode of a series with subtitles when it is broadcast, but then be unable to watch subsequent episodes on catch-up services. We therefore asked stakeholders whether regulations should focus on programmes/services which have previously been broadcast with access services.

3.21   While catch-up content is viewed as particularly important, some consumer groups felt that there should be full access across on-demand content, which would also take into account services where content is shown on-demand before it is broadcast rather than vice versa (AHL, RNIB).

3.22   Many respondents also said there should be a level playing field across all forms of ODPS (✂, COBA, UKTV, BT). COBA made the point that pure on-demand services are amongst the most popular and largest on-demand services in the market, and "therefore it would be grossly disproportionate to require higher levels of access services for catch-up services". UKTV suggested that prioritising content broadcast with access services would unfairly penalize those who have over-provided against their linear accessibility targets.

3.23   However, one respondent felt that the regulations should limit accessibility requirements to those services which have already been broadcast on linear TV, and a number of respondents (TODIF, BBC, ✂, VIMN) suggested that there would need to be a different approach to requirements for catch-up television. This is discussed in more detail in section 4 below.

Ofcom discussion

3.24   We agree that both catch-up and 'pure VOD' services need to be captured by the regulations. Both types of service play an important role in today's television viewing. For example, in 2017 9% of all audiovisual content that individuals in the UK watched on average per day was to broadcaster video-on-demand services, while 18% was to subscription video-on-demand services.[12] We also note that the relationship between broadcast and on-demand television is becoming increasingly complex, with some services (e.g. BBC3) offering content on-demand <u>before</u> it is broadcast. In order for regulations to be future-proof we do not feel that they should focus on catch-up content only.

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[12] Source: Ofcom/BARB/BARB TV Player (census data)/TouchPoints/comScore as published in Ofcom's <u>Media Nations</u> report, p.21

3.25   We do however agree that there is a need for the regulations (and their enforcement) to recognise the importance to consumers of recently broadcast content offered on a catch-up basis. This would also reflect the fact that access services for broadcast content often already exist. In Section 4 below we suggest ways in which the regulations could do this.

Audience size

3.26   The audience size for a particular service or programme is one obvious way in which the benefits of increased accessibility can be measured. If the audience is very small then there are fewer people to benefit from increased accessibility. Our consultation asked if ODPS programmes/services should be excluded from the full requirements on the grounds of audience size, and/or whether regulations should impose different accessibility requirements on ODPS made available via popular platforms which as less popular.

3.27   A number of respondents (Channel 4, BT, ✂) agreed that audience size is in principle an appropriate ground for exclusion or a reduction in requirements. COBA suggested that audience benefit is even more important for VOD than for broadcast, given the "significantly lower levels of audiences (and of course revenues) for many services in the on-demand sector generally compared to linear broadcasting".

3.28   Some respondents emphasised that audience size should be judged in relation to each ODPS as it appears on a particular platform. COBA suggested that this is important because "a provider is likely to incur additional costs for each platform for which it provides access services. It may be proportionate to exclude some services entirely (on the grounds of their overall audience); for others, it may be proportionate to limit requirements only to the platforms where they have the biggest audiences."

3.29   However, other respondents disagreed that audience size is relevant for excluding services from requirements. UKTV said that while audience size may be a way to determine the scale of requirement, 'we don't believe that ODPS services should be excluded on the grounds of audience size'.

3.30   Consumer groups also expressed some unease with exemptions based on audience size, suggesting that accessibility shouldn't be restricted to larger channels or popular platforms. The RNIB emphasised the need to ensure that programming about niche topics is not excluded.

3.31   Others suggested that some platforms may be more popular with sight or hearing impaired people than they are with consumers more generally. NADP pointed to its research suggesting that gaming platforms such as Xbox and PlayStation allow access to superior quality playback at an affordable price. Channel 4 suggested that some platforms and devices have better native accessibility features and are therefore more useful and more widely used by people with sight and/or hearing impairments.

Measuring audience size

3.32   Our consultation asked for views or information on appropriate and available means of measuring the audience impact of ODPS. Respondents generally agreed that there is not

currently a standardised industry measure of audience size across on-demand services and platforms.

3.33   Some pointed to the limits of Barb's 'Project Dovetail' work on measuring on-demand content. BT felt that "there should be no regulation based on audience size until such time as accurate/universal measurement tools are available". Others suggested interim measures such as self-reporting on audience figures from each individual ODPS provider (AHL, TODIF, COBA), with some suggesting proxy measures to be used where this is not possible. For example, TODIF suggested that "Ofcom should take a flexible approach to measuring audience benefit, allowing on-demand service providers to use viewing data, where available, or other metrics such as catalogue size, or platform reach, when it is not". COBA added that Ofcom would "need to set out guidance on measuring audiences" but that measurement is generally possible and is important in "ensuring requirements are as proportionate as possible".

Ofcom discussion

3.34   We consider it fair that audience size should play some part in the requirements for ODPS providers. This would ensure a fully proportionate approach where resources are focused on services of maximum benefit. However, we acknowledge that less popular services may be of great significance to those who use them, and that audience size should be considered carefully in a way that does not compromise the starting goal of accessible services for all.

3.35   We also agree that assessing audience size has to be done on a platform-by-platform basis. We would not expect to make exemptions based on the overall audiences for a given platform – what matters is whether a particular service is watched on a platform, not whether that platform is generally popular.

3.36   It is Ofcom's understanding that there is currently no robust, comprehensive, independent industry-standard measurement for on-demand audience figures. For UK broadcast services, audience share data is obtained through the Broadcasters' Audience Research Board (BARB)[13]. BARB does provide measures for catch-up television viewing, and its 'Project Dovetail'[14] aims to provide data on online and on-demand viewing, but this does not yet comprise a comprehensive industry measure. BARB can currently measure viewing to non-broadcaster on-demand programmes where the provider has chosen to provide BARB with the necessary data. BARB is currently exploring how router meters can be used to deliver aggregate levels of viewing to some on-demand subscription services ("SVOD")[15]. However, the timeframe for this work is to be determined – some additional measurements may be available by the time the on-demand requirements come into force

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[13] Under the TV Code, audience benefit is assessed using the viewing share of a given service, measured as an average share of all households over a 12 month period. UK broadcast services which have less than a 0.05% share of UK household viewing are excluded from having to provide access services (the threshold for sign-interpretation requirements is higher at 1%).

[14] Project dovetail

[15] https://www.barb.co.uk/future-development-faqs/

but they are unlikely to constitute a comprehensive industry measure as notified ODPS vary enormously in type, including for instance many online adult websites which would not be covered by the Barb methodology.

3.37 Taking into account the factors in paragraphs 3.34-3.36 above, we believe that audience size should in practice be taken into account judiciously and in line with the following observations:

a) Only services with very low audience sizes should be exempt from requirements entirely.

b) In the absence of industry standard measurements, we view affordability (see below) as a useful proxy for audience size more generally. In the application of the broadcast accessibility rules, both affordability and audience share are taken into account; there are very few services which are exempt on audience share grounds which would not anyway be exempt on grounds of affordability.

c) Audience size should otherwise be used as a factor in the <u>prioritisation</u> of services on some platforms over others.

d) ODPS providers may be able to self-report audience figures (taking into account the sensitivities surrounding such data, as recognised by AHL) to justify the prioritisation of access services on one platform over another. More broadly viewed, such a system could also allow providers to take into account the importance of services on particularly accessible platforms (as described in paragraph 3.31).

3.38 We will develop these observations in relation to the Ofcom ODPS accessibility code giving guidance on complying with the regulations. However, we lay them out here because they demonstrate that we could and should be able to take audience size into account despite the difficulties in measurement.

3.39 Some industry respondents emphasised more generally that on-demand services attract smaller audiences (and revenue) than equivalent broadcast services. We do not agree with the implication that on-demand accessibility is a relatively minor concern or priority. On-demand viewing is increasing rapidly: for example, the total number of SVOD subscriptions in the UK to Netflix, Amazon Prime or Now TV has increased by over 250% from 4.6 million in Q2 2014 to 16.1 million in Q2 2018.[16]   The aim of these regulations is to establish an expectation and pattern of accessibility in relation to such services. As outlined in section 2 above, we do not believe that on-demand accessibility is progressing adequately in the absence of regulation.

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[16] Source: BARB Establishment Survey Q2 2014 – Q2 2018. Includes multiple SVoD subscriptions within one household and may include those on a free trial.

Audience benefit – type of service / content

Specific genres

3.40   Our consultation invited views on whether there are particular types/genres of programming which should be excluded from requirements on the grounds of limited audience benefit. An example of this would be 'adult' services (pornographic services "whose primary purpose is sexual arousal or stimulation"[17]). Providers of such services are currently not obliged to submit data to Ofcom on the accessibility of their adult ODPS, on the grounds that Ofcom's engagement with consumer groups and industry stakeholders has previously indicated insufficient demand for access services on these ODPS.

3.41   NADP commented that it does not "believe deaf people need more or less restrictions on the content that they view than the population as a whole." AHL felt that while the ultimate goal is 'full access', ODPS providers could prioritise the most popular content (as people with hearing loss have the same range of preference as everyone else). AHL also pointed out that there are certain types of content which carry greater risk of harm if they are not accessible – for example news.

3.42   ODPS providers gave examples of programming which they felt was either impractical to make accessible and/or of little benefit to do so, for example: AD on music videos (BT), AD on sports events with commentary (BT), programmes targeted at babies/toddlers (BT), foreign language content, programming with a 'short shelf life' on-demand, such as sports with restricted rights, quick turnaround topical programming (C4, BT, Sky, ✂), and adult content.

3.43   ODPS providers also gave examples of content which gives rise to operational or technical difficulties in order to make accessible. This includes, for example, live and late-delivery catch-up (C4).

3.44   C4 made the additional point that the accessibility of advertising should be considered, although not in the regulations themselves.

Ofcom discussion

3.45   We agree that with some types of programming – for example sports events with commentary leaving little room for AD – the addition of access services is difficult and would add little in terms of audience benefit. In such cases we believe that exemptions could be made either for individual programmes or (where appropriate) whole services.

3.46   Where difficulties are logistical or operational (rather than a matter of audience benefit) we believe they are best considered as potential exemptions on grounds of practicality / technical difficulty (see paragraphs 3.65-3.88 below).

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[17] See the British Board of Film Classification's guidance <u>here</u>

3.47   In terms of particular genres such as adult programming, while adult services are currently not obliged to submit data on accessibility, we do not have enough evidence to exclude them outright from any future requirement. As noted in Ofcom's 2017 statement on accessibility of ODPS[18], the demand for access services is hard to measure with any certainty, and the ODPS industry is a developing one where market shares, nature of output, available measurements and consumer preferences can change, requiring periodic reassessment of whether it is appropriate for any services or types of service or content to be excluded from the routine provision of access services.

3.48

We therefore do not believe it is possible for the regulations to set out the specific genres or types of programming that should be excluded, but should instead embed the general principle that audience benefit should be taken into account in allowing exemptions from requirements. The ODPS accessibility code could then set out guidance on taking into account audience benefit in prioritising the introduction of access services on different types of programming.

3.49   Ofcom is keen to support current work on the accessibility of advertisements, but does not feel that it is yet developed enough to recommend a specific inclusion for advertising in the ODPS regulations at this time. We also note that Ofcom has designated the Advertising Standards Authority (ASA) to be the regulator of advertising on ODPS[19].

3.50   In our consultation, we did not explicitly ask respondents about ODPS which are not available to UK audiences but are available only to audiences in other EU countries ("non-domestic" services). For the record we believe that, as with the broadcast accessibility rules, there is no basis on which to differentiate between the experiences of audiences with sight and/or hearing impairment in the UK and elsewhere. We would therefore expect any regulations to apply to non-domestic ODPS as they do to domestic ODPS. However, our experience with broadcast accessibility is that costs and infrastructure in relation to access services provision can vary enormously from country to country, and therefore it is likely that the affordability of meeting the regulations will vary too.

Affordability

3.51   One way of ensuring a proportionate regulatory approach would be to exclude services/programmes from requirements where those requirements are not affordable, or impose a disproportionate financial burden on the provider. We asked stakeholders to comment on whether certain services should be excluded from (or subject to reduced) requirements on the basis that providers cannot afford to implement them without disproportionate expense.

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[18] Available here
[19] https://www.ofcom.org.uk/tv-radio-and-on-demand/information-for-industry/on-demand/designation-asa

3.52   This section outlines responses to this question i.e. opinions on whether affordability is an appropriate consideration in theory, and a workable one in practice. Our impact assessment (Annex 3) uses some of the information provided (along with other evidence) to model the affordability of our proposed requirements for ODPS providers.

3.53   While most respondents supported the principle that affordability should be a criteria for exclusion, some respondents expressed concern that the bar to entry should not be set either too low or too high.

3.54   Some industry respondents (Channel 4, COBA) pointed to the relatively small audiences and revenues accruing to VOD services. Channel 4 noted that "given the relative proportion of viewing on linear and ODPS, and the high development costs involved in providing access services for ODPS, we currently spend a disproportionately high amount on access services for ODPS relative to our spend on linear". COBA suggested that while it might be difficult to identify OD revenue, "it is a given that for the majority of services those on-demand revenues will be miniscule compared to linear"

3.55   Other respondents asserted that ODPS accessibility is likely to incur much greater expense, given that:

a)   There is no limit to the size of an ODPS catalogue (unlike broadcast content which is limited to 24 hours a day).

b)   ODPS are available over a far greater number of platforms.

3.56   However, the RNIB felt that any mature model of accessibility "needs to allow access services to be a significant cost in the production and distribution of content". RNIB compared television accessibility with that of technology companies such as Apple, Google, Samsung and Panasonic, who have built accessibility (e.g. screen readers) into their products as standard. The RNIB felt users of ODPS "should be able to expect the same mature accessibility model from the VOD and broadcasting industries. Access services need to be considered part of the product rather than additional 'nice-to-haves'."

3.57   Sky objected to the principle that only the largest ODPS providers should be subject to the full requirements on the grounds of affordability, believing it to risk a "two-speed" industry and suggesting that smaller service providers had lower requirements or the ability to offset their requirements in other ways that achieve similar accessibility goals.

3.58   A number of respondents pointed to practical difficulties in measuring affordability in relation to ODPS (as compared with broadcast), notably the fluctuating size of ODPS catalogues and the lack of ability to distinguish ODPS turnover relative to bundled turnover with other services (TODIF).

3.59   Some respondents suggested an approach which overcame these practical difficulties by Ofcom taking a case-by-case approach, with providers "demonstrating to Ofcom's satisfaction that VoD services are not their primary form of income…[or]…are primarily "promotional" for their related linear services…measured by looking at the number of hours on a certain service" (COBA).

3.60   Another respondent suggested viewing figures as a proxy for likely revenue associated with a particular service, where ODPS-specific turnover is not available.
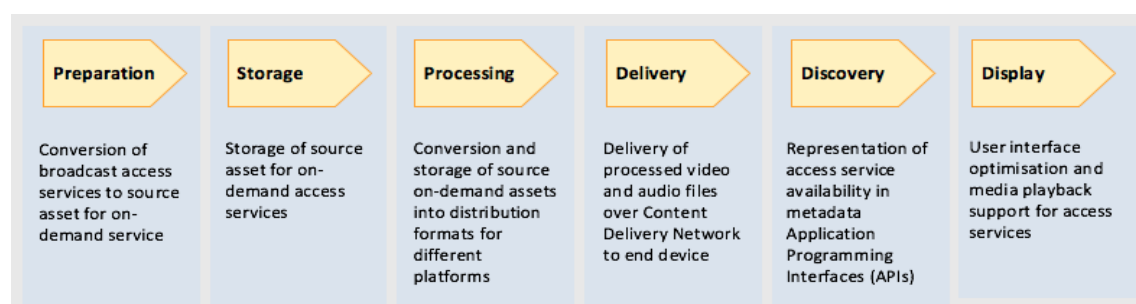
Ofcom discussion

3.61   As stated in paragraph 3.39 above, we do not agree that the relatively low revenue accruing to on-demand services should mean that requirements should be limited only to the very largest providers. The aim of regulations is to increase the accessibility of on-demand content, taking account of the increasing importance of on-demand viewing in the television landscape and the fact that providers are looking for new ways to monetise on-demand content. This will necessarily involve providers committing to some expenditure, although the impact of this should decrease as ODPS revenue increases and costs of access service provision decrease (e.g. due to providers building up an archive of accessible content). Section 4 below recommends an approach to phasing in requirements to encourage a culture and expectation for the future that on-demand content should be accessible to those with hearing and/or sight impairment.

3.62   We do however recommend that services are excluded from the requirements, or subject to reduced requirements, where they raise genuine issues of affordability. At the present time, we believe it reasonable to judge this affordability by relation to a provider's overall revenue, as this is readily available and comparable across the range of ODPS providers, and gives us a clear indication of a provider's ability to spend on access services[20]. We do not believe that viewing figures provide a useful proxy for revenue in this instance, as viewing figures themselves are equally difficult to establish (see paragraph 3.36 above).

3.63   The detail of any system of exemptions on the grounds of affordability would be set out in a future Ofcom ODPS accessibility code on ODPS accessibility. However, our impact assessment (Annex 3) shows that major ODPS providers should be able to afford the recommended requirements across the majority of platforms on which their service is distributed. Our impact assessment also shows that – as might be expected – the cost of setting up access services capacity on different platforms has a much more significant effect on smaller services (with smaller catalogues of content) and that it may not be affordable for such services to provide accessibility across multiple platforms.

3.64   Where it is established that a provider can afford to provide access services across only a subset of their available platforms, exemptions or reductions in requirements on the basis of affordability would apply. We would anticipate that these exemptions or reductions in requirements would also take into account the potential benefit to relevant audiences. This would determine, for example, whether a given provider was subject to reduced requirements across the full range of platforms, or full requirements across a subset of platforms.).

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[20] This is the reason that we currently use overall turnover to determine the regulatory fees paid by ODPS providers, as explained in our 2017 statement on regulatory fees for on-demand programme services.

Practicability / technical obstacles

3.65   We asked stakeholders if they thought ODPS programmes / services should be excluded from (or subject to reduced) requirements on the grounds of technical difficulty.

3.66   Individual consumers and consumer groups largely perceived technical difficulty as an excuse for poor levels of provision. The RNIB suggested that "if AD does not fit the current workflows of a broadcaster then this is not a technical issue but a procedural one and if progress is not being made in this area it is not due to technical difficulties but rather a lack of motivation or resources being committed". AHL stated that in its 2018 survey "3 out of 4 respondents said that no programmes or services should be excluded from the regulations on the grounds of technical difficulty" and suggested that technical difficulties need to be more clearly defined to be accepted as genuine.

3.67   However, for many industry respondents, technical and operational difficulties were a key issue. Some pointed to the complexity of the on-demand supply chain relative to that of broadcasting distribution, potentially involving conversion of broadcast access services for use on-demand and delivery to a large number of platforms.

Figure 1: Supply chain for ODPS distribution as provided by a confidential respondent

Preparation	Storage	Processing	Delivery	Discovery	Display
Conversion of broadcast access services to source asset for on-demand service	Storage of source asset for on-demand access services	Conversion and storage of source on-demand assets into distribution formats for different platforms	Delivery of processed video and audio files over Content Delivery Network to end device	Representation of access service availability in metadata Application Programming Interfaces (APIs)	User interface optimisation and media playback support for access services

Whose responsibility is it?

3.68   Respondents to our consultation play different roles in this supply chain and expressed a variety of opinions on why difficulties arise and whose responsibility it is to solve them. Figure 1 shows some of the key parties involved in getting access services out to consumers. Some ODPS providers are also content providers (e.g. Channel 4) and/or platform operators (e.g. Sky).

Figure 2:   Key parties involved in getting access services out to consumers

Content Supplier (E.g. US Studio)	ODPS Provider (E.g. Amazon Prime Video)	Platform Operator (E.g. FreeView)
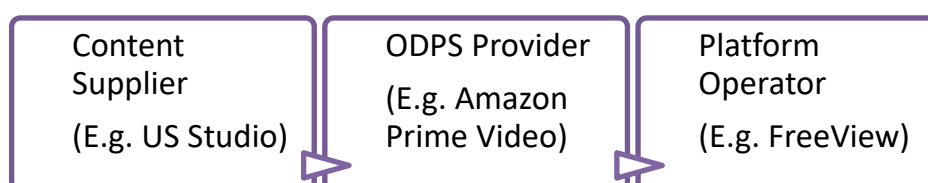
Content provider to ODPS provider

3.69   A number of ODPS providers suggested that their ability to make content accessible depends on whether it is delivered to them with access services by the content supplier. Content suppliers can resist requests for access services and/or supply them only at significant cost to the ODPS provider. NADP also believed it essential that subtitles should be included when a programme is supplied to an on-demand service - but felt that this obligation should be enforced in relation to both content providers and ODPS providers (who should require the access services from their suppliers).

ODPS provider to Platform operator

3.70   The proliferation of platforms across which on-demand services are distributed is a key issue. Many respondents gave details of the various cost categories and workflow complexities involved (see our Impact Assessment at Annex 3). Channel 4 told us that All4 is distributed across 26 different platforms and that "given the growing number of platforms and the extensive development work required we have to make difficult decisions about where to prioritise our resources." COBA's response gave the following example: "UKTV provides content to no fewer than nine on-demand platforms, each of which require different delivery methods, often involving different file formats".

3.71   ODPS providers and platform operators can disagree on the balance of responsibility in achieving accessibility for consumers. Some ODPS providers (VIMN) believe that where they give content to platforms with access services "the responsibility lies with the platforms themselves to make the necessary technological adjustments". Outside the scope of Ofcom's consultation, we have heard from platform operators that they will distribute content with access services but only if it is provided in the right format. One respondent felt that it should be a requirement for some services to meet the technical standards required by platforms.

3.72   Other ODPS providers (UKTV, BT) focused on a shared responsibility. UKTV "strongly believes that there is a shared responsibility between service providers and platforms to resolve this in a cost-effective and flexible manner." BT, as a platform operator, ODPS provider and content supplier, suggested a division of responsibilities where the ODPS provider (or content supplier) takes responsibility for creating access services and platform providers should create the capability to "surface" those access services to consumers. Otherwise, BT suggests, different platforms would be in the position of duplicating access service creation for the same programmes.

3.73   In response to these issues, respondents suggested two 'solutions' (not mutually exclusive):

   a) For ODPS providers to <u>prioritise</u> content on certain platforms; and

   b) For ODPS providers and platform operators to work towards technical standardisation in order to minimise the difficulties in getting access services all the way to consumers.

3.74   Some respondents asserted that accessibility obligations should apply only to services delivered on platforms under the provider's direct control, with others setting out a plan for future accessibility. Others suggested exemptions for certain platforms based on information about their capabilities.

Technical standardisation

3.75   A significant number of respondents (UKTV, TODIF, BT, C4, ✂) called for further work on technical standardisation, perhaps mandated by Ofcom, in order to reduce the problems of interoperability which account for much of the cost and difficulty in access service provision across multiple platforms. Standardisation of technical formats and delivery mechanisms was thought to minimise the costs of converting access services for use on multiple platforms and to facilitate greater efficiency and decreased duplication of effort.

3.76   For example, UKTV stated: "There is currently no industry standard file format for ODPS to send/attach subtitle files to programme content. There is also no standard delivery mechanism, which is just as much as of a barrier. For example, ideally UKTV would prefer subtitle file delivery to be completely independent of the VoD asset as it is with linear, rather than packaged with the video asset, as Sky is currently proposing." UKTV suggested that platforms should be required to work with ODPS to address this issue before ODPS are required to provide access services on third-party platforms.

3.77   BT strongly supported standardisation but sounded a note of caution, stating that "careful consideration is required when discussing standardisation as the aim is not to drive any ODPS or content provider to cease operation but to enhance viewers' experience with a variety of content available and continue to encourage innovation".

3.78   A number of respondents (UKTV, ✂, VIMN, C4) considered the possibility of requirements on platforms as well as ODPS providers – for example to engage with the standardisation process, or to carry to consumers all subtitles provided in an appropriate format.

Ofcom discussion

When 'technical difficulty' is 'affordability'

3.79   The issue of providing accessibility across multiple platforms is in part a question of affordability rather than technical difficulty. The introduction of regulations in this area will inevitably involve additional work and expense for ODPS providers, which may include an initial outlay with respect to different platforms and setting up systems to convert access services to different formats for different platforms. Following the analysis laid out in our Impact Assessment, we believe that our recommendations can be adopted by many providers across multiple platforms without undue expense (and bearing in mind the benefits they will bring).

3.80   Where providers cannot provide access services across multiple platforms without disproportionate cost, they should be exempt from the full requirements on grounds of affordability, as discussed above in paragraphs 3.61-3.64. As explained below (paragraphs 3.89-3.90), we are recommending that Ofcom's ODPS code sets out how the requirements

are to be met in relation to services available across multiple platforms (including prioritising the accessibility of services on specific platforms, taking account of the likely benefit to audiences).

3.81   Likewise, where content is not supplied with access services, we believe that ODPS providers should endeavour to obtain or create these access services where this does not involve disproportionate expense. Our impact assessment (Annex 3) suggests that larger 'on-demand only' content aggregators should be able to afford to create access services for a significant proportion of their catalogue (if necessary).

Exemptions on grounds of technical difficulty

3.82   The broadcast accessibility rules allow for exemptions on the grounds of technical difficulty and this has been applied, where, for example, standard consumer equipment in a particular country does not support audio description. These difficulties might ultimately boil down to cost, but where there is sufficient difficulty in gathering resources, or establishing who is financially responsible, this is reasonably viewed as a technical obstacle to provision for the broadcaster.

3.83   We believe a similar ground for exemption from requirements should apply in relation to ODPS, and that this may in some cases apply in relation to specific platforms. ODPS providers have consistently told both Ofcom[21] and previous co-regulator ATVOD[22] that a key obstacle to providing on-demand access services is the technical challenge of providing access services to a range of different platforms (e.g. YouView, Virgin, Sky), each of which may require delivery of these access services in a different technical format.

Providing access services across multiple platforms

3.84   Ofcom strongly encourages content suppliers to ensure that access services are available alongside programmes, and platform operators to ensure that their platforms support commonly used subtitle formats. However, any requirements drawn up under s.368BC of the Act (as amended by s.93 of the DEA) will apply only to the providers of ODPS and not to the operators of the platforms through which those ODPS are made available to consumers.

3.85   While we acknowledge the difficulties for ODPS providers, we do not agree that requirements should be restricted to platforms under the ODPS provider's direct control. A key purpose of regulations should be to expand the provision of accessibility across different platforms, as we know that platforms under ODPS providers' direct control are already more accessible than other platforms.[23] While technical obstacles can be challenging, they are not generally insurmountable.[24] A key issue in this regard is who takes

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[21] In providing data on the first half of 2018, 36 ODPS providers commented on obstacles to providing access services: 23 mentioned financial issues including developing technological capability, while 16 referred to technical challenges.

[22] See the annual VOD access services reports

[23] See our latest VOD access service report.

[24] See the first and second reports from ATVOD's technical working group on access services

responsibility (and provides resources) for ensuring that available access services reach the consumer.

3.86   We agree with the RNIB and TODIF that Ofcom would need to make a case-by-case judgement on whether an ODPS provider has made sufficient effort to overcome technical challenges and yet been unable to progress with accessibility on a given platform. We do not believe that ODPS providers can be expected to overcome challenges in all cases – we do not agree, for example, with the NADP assertion that providers can refuse to distribute their services via platforms which don't support accessibility features, as not all providers have equal leverage to influence platform development.

3.87   The way in which an exemption on technical grounds would operate in practice would have to be a matter for future consultation before it could be included in Ofcom's ODPS accessibility code. However, we believe there are ways in which this process could be made relatively simple and transparent: for example, Ofcom could establish an accreditation scheme for platforms which meet certain criteria (such as accepting subtitles in a common technical format). ODPS providers might then be expected ordinarily to be able to provide access services on these platforms without technical difficulty.

3.88   We agree with TODIF that "getting a sector-wide agreement between on-demand services and platforms on exchange and delivery formats should be a priority". Ofcom has continued to work with ODPS providers and platform operators to encourage a more standardised approach to access service provision, and in particular a standard technical format for subtitles. However, we do not believe it would be appropriate to mandate any particular technical standard or solution as this risks constraining product development and innovation.

How to prioritise?

3.89   As seen throughout this section, there are a number of circumstances in which ODPS providers may not be able to make all their services or content accessible and will need to prioritise. Some ODPS providers (UKTV, Channel 4, Sky, TODIF, ✂) suggested that ODPS providers should be given flexibility to make judgements on which programmes, platforms and devices to prioritise, based on their knowledge of their own audiences. Channel 4 said that it makes complex decisions around where to prioritise access services based on multiple factors such as audience viewing data, the public value of particular content, suitability of a programme for a particular access service, and coverage of a broad range of genres and programme types. Some respondents suggested that there should be prioritisation of platforms which are themselves particularly accessible / usable. Action on Hearing Loss stated that "people with hearing loss should be able to choose their priorities about which programmes are signed".

Ofcom discussion

3.90   We agree with Channel 4 that the regulations should 'support effective prioritisation'. We believe that ODPS providers should have regard to the Ofcom code in this regard. Code

guidance should be informed by consultation with industry and user groups but should also allow ODPS providers the flexibility to make use of their own insights and data. For example, Ofcom might give guidance that popular content should be prioritised but allow ODPS to justify decisions with reference to their own experience in relation to which content is 'popular'. This could be a useful approach in the medium term in the absence of a standardised measurement for on-demand services audiences.

Summary: Ofcom recommendations on which services the regulations should cover

3.91   The starting point should be that all ODPS are made accessible (across all the platforms on which they are made available.

3.92   However, we recommend that the regulations set out the grounds on which programmes/services will be excluded or subject to reduced or alternative requirements. We recommend that these grounds include:

   a.   The extent of benefit (both quantitative and qualitative) to disabled people, including size of the intended audience.
   b.   The cost of providing the required assistance, relative to the provider's ability to pay
   c.   Technical or operational difficulty

3.93   The method by which factors such as audience benefit and affordability are assessed should be left to Ofcom's discretion and may change over time as industry standard measures become available.

3.94   The Ofcom code should also set out guidance on prioritisation of services on particular platforms, considering factors including the extent of benefit (both quantitative and qualitative) to disabled people.

3.95   We recommend that the regulations allow for future review of the requirements, including targets (see section 4), particularly in relation to public service providers' on-demand services.

3.96   We recommend that Government considers further the arrangements applying to BBC iPlayer.

3.97   While we recommend that the regulations make reference to the accessibility of programmes as defined in the Communications Act 2003, we also recommend that Government considers the extension of scope to include advertising at a future date.

3.98   We recommend that Government considers more generally the potential for introducing commensurate obligations on content suppliers and platform operators to support the aims of these obligations on ODPS providers.

4. What should be required?

4.1   In this section, we consider what should be required of those services and programmes that are subject to the regulations.

4.2   We want our recommendations to lead to regulations which are effective and result in measurable progress. One way of doing this is to set targets against which ODPS providers' progress can be assessed, for example relating to the minimum amount of programming that must be accompanied by subtitling/signing/audio description.

4.3   In relation to broadcast television, such targets are expressed as percentages of the service including all programmes other than advertisements and excluded programmes.

4.4   Government asked us to provide recommendations on targets for the amount of content in on-demand programme services that must have accessibility features and, if required, timescales for meeting them.

4.5   We asked stakeholders to comment on the appropriateness of targets in relation to ODPS, and the means of calculating them.

Targets

General idea

4.6   Some consultation respondents supported the idea of setting targets in order to measure progress, including consumer groups (AHL, CCP and RNIB) and some industry respondents (including Sky and UKTV).

4.7   Several industry respondents objected to the idea of setting targets due to the technical challenges related to on-demand platforms (see paragraphs 3.65-3.74). Channel 4 stated that targets are not a workable solution as new platforms and devices frequently enter and leave the market with diverging technological requirements, each requiring ODPS providers to develop the capability to provide access services.

4.8   Others pointed to the fluctuating volume of ODPS content catalogues.

4.9   Channel 4 and ✂ also stated that targets could inhibit innovation, causing ODPS providers to remove content from platforms or be disincentivised from acquiring new content because of the cost implications.

4.10   Channel 4 and ✂ stated that targets which focus on the volume of programming may result in content being prioritised which is easier and cheaper for ODPS providers to meet the targets, rather than content which brings the most consumer benefits.

4.11   Several respondents also suggested that targets should be set separately for new and archive content. AHL stated that for major ODPS providers, 80% of new content and 50% of archive content should be subtitled within 5 years, and 95% of both new and old content should be subtitled within 10 years. Similarly, NADP suggested that Ofcom could adopt a

similar approach to the FCC's approach[25] where initially new content is made available with captions, and there is a timeline for historic content to be captioned.

Ofcom discussion

4.12   Given the slow progress in ODPS accessibility thus far (see paragraph 2.3), we consider that targets are required to ensure measurable progress in expanding the amount of accessible content in ODPS. Targets are an easily understood tool which would bring clarity to industry and consumers about the levels of accessible content and provide us with a clear way to measure progress. In our impact assessment (Annex 3) we set out in detail our consideration of the benefits to consumers and costs to industry of setting targets, as opposed to only introducing 'softer' requirements on ODPS providers, such as the requirement to set out a plan.

4.13   We acknowledge that the on-demand market is developing and diverse, and also that viewing to on-demand services is growing (see paragraph 3.39). It is therefore highly important that ODPS providers consider accessibility as part of their broader development strategies, so that the requirements of people with sight/ hearing impairment are not left behind. ODPS providers should aim to embed access service capability within technology at an early stage, and we expect that stretching targets will incentivize ODPS providers in this regard.

4.14   We explore below how we can mitigate the risk that providers will prioritise cheaper or easier content to meet targets. However, while it is important that access services are targeted to content which brings more benefits, stretching targets will by necessity require ODPS to provide access services on content where it is less simple or cheap for providers to do so. For instance, the introduction of targets on linear (for 80% of content to be subtitled) has resulted in more live programming being made accessible, even while live programming can be more technically challenging and expensive to provide with subtitles.

4.15   In our impact assessment we found that the costs to ODPS providers of meeting targets, which include the likely development costs to introduce access services across multiple platforms, are generally low relative to ODPS providers' overall turnover. We are also recommending exemptions or reduced requirements to ensure targets are flexible to account for costs or technical difficulties (see Section 3). In light of these factors, we do not consider that the costs to meet targets would have a material impact on ODPS providers' decisions around expanding or reducing content catalogues. We believe these decisions are more likely to be driven by the many other costs involved in expanding content catalogues.

4.16   We recognise that ODPS providers may wish to develop their content offering at any time; for instance, by introducing content on a new platform. If target levels and exemptions

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[25] The Federal Communications Commission (FCC)– which is the US communications regulator - enforces rules set out in the 21st Century Video Accessibility Act (CVAA). The FCC requires that all videos that previously aired on US television with captions must include captions when published on the internet. The requirements have been phased in over several years, depending on the type of content and the date of broadcast on television. For the full requirements, see the FCC's website.

were set in advance (as under the broadcast requirements), then they may not account for any developments in an ODPS provider's service offering during the course of the year. We also understand that the fluctuating nature of on-demand catalogues could make it challenging for ODPS providers to plan to meet targets. However, our proposal would be to establish enforcement practices in our ODPS accessibility code (which would be subject to consultation) to mitigate these potential issues. For example, the code could introduce a post-hoc system of assessments whereby providers report to us at the end of the year on how they have progressed against the requirements and provide explanations of where they consider that they meet certain criteria (also set out in the code) for exemptions or reduced requirements. We consider that this would reduce the burden on ODPS providers to plan to meet targets in advance, and ensure they are not discouraged from innovating. We discuss our recommended enforcement practices further in Section 5.

4.17   Regarding suggestions that targets should be set at different levels for new and archive content, we do not consider there is a clear argument that the audience benefit is greater for new content available on ODPS. For instance, the value of providing access services on a 'new' series would arguably be limited by a lack of provision on previous series of the same show. We are also aware that the proportion of 'new' and 'archive' content varies depending on the ODPS catalogue. We therefore consider that targets set as a proportion of an ODPS' total hours of available programming would provide a more even regulatory playing field, in which we maintain the flexibility to reduce requirements wherever it is most proportionate to do so (see paragraph 3.93). Targets across all ODPS content would also provide more clarity to consumers about the levels of accessible programming to expect and when to expect it.

4.18   However, in suggesting more particular approaches to targets, or alternatives, respondents tended to distinguish 'broadcaster VOD' (i.e. catch-up) and 'VOD-only' services. We therefore consider below whether a separate approach would be desirable for broadcaster VOD.

Different Approach for broadcaster VOD?

4.19   A number of respondents (✕, ✕, BBC, VIMN) said that rather than applying targets to 'catch-up' services, the requirement should be that existing access service assets from linear programming should be made available on-demand where possible. Respondents suggested that such an approach would by default reflect the approach currently taken to broadcast accessibility, would be more proportionate and would reduce the regulatory burden since ODPS catalogues vary in size and inventory. The BBC said that this approach is appropriate as broadcaster VOD is "channel-led", i.e. the majority of the BBC's on-demand content derives from its linear channels, and the majority of viewing to BBC services is to broadcast content; 96% of total viewing for the BBC and Channel 4, and over 98% for ITV[26].

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[26] Enders Analysis estimates based on BARB/InfoSys+/company reports/BBC iStats, published January 2018 for calendar year 2016

4.20   TODIF and Channel 4 disagreed with setting absolute targets for broadcaster VOD which map to targets for associated linear services, pointing to the additional technical challenges of creating on-demand versions of programmes broadcast with access services.

Ofcom discussion

4.21   As discussed in Section 3 (paragraphs 3.20-3.25), we recognise that the accessibility of catch up content can be important for consumers with sight or hearing impairment, who experience particular frustrations when content is accessible on broadcast television but not on catch-up services. However, the flip-side to this is that people with sight / hearing impairment may not have any opportunity to watch inaccessible, on-demand only content, which has not been previously broadcast with access services.

4.22   While we take into account the BBC's point that broadcaster VOD is mainly "channel-led", we also understand that on-demand viewing is becoming more prevalent. Broadcasters are increasingly investing in on-demand only content (for instance, Channel 4's ODPS All 4 includes its Walter Presents service which shows acquired foreign language dramas on-demand). We aim for the targets to be future-proof and consider that an approach limited to previously broadcast content has the potential to miss out high-value, on-demand only content, which may over time make up increasing proportions of broadcaster VOD catalogues.

4.23   We do not consider that an "everything everywhere" approach would be simple to implement. The exemptions and reduced requirements calculated by Ofcom for broadcast services may not directly map onto the most proportionate target levels and exemptions for ODPS. The technical difficulties and affordability of providing access services on-demand may differ for the same content provided on linear television and need to be considered within the context in which services are provided.

4.24   Moreover, just as broadcaster VOD catalogues include on-demand only content, VOD-only services can acquire previously broadcast content or invest in linear content (for instance, Amazon Prime has recently started broadcasting live sports content). We need to account for the fact that the distinctions between 'broadcaster VOD' and 'VOD-only' services may become increasingly blurred. A consistent approach across all ODPS would ensure simplicity in how we apply targets. It would provide clarity to industry and consumers and ensure that Ofcom's enforcement work is focused on ensuring that the content with maximum audience benefit is made accessible.

Target levels

4.25   Consumer groups generally felt that the levels of the targets should match or be higher than target levels for equivalent linear services (AHL, CCP), or rather felt that all content should carry subtitles (NADP). Those industry respondents who did not object to the idea of setting targets generally felt that it would be disproportionate to set targets at comparable levels to linear (COBA and UKTV).

4.26   Several respondents commented on how the regulations might prioritise between subtitles, audio description and signing. UKTV said that subtitles should be prioritised over audio description and signed content "due to technical challenges and likely costs, as well as the perceived audience benefit". AHL said that the current linear target for signed content (5%) needs to be improved on both broadcast TV and ODPS, and that it recommends further "in-depth research and review" regarding the audience size and need for sign language and subtitles.

Ofcom discussion

4.27   It is difficult to compare the impact of introducing subtitling, audio description and signing; many of the benefits of access service provision – such as enjoyment and inclusion in society - are not quantifiable. However, we need to ensure the regulations do not incur a disproportionate burden on providers, and so have considered how the targets should vary between the different access services. We have compared the estimated costs of providing each type of access service alongside the number of people in the UK with sight loss, hearing loss, and with BSL as a main language.

4.28   As indicated by the estimated costs set out in our impact assessment (see A1.38), the cost of creating audio description files is around ✂ times as expensive as creating subtitles. The cost of repurposing[27] audio description files is also around ✂ times as expensive. The cost of creating signed content is almost ✂ times as expensive as creating subtitles. There are more than 5 times as many people in the UK with hearing loss (11 million)[28] compared to people in the UK with poor or no vision (2 million)[29]. There are around 87,000 people in the UK who use British Sign Language as their preferred language.[30]

4.29   We consider there is a public expectation that at least the same proportion of content which is accessible with the different access services on broadcast TV should be made accessible on-demand. Taking the above factors into account, we consider it is appropriate for the targets to prioritise the introduction of subtitling, audio description and signing in line with the linear requirements. However, we would encourage ODPS providers to view the target levels as a minimum requirement, and to increase their provision of each access service wherever it is proportionate to do so.

4.30   We have considered whether the targets – expressed as a percentage of programming on a service - should be set at higher or lower levels than for broadcast TV. If targets are set at equivalent levels to broadcast, we expect that the majority of content broadcast with access services would be provided with access services on-demand since most content on catch-up services has been previously broadcast. This would satisfy a key concern from charities about the inaccessibility of previously broadcast content (see paragraph 3.20).

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[27] By repurposing, we mean repurposing broadcast access service files for use on demand, which can include automated file format conversion and manual intervention (e.g. to remove ad breaks from broadcast assets where necessary.)

[28] Action on Hearing Loss, 2015, Hearing Matters

[29] The economic impact of partial sight and blindness in the UK adult population, July 2009, Access Economics, p. 45)

[30] British Deaf Association statistics

4.31   We do not consider that it would be proportionate to expect ODPS providers to meet targets at higher percentages than the broadcast targets, considering the time and resource implications of introducing access services together with the fact that our recommended timescales for meeting the targets are shorter than under the linear regulations (see below). We also take into account that there are certain specific kinds of content for which it may be less appropriate or feasible to provide access services. If targets were set at higher levels than for linear we think ODPS providers would be more likely to apply to Ofcom for exemptions for specific types of content which could make up a very small proportion of their catalogue. We consider that this could incur unnecessary work for Ofcom and for providers and that this would distract from the core aim of increasing accessibility across services and platforms.

4.32   Considering the increasing prominence of on-demand viewing (see paragraph 3.39), we do not believe there is any reason that targets should be set at different levels for on-demand only content than for catch-up. In our impact assessment (see Annex 3) we set out our consideration that the costs to both 'VOD-only' and 'catch-up' ODPS providers are generally proportionate to meet targets at the same levels as for linear (80% subtitling, 10% audio description and 5% signing). In cases where the costs or technical difficulties are disproportionate, we are recommending exemptions or reduced requirements (see Section 3).

4.33   We acknowledge that it may be necessary also to set the level of 'reduced requirements' in the regulations. Following the reasoning above in relation to overall targets (4.29 to 4.32) we believe it would be appropriate for the reduced requirements to reflect those currently applied in the Ofcom broadcast accessibility code[31]. In the code there are three 'levels' of provision as below, and broadcasters must achieve the highest level of provision they can afford (in this case within a budget equating to 1% of their relevant turnover):

   a. Level One equates to the full targets for subtitling, signing and audio description, as well as any alternative requirements;
   b. Level Two equates to 66% of full target for subtitling, plus 100% of the targets for signing and audio description, and any alternative requirements; and
   c. Level Three equates to 33% of the full target for subtitling, plus 100% of the targets for signing and audio description and any alternative requirements.

4.34   We have outlined at paragraph 3.17 why we do not consider that it is currently appropriate for Channel 3 (ITV and STV) and/or Channel 4 and/or Channel 5 to be subject to higher quotas in the ODPS regulations, even while they are required to meet stricter targets for their broadcast content.

4.35   However, we have recommended in section 3 that the regulations leave space for Government to review target levels in future, including those relating to public service broadcasters' catch-up services.

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[31] See para 26 of the broadcast accessibility code

What should be the timeframe for introducing targets?

4.36   Most consultation respondents said there should be a phased introduction to the requirements to enable planning, resourcing and negotiation with content providers and platforms.

4.37   COBA said that there should also be a transitional period so that providers can plan properly.

4.38   NADP and RNIB said that the timescales for introduction should be shorter than under the linear regulations since: AD technology is now mature (RNIB); a significant amount of ODPS content should already be captioned as required under the FCC regulations[32] (NADP).

4.39   AHL disagreed with a phased introduction, stating that industry have been aware of the need for improvements since the DEA was passed in 2017, and prior to that with the reporting requirements (see A3.5).

Ofcom discussion

4.40   We recognise that it takes time, planning and resource for ODPS providers to develop the capability to provide access services over multiple platforms, and to ensure that all of their content (including archive content) is made accessible. However, the access services industry has significantly developed its infrastructure and workforce since the broadcast access regime came into force in 2003. Moreover, catch-up ODPS providers are likely to make use of existing access service files from broadcast content, and the process for converting files for use on-demand is simpler than creating access services from scratch. We also expect some ODPS providers to acquire access service files from third parties (for instance, for US content which has been made accessible under the FCC's regulations).[33]

4.41   We therefore consider that the timeframe for meeting the targets should be shorter than it was for broadcasters (for whom there was a phased introduction of ten years). We consider that targets should have to be met within 4 years and that there should be an interim target after 2 years (40% subtitling, 5% audio description and 5% signing).

Signing

Sign-Interpreted v Sign-Presented Programming

4.42   The legislative framework for television broadcast services does not specify whether broadcasters need to provide sign-interpreted or sign-presented programmes to fulfil the signing targets. Ofcom sets out requirements in its broadcast accessibility code regarding whether broadcasters should provide sign-presented or sign-interpreted programming.[34] We asked stakeholders if they had any views on the relative importance of sign-presented and sign-interpreted programming.

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[32] See the FCC's website
[33] See the FCC's website
[34] See Ofcom's Television Access Service Code

4.43   AHL said it would support the prioritisation of sign-interpreted programming where necessary as it makes mainstream and popular TV accessible for people who sign. However, it also said sign-presented programming can be particularly valuable for certain content, such as children's content as "all young people can benefit from seeing positive portrayals of different people in television".

4.44   BSLBT said that sign-presented programming is preferable, since it is highly important for people to "see themselves and their lives reflected, and their experiences and culture shared and acknowledged through their preferred language". It said that sign-interpreted programming has value on news and current affairs programming, but not on other programme types where a single interpreter must convey what many different people are saying.

4.45   COBA raised concerns about the higher costs of sign-presented programming. It also said that to their knowledge there has also been "little, if any, evidence-based research into audience's preferences in this area".

Ofcom discussion

4.46   As indicated by AHL and BSLBT, the relative benefits of providing sign-presented or sign-interpreted programming can depend on the type of content. We recognise that sign-presented programming is costlier to provide and we consider that the appropriateness of providing such content may depend on the size and revenue of the ODPS provider. Therefore, we do not believe that the regulations should specify that the targets must be met exclusively through sign-presented or sign-interpreted programming.

4.47   We expect to set out in our forthcoming ODPS accessibility code any guidance regarding the provision of sign-interpreted or sign-presented programming. Any such code guidance would be subject to consultation.

Alternative arrangements

4.48   In broadcasting, where a programme/service has been excluded from the full requirements, Ofcom may require a different level of accessibility to be achieved, or an alternative arrangement to be put in place.

4.49   Ofcom's broadcast accessibility code[35] sets out that broadcast channels with smaller audience shares can either fulfil amended obligations relating to signing targets or can propose and ask Ofcom to approve alternative arrangements. For example, in place of providing signed programming, many UK broadcasters have made a financial contribution to the British Sign Language Broadcasting Trust, which commissions and distributes programmes made in British Sign Language.

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[35] See Ofcom's [Code on Television Access Services](#).

4.50   We asked consultation respondents if they had any views on whether there are satisfactory alternative arrangements which might apply in place of an ODPS provider making its own content available with access services.

4.51   UKTV pointed to the significant resource and costs that would be involved if it were to offer its own sign-interpreted content via its ODPS. It said there should be a similar approach as on linear whereby it can make a financial contribution to the BSLBT.

4.52   COBA and TODIF said that it may be overly burdensome for ODPS providers to make financial contributions to third party providers of signed content. COBA said that "the audience demand and costs for alternative arrangements must be established first".

4.53   Sky said that ODPS providers should be able to use alternative ways to provide access services, for example by a companion app (it said there have been trials of companion Apps synchronising audio description tracks to content playing on TV).

Ofcom discussion

4.54   As set out in Section 3, we are recommending that the regulations make provision for exemptions, reduced requirements or alternative arrangements on grounds including audience benefit, affordability and technical difficulty. While we acknowledge that Government may wish to specify the level of reduced requirements in the regulations themselves (see 4.33 above), we consider that the form of any other alternative arrangements should be a matter for the accompanying ODPS accessibility code We would consider the benefits of any alternative arrangements to people with sight and hearing impairment, along with the proportionality of the demands on ODPS providers.

4.55   We would aim for alternative arrangements to reflect consumer demand and industry developments. As an example, we are aware that broadcasters sometimes meet their signing obligations by providing signed content on their channels in the early hours of the morning. This is arguably of more limited use to many consumers than signed content available on-demand. We might consider proposing a reduction in broadcasters' linear signing obligations on the grounds of audience benefit, if they choose to exceed their signing obligations on-demand. BSLBT currently distributes its content 'on-demand' as well as broadcasting it – we will consider whether there can or should be any interplay between the current BSLBT funding arrangements and a similar arrangement for ODPS.

4.56   We will consider Sky's suggestion on alternative arrangements alongside our code consultation; however, at this point, we do not believe that companion apps provide the same accessibility as built-in audio description.[36]

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[36] This is because, while blind and partially sighted people are often older and on a restricted income, companion apps require such users to have a suitable mobile device, pay for it (and a broadband connection), and possess the dexterity and cognitive abilities to use a touch-screen device they cannot see well or at all

Usability and quality

4.57   Access services such as subtitling and audio description are of limited benefit if they cannot be found and enjoyed by the relevant consumers. Therefore, another way in which ODPS might be made more accessible is by addressing the "usability" of such services by people with sight and/or hearing impairment. We asked stakeholders to comment on the extent to which regulations can or should require usability features such as accessible catalogues and best practice relating to the creation, scheduling and presentation of accessible programming.

4.58   Consumer groups (RNIB, NADP, AHL and CCP) highlighted the importance of people with sight / hearing impairment being able to easily find and use accessible content, and detailed the current frustrations faced. For instance, RNIB said that the "inability to access content independently … is as much a point of frustration for blind and partially sighted people as the absence of audio described content". It noted complaints it had received regarding ODPS providers not taking advantage of usability features on third party platforms, stating that players on iOS and Android are often not designed in line with the best practice guidelines for those platforms[37]. CCP pointed to the lack of information provided on the availability of access services. 76% of respondents to AHL's Subtitle It survey had subscribed to a service or started to watch a programme and later found it had no subtitles. Consumer groups also pointed to issues with the quality of access services; for instance, NADP said that it commonly receives complaints regarding the accuracy of subtitles, in terms of both reflecting the audio and the spelling and grammar.

4.59   Consumer groups strongly felt that the regulations should include requirements which ensure the usability of access services. CCP and AHL both stated that Ofcom should develop "best practice" usability guidance in collaboration with users and industry and that the regulations should require ODPS providers to use their "best endeavours" to meet the guidance. NADP advocated the most exacting requirements, stating that Ofcom should set mandatory standards regarding subtitles; including on the text's font, size, colour and positioning, with the option for users to customise the subtitles.

4.60   Many ODPS providers disagreed with the idea of setting binding usability requirements, pointing to the limitations of their influence over how access services are presented and curated by third party platforms. Some platform providers support this reasoning. Further, several respondents indicated that industry will still have the incentive to develop usability features in the absence of regulation.

4.61   Nevertheless, industry respondents generally indicated that ODPS providers should support usability to the extent they are able to, in particular by supplying appropriate metadata to platforms. Several respondents (TODIF, VIMN, UKTV) stated that ODPS providers have a responsibility to supply metadata and information which allows platforms

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[37]https://developer.apple.com/library/content/documentation/UserExperience/Conceptual/iPhoneAccessibility/Introduction/Introduction.html#//apple_ref/doc/uid/TP40008785 last checked 27/03/2018.
https://developer.android.com/guide/topics/ui/accessibility/index.html last checked 27/03/2018

to label and curate accessible content. Additionally, Sky said that non-binding guidance on supplying appropriate metadata to platforms would be helpful, and UKTV suggested broader non-binding guidance on how ODPS providers can make their catalogues accessible.

4.62   BT said that Ofcom should set non-binding guidance for platforms, who are responsible for helping users find access services. It also stated that there should be guidance for content providers (rather than ODPS providers) on technical standards for supplying the appropriate metadata to support usability features.

Ofcom discussion

4.63   Consumers face significant difficulties and frustrations which result from issues with the usability and quality of ODPS accessibility, as indicated by the evidence from charities. We believe that guidance on usability and quality is highly important to complement the introduction of targets; the increased provision of access services needs to be found and enjoyed by the relevant consumers.

4.64   We acknowledge that ODPS providers have more limited control over some aspects of the usability of their content, especially in regard to how content is presented on third party platforms. Moreover, we believe that any attempt to mandate specific technical standards for usability features[38], would risk constraining product development and innovation. However, there are areas where ODPS providers can usually take significant actions – for instance in providing appropriate metadata to platforms and in ensuring the usability of their own websites or apps.

4.65   We therefore recommend that reporting requirements in the regulations include a requirement to report on the measures taken to improve the quality and usability of the required access services. We anticipate that Ofcom's ODPS accessibility code will give guidance on ensuring that these access services are of sufficient quality and can be used effectively by the intended audience, recognising the limitations of ODPS providers' abilities to control the end user experience in many cases.

4.66   We would expect to set out high-level standards/goals which provide clarity to ODPS providers about how they can most effectively make their services accessible. This would also ensure a level of consistency of approach to usability features across ODPS, which would further assist consumers in identifying how to find and use access services.

4.67   While the regulations and code will only apply to ODPS providers, we plan to encourage platforms to support ODPS providers in implementing the usability features set out in the guidance. For instance, as part of our potential accreditation scheme setting out how platforms support access service provision (see 3.87), we could rate platforms on how well they provide and support usability features. We also consider that the TODIF technical working group would be a good forum through which to encourage ODPS providers and

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[38] We note that the Digital Television Group's D-Book provides the technical specification for Digital Terrestrial Television in the UK. The DTG's U-Book contains associated usability and accessibility guidelines.

platforms to work together to improve the usability of their services. Further to this, in June 2018, Ofcom introduced requirements on EPG providers[39] to use reasonable endeavours to introduce certain accessibility features where practicable (including to highlight or list separately programmes with audio description, and with signing.)[40]

Summary: Ofcom's recommendations on what should be required

4.68   We recommend that the regulations require the following targets to be met by services as consist of programmes which are not excluded programmes:

- from the 2nd anniversary of when the regulations come into effect or (if afterwards) when the service starts: 40% subtitling, 5% audio description and 5% signing.
- from the 4th anniversary of when the regulations come into effect or (if afterwards) when the service starts: 80% subtitling, 10% audio description and 5% signing.

4.69   As discussed in Section 3, we recommend that the regulations set out grounds for exemption from the full requirements, or for reduced requirements or alternative arrangements. The regulations could also set out levels of reduced requirements (decreasing subtitle targets to 66% or 33% of the full requirements).

4.70   We recommend that ODPS providers are required to report on measures they have taken to ensure that the required access services are of sufficient quality and can be used effectively by their intended audiences (see below).

4.71   We anticipate that Ofcom's ODPS accessibility code will give guidance on best practice in providing access services, including ensuring that access services can be used effectively by the intended audience, providing information on usability to the likely audience, and ensuring the quality of the access services.

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[39] The EPG providers are currently Sky, Virgin, YouView, Freesat, Lebara, Digital UK for Freeview, BT, EE and TalkTalk
[40] For a full description of the requirements see Ofcom's EPG Accessibility Statement

5. Enforcement

5.1   Government asked us to make recommendations on any penalties or incentives relating to non-compliance and implementation periods.

5.2   Here we consider such issues, alongside other enforcement points raised by respondents or that we deem relevant.

Monitoring and reporting

5.3   Consumer groups (AHL, RNIB and CCP) stated that Ofcom should introduce reporting requirements in order to measure progress, and to inform consumers about the accessibility of different services. RNIB said there should be comprehensive reporting requirements which cover both access service provision and usability features as "users need to know which programmes are accessible, and which services on which platforms have the required accessibility features, such as screenreaders and magnification." AHL stated that as part of the reporting, ODPS providers should be required to supply a "breakdown of access service provision by platform and device" and that their stakeholders have informed them that the current reported figures do not always reflect the viewer's experience. Along with regular monitoring and reporting, CCP stated that ODPS providers should be required to make it easier for people to provide complaints and feedback, as this would provide insight on where improvements are needed.

5.4   Two ODPS providers also pointed to the role of reporting in the regulatory regime. As mentioned in Section 4, the BBC said that all previously broadcast content should be made available with access services as "tested against a periodic 'comply or explain' requirement including broadcasters and platforms".

Ofcom discussion

5.5   Ofcom already regularly collects and publishes data on ODPS accessibility. This includes information on the proportion of programmes on each ODPS which provide subtitles, signing and/ or audio description, broken down by the platforms on which it appears.[41] In 2016-17, we ran a consultation which led to changes in how we collect and publish data on ODPS accessibility, with an aim to ensure the data is detailed enough to be meaningful to consumers.[42] We could consider further changes to the data we collect as part of our ODPS accessibility code consultation. However, ODPS providers can face difficulties in determining whether their access services are being played out on certain devices, such as some older versions of set-top boxes, which may dissuade us from increasing the granularity of the data we require.

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[41] For more information, see our latest report on accessibility.

[42] As part of this, we decided to collect data on each "branded" service offered by ODPS, rather than the sum of their on-demand content. For instance, Channel 5 Broadcaster has to break down its data by its different branded services (e.g. "All Day Milkshake", "My5"). Our statement can be found here.

5.6   In order to enforce effectively our recommended regulations (set out in Section 4) we consider that we will need to expand the information which we require from ODPS providers. As explained in Section 3, it is important that the regulations are flexible enough to account for any barriers which providers may face in meeting the target requirements (for example, technical difficulties in introducing access services on particular platforms). This flexibility relies on ODPS providers supplying sufficient information to Ofcom, so that we can make an informed assessment of where it is reasonable to make exemptions or reduce requirements.

5.7   It is important that the form of our reporting requirements (which will be subject to the code consultation) allows for differences in the broadcast and on-demand environments. Under the broadcast requirements, we make exemptions or reduce target levels for certain services in advance of the relevant year, making use of turnover information from broadcasters along with audience share data, and any other relevant information submitted by broadcasters.[43] In calculating the requirements, we estimate the number of programme hours available on each broadcast service over a year in accordance with the linear schedule.

5.8   However, the same approach may not be appropriate for ODPS, where content catalogues fluctuate in size throughout the year and platform and device technology is more diverse and subject to change - platforms may enter or leave the market during the course of a year. It would be challenging to determine with accuracy all the appropriate exemptions for ODPS in advance, and so we consider that a post-hoc system of reporting and assessment may be more effective and fairer to ODPS providers. ODPS providers could report to us on how they have progressed against targets and provide explanations of where they consider that they meet criteria (which we could set out in the ODPS accessibility code) for exemptions or reduced requirements.

5.9   We consider that the regulations should also require ODPS providers to set out a plan regarding how they will make their services progressively more accessible. This will incentivise them to consider and formalise a strategy. It will also be important as a means of monitoring technical developments, and as a transparency mechanism to show whether ODPS providers are making genuine efforts to overcome any barriers to the accessibility of their services. This is in line with the revised AVMS directive[44] which includes a requirement that "Member States shall encourage media service providers to develop accessibility action plans in respect of continuously and progressively making their services more accessible to persons with disabilities."[45]

5.10   We have outlined (in section 4) our recommendation that ODPS providers should be required to report on measures taken to ensure the quality and usability of their access services.

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[43] See our Code on Television Access Services
[44] Information about the revised AVMS directive can be found here, with the provisions on accessibility in Article 7 here.
[45] Sections 7(1)-(5)

5.11   Alongside any formal reporting requirements set out in the regulations, we may consider whether there are best practice measures which we should include in the ODPS accessibility code in terms of monitoring and reporting. As part of this, we could consider whether ODPS providers need to provide clearer routes for people to provide complaints and feedback.

Penalties and incentives

5.12   NADP stated that all content should be subtitled with no exemptions, but that there should be varying penalties and levels of tolerance for not meeting the requirements. It said that stricter penalties should apply for ODPS content which is not provided with subtitles when the same content has been available with subtitles online or on broadcast TV. It also said that providing US captions rather than subtitles might be an acceptable compromise for smaller ODPS providers which acquire captioned content from third parties.

5.13   NADP also said that ODPS providers offering "pay per view" content should be financially penalised when viewers pay for content which is incorrectly labelled as providing subtitles. It said that "whilst many providers offer their apologies in these circumstances and a refund, the user has been inconvenienced and potentially distressed by this situation."

Ofcom discussion

5.14   The Act, as amended by s93 of the DEA, sets out enforcement measures which Ofcom will be able to take if an ODPS provider contravenes the requirements. This includes provision for Ofcom to serve enforcement notifications[46] and impose penalties[47] on ODPS providers. This is line with the existing enforcement procedures for ODPS[48] in relation to breaches of the ODPS rules[49].

5.15   Consultation respondents did not comment directly on ways to incentivise ODPS providers to comply with the regulations or go beyond them. We consider there will be means by which we can provide incentives in this regard (for instance, see our example regarding signing targets at 4.64) and will consult on these measures when we consult on the ODPS accessibility code.

5.16   In regard to NADP's comment, our experience is that mistakes of this kind by "pay for view" ODPS providers which result in content being incorrectly advertised as displaying subtitles tend to result from unpredictable technical faults (NADP also acknowledge that ODPS providers often refund customers in this case). It would seem unfair in those

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[46] An enforcement notification imposes a requirement on the provider to take all such steps for complying with the regulations and for remedying the consequences of the contravention of the regulations as may be specified in the notification

[47] Penalties must be given in accordance with the existing statutory requirements regarding financial penalties for ODPS under s368J of the Act, which state that penalties should not exceed 5% of the provider's applicable qualifying revenue[47] or £250,000. We set out our definition of "appropriate qualifying revenue" in Procedures for the consideration of statutory sanctions arising in the context of on-demand programme services.

[48] Set out in our Procedures for investigating breaches of rules for on demand programme services.

[49] The ODPS rules reflect the requirements set out in Part 4A of the Communications Act 2003 ("the Act") and can be found here.

circumstances to penalise the provider. However, we are recommending that ODPS providers are required to report on quality/usability of access services, and should follow the Ofcom accessibility code of guidance on these issues (see paragraph 4.71).

Summary: Ofcom recommendations on enforcement

5.17   We recommend that the regulations require ODPS providers to report to Ofcom on the extent to which / how they have met the requirements set out in the ODPS accessibility code, and on their plans to continuously and progressively make their services more accessible.

5.18   We also recommend that ODPS providers are required to report on measures they have taken to ensure that the required access services are of sufficient quality and can be used effectively by their intended audiences.

Other considerations

5.19   We look here at any other issues raised by respondents or that we consider relevant.

Impact on competition

5.20   Several ODPS providers raised concerns that the requirements would negatively affect their ability to compete with on-demand providers who are not regulated by Ofcom, pointing to Netflix in particular.

5.21   The BBC said that 16-24 year olds spend more time watching Netflix than all of BBC TV (including iPlayer) combined, and that viewing to iPlayer - as the leading UK "broadcaster VOD" service - accounts for only 8% of all online viewing. It also pointed to the large content budgets of Netflix and Amazon Video, stating that Netflix has a content budget which is "nearly three times greater than the BBC's"

Ofcom discussion

5.22   The amendments to the Act only make provision for requirements to be introduced on ODPS. However, on-demand services not regulated by Ofcom can provide access services for commercial reasons or be subject to requirements from elsewhere (for instance, to the Federal Communications Commission's requirements for content previously broadcast in the US[50]). In our impact assessment we have found that the costs to ODPS providers of introducing targets are generally low relative to their overall turnover. We further consider that our recommended provisions on exemptions (see Section 3) will ensure that ODPS providers are not subject to disproportionate costs or technical challenges which might materially hinder their ability to compete with other providers. We therefore consider that any impact on competition with other providers is likely to be very small. Ofcom regulates certain YouTube channels which fit the criteria to be notified as an ODPS[51].

Additional Measures

5.23   The RNIB said there should be a national register to record the production of AD across services and platforms, as AD tracks are being duplicated. This would allow other companies to buy copies of existing AD tracks. It said that Ofcom could impose a duty to make the AD track available at a fair, reasonable and non-discriminatory price to third parties.

Ofcom discussion

5.24   It is not for Ofcom to mandate that content suppliers must share their access service files, or to set requirements regarding how much they charge for those files. These are matters for industry negotiation. However, aside from setting out requirements in our ODPS

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[50] See the FCC's website
[51] See our Guidance on who needs to notify

accessibility code, we intend to engage with industry and user groups on an ongoing basis to help facilitate industry negotiations and we may recommend best practice measures which support this.

5.25   As part of our code consultation we would expect to consider whether to recommend an AD register as a best practice measure.

Equality Act

5.26   The NADP suggested that Ofcom would be countering the Equality Act if it did not require smaller ODPS providers to offer subtitles.

Ofcom discussion

5.27   Our understanding of the Equality Act is that "content services" are excluded from the requirement to make reasonable adjustments, and that subtitles are part of a content service. There is no clear legal obligation for broadcasters to provide subtitling in the absence of specific regulations – this is exactly why we are working with Government to introduce such regulations.

Periodic review

5.28   The BBC recommended a framework with different requirements for catch-up and VOD-only ODPS, which should be "subject to periodic review to keep in line with trends in audience consumption and expectations as well as content supply".

Ofcom discussion

5.29   Whether the regulations are reviewed is a matter for Government; however, we have worked under the assumption that the regulations are likely to stand for some time. We have aimed to recommend regulations which are forward-looking, and flexible enough to adapt to changes in the on-demand landscape. As set out in Section 4, we are setting targets based on the proportion of an ODPS provider's entire content offering, to account for the fact that the separation between 'VOD-only' and 'catch-up' services may become less distinct.

5.30   The statutory framework makes provision for us to review the ODPS accessibility code from time to time, which will allow us to respond to industry developments.

5.31   However, we recommend that the regulations allow for periodic review to account for changes which cannot be accommodated in the ODPS accessibility code. We give as an example above potential changes to the status of PSB catch-up services (see paragraph 3.18).

A1. Extracts from Digital Economy Act 2017

93 On-demand programme services: accessibility for people with disabilities

(1) The Communications Act 2003 is amended as follows.

(2) After section 368BB insert—

"*Accessibility*

368BC   Accessibility for people with disabilities

(1) The Secretary of State may by regulations impose requirements on providers of on-demand programme services for the purpose of ensuring that their services are accessible to people with disabilities affecting their sight or hearing or both.

(2) The requirements that may be imposed include—

> (a)requirements for programmes included in the services to be accompanied by subtitling;

> (b)requirements for such programmes to be accompanied by audio-description for the blind;

> (c)requirements for such programmes to be presented in, or translated into, sign language.

(3)The steps set out in subsections (4) to (6) must be taken before regulations are made under this section.

(4)The Secretary of State must ask the appropriate regulatory authority to consult such persons as appear to the authority likely to be affected by regulations under this section, including—

> (a)providers of on-demand programme services, and

> (b)representatives of people with disabilities affecting their sight or hearing or both.

(5) The appropriate regulatory authority must inform the Secretary of State of—

> (a)the outcome of the consultation, and

> (b)any other matters that they think should be taken into account by the Secretary of State for the purposes of the regulations.

(6) Where OFCOM are not the appropriate regulatory authority, the Secretary of State must consult OFCOM.

(7) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

[368BD Enforcement of regulations under section 368BC…]

368BD Enforcement of regulations under section 368BC

(1) Where the appropriate regulatory authority determine that a provider of an on-demand programme service is contravening or has contravened regulations under section 368BC, they may do one or both of the following—

>(a) give the provider an enforcement notification under this section;

>(b) impose a penalty on the provider in accordance with section s368J.

(2) The appropriate regulatory authority must not make a determination as mentioned in subsection (1) unless there are reasonable grounds for believing that a contravention of the regulations is occurring or has occurred and they have allowed the provider an opportunity to make representations about that apparent contravention.

(3) An enforcement notification under this section is a notification which specifies the determination made as mentioned in subsection (1) and imposes a requirement on the provider to take all such steps for complying with the regulations and for remedying the consequences of the contravention of the regulations as may be specified in the notification.

(4) An enforcement notification must—

>(a) include reasons for the appropriate regulatory authority's decision to give the enforcement notification, and

>(b) fix a reasonable period for taking the steps required by the notification.

(5) It is the duty of a provider to whom an enforcement notification is given to comply with it.

(6) That duty is enforceable in civil proceedings by the appropriateregulatory authority—

>(a) for an injunction,

>(b) for specific performance of a statutory duty under section 45 of

>the Court of Session Act 1988, or

>(c) for any other appropriate remedy or relief.

(7) If a provider to whom an enforcement notification has been given does not comply with it within the period fixed by the appropriate regulatory authority in that enforcement notification the appropriate regulatory authority may impose a financial penalty on the provider in accordance with section 368J."

(3) In section 368C (duties of the appropriate regulatory authority), omit subsection (2).

(4) After that section insert—

>**"368CA Code on accessibility for people with disabilities**

>(1)It is the duty of the appropriate regulatory authority to draw up, and from time to time review and revise, a code giving guidance as to—

(a)the steps to be taken by providers of on-demand programme services so as to meet the requirements of regulations under section 368BC, and

(b)other steps to be taken by providers who are subject to requirements under the regulations to ensure that their services are made progressively more accessible to people with disabilities affecting their sight or hearing or both.

(2)The appropriate regulatory authority must publish the code drawn up under this section, and every revision of it, in such manner as, having regard to the need to make the code or revision accessible to—

(a)persons who are deaf or hard of hearing,

(b)persons who are blind or partially sighted, and

(c)persons with a dual sensory impairment,

they consider appropriate."

(5) In section 368J(1) (financial penalties), after "368BB" insert ", 368BD".

(6) In section 368K(1) (suspension or restriction of service for contraventions)—

(a) in paragraph (a), after "368D" insert ", or of regulations under section 368BC",

(b) in paragraph (b)—

(i) after "368D" insert "or the regulations", and

(ii) for "or 368I" substitute ", 368I or 368BC".

(7) In section 368O(2)(a) (power to demand information), after "368D" insert ", or of regulations under section 368CA,".

(8) In section 402(2)(a) (procedure for statutory instruments) after "411" insert "or regulations under section 368BC".

A2. Extracts from Communications Act 2003

303 Code relating to provision for the deaf and visually impaired

(1) It shall be the duty of OFCOM to draw up, and from time to time to review and revise, a code giving guidance as to—

>(a) the extent to which the services to which this section applies should promote the understanding and enjoyment by—

>>(i) persons who are deaf or hard of hearing,

>>(ii) persons who are blind or partially-sighted, and

>>(iii) persons with a dual sensory impairment,

>of the programmes to be included in such services; and

>(b) the means by which such understanding and enjoyment should be promoted.

(2) The code must include provision for securing that every provider of a service to which this section applies ensures that adequate information about the assistance for disabled people that is provided in relation to that service is made available to those who are likely to want to make use of it.

(3) The code must also require that, from the fifth and tenth anniversaries of the relevant date, the obligations in subsections (4) and (5), respectively, must be fulfilled by reference to averages computed over each of the following—

>(a) the twelve month period beginning with the anniversary in question; and

>(b) every twelve month period ending one week after the end of the previous period for which an average fell to be computed.

(4) The obligation to be fulfilled from the fifth anniversary of the relevant date is that at least 60 per cent. of so much of every service which—

>(a) is a service to which this section applies, and

>(b) has a relevant date after the passing of this Act,

as consists of programmes that are not excluded programmes must be accompanied by subtitling.

(5) The obligations to be fulfilled from the tenth anniversary of the relevant date are—

>(a) that at least 90 per cent. of so much of a Channel 3 service or of Channel 4 as consists of programmes that are not excluded programmes must be accompanied by subtitling;

>(b) that at least 80 per cent. of so much of every other service to which this section applies

as consists of programmes that are not excluded programmes must be accompanied by subtitling;

(c) that at least 10 per cent. of so much of every service to which this section applies as consists of programmes that are not excluded programmes must be accompanied by audio-description for the blind; and

(d) that at least 5 per cent. of so much of every service to which this section applies as consists of programmes that are not excluded programmes must be presented in, or translated

into, sign language.

(6) A reference in subsection (4) or in any paragraph of subsection (5) to excluded programmes is a reference to programmes of the description for the time being set out under subsection (7) in relation to that subsection or paragraph and also in relation to the service in question.

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(7) The code must set out, in relation to subsection (4) and each of the paragraphs of subsection (5), the descriptions of programmes that OFCOM consider should be excluded programmes for the purposes of the requirement contained in that subsection or paragraph.

(8) In complying with subsection (7), OFCOM must have regard, in particular, to—

(a) the extent of the benefit which would be conferred by the provision of assistance for disabled people in relation to the programmes;

(b) the size of the intended audience for the programmes;

(c) the number of persons who would be likely to benefit from the assistance and the extent of the likely benefit in each case;

(d) the extent to which members of the intended audience for the programmes are resident in places outside the United Kingdom;

(e) the technical difficulty of providing the assistance; and

(f) the cost, in the context of the matters mentioned in paragraphs (a) to (e), of providing the assistance.

(9) The exclusions that may be set out in the code under subsection (7)—

(a) may include different descriptions of programmes in relation to different services to which this section applies; and

(b) in the case of a service which OFCOM are satisfied (having regard to the matters mentioned in subsection (8)) is a special case, may include all the programmes included in

the service.

(10) The requirements that may be imposed by the code include, in particular—

   (a) requirements on persons providing services to which this section applies to meet interim targets falling within subsection (11), from dates falling before an anniversary mentioned in subsection (3);

   (b) requirements on persons providing such services to meet further targets from dates falling after the anniversary mentioned in subsection (5); and

   (c) requirements with respect to the provision of assistance for disabled people in relation to excluded programmes, or in relation to a particular description of them.

(11) The interim targets mentioned in subsection (10)(a) are the targets with respect to the provision of assistance for disabled people which OFCOM consider it appropriate to impose as targets on the way to meeting the targets imposed in pursuance of subsection (3).

(12) This section applies to the following services—

   (a) S4C Digital or any other television programme service provided by the Welsh Authority for broadcasting in digital form so as to be available for reception by members of the public;

   (b) any licensed public service channel;

   (c) a digital television programme service but not an electronic programme guide;

   (d) a television licensable content service but not an electronic programme guide;

   (e) a restricted television service.

(13) In this section—

"electronic programme guide" means a service which—

   (a) is or is included in a television licensable content service or a digital television programme service; and

   (b) consists of—

      (i) the listing or promotion, or both the listing and the promotion, of some or all of the programmes included in any one or more programme services

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      the providers of which are or include persons other than the provider of the guide; and

      (ii) a facility for obtaining access, in whole or in part, to the programme service or services listed or promoted in the guide;

"programme" does not include an advertisement

A3. Impact Assessment

Introduction

A3.1   The analysis in this Annex constitutes an impact assessment as defined in section 7 of the Communications Act 2003 (the 'Act'). 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.[52]

A3.2   In this Annex, we set out our assessment of the impact of the recommendations that we have decided to make to the Secretary of State regarding the ODPS accessibility regulations. We take account of stakeholders' responses to our consultation, along with other relevant factors.

A3.3   In assessing options for the regulations, we consider the impact on stakeholders by examining the likely costs and benefits of our decisions. We have taken a largely qualitative approach to assessing the likely benefits, considering the difficulties faced by those with visual and hearing impairment, and the nature of the benefits that increased accessibility might provide them. In assessing costs, we have drawn on the cost estimates provided by stakeholders in response to our consultation, along with the qualitative information on potential costs provided by stakeholders.

Current Situation

A3.4   As set out in the Background section, broadcast television services are subject to statutory targets which require them to make a certain proportion of their programming accessible, by means of subtitles, signing, and audio description (collectively known as 'access services').[53] There are not currently equivalent statutory requirements in relation to ODPS.

A3.5   Ofcom does have a duty under section 368C(2) of the Act to "encourage" providers of ODPS to ensure that their services are progressively made more accessible. One of the key ways in which Ofcom aims to achieve this is through regularly collecting and publishing data on ODPS accessibility. This includes information on the proportion of programmes on each ODPS which provide subtitles, signing and/ or audio description.[54] Ofcom has required ODPS providers to submit accessibility data since 2016, after taking over the regulation of ODPS from the Authority for Television On-Demand ("ATVOD").[55] ATVOD had required

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[52] For further information about Ofcom's approach to impact assessments, see the guidelines Better policy-making: Ofcom's approach to impact assessment, which are on Ofcom's website: Better policy making

[53] See Annex 2 of this document for relevant extracts from the Act

[54] For more information, see our latest report on accessibility.

[55] Ofcom assumed sole responsibility for regulation of non-advertising content on ODPS in January 2016. Previously, Ofcom had designated regulatory functions to the Authority for Television On-Demand ("ATVOD").

ODPS providers to submit accessibility data since 2014 (and between 2011 and 2014 they were encouraged to submit data voluntarily).[56]

A3.6 Since the targets for broadcast television services were introduced in 2004, there has been significant improvement in accessibility (see Figure 1). This year (2018) 84 UK channels were required to provide access services, accounting for over 90% of broadcast television viewing in the UK.

A3.7 The accessibility of ODPS lags behind (see Figure 2), with 45% of ODPS providers not making any of their services accessible in the first half of 2018. While this figure is not directly comparable with that in Figure 1 (which refers to percentage of programming) we believe that there are good grounds to be concerned about the accessibility of ODPS in the absence of statutory requirements. Among the ODPS providers who were required to pay fees to Ofcom this year on the basis of their annual turnover[57] - which we take here as a proxy for the larger ODPS providers – subtitles were provided on only 15% of their total hours of programming, audio description on 1% and signing on 0.2%. Access service provision is patchy depending on the platforms and devices through which ODPS content is viewed. Looking at all the individual on-demand programme services provided during the first half of 2018, 26% carried subtitles on own-brand websites (down slightly from 27% in the second half of 2017), 20% carried subtitles via mobile apps, and only 7% carried subtitles via games consoles or smart TVs.

A3.8 One area in which we have seen an improvement is the accessibility of on-demand services when viewed using platforms such as set top boxes (e.g. FreeView, Sky Q) and video streaming sticks (e.g. Amazon Fire, Google Chromecast) which enable more traditional 'living room' access to on-demand services via a television set. In 2018, 26% of services carried subtitles on these platforms, up from 20% in 2017. While this is a small increase, there remain only a limited number of ODPS which offer subtitles when viewed on some commonly used platforms. In the first half of 2018 only three on-demand services were available with subtitles on FreeView Play and Virgin (the same as at the end of 2017), and seven on Sky (up from six).[58]

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[56] Ofcom assumed sole responsibility for regulation of non-advertising content on ODPS in January 2016. Previously, Ofcom had designated regulatory functions to the Authority for Television On-Demand ("ATVOD").
[57] For the Ofcom fee structure for ODPS providers, see our Regulatory Fees for ODPS statement.
[58] For more information on current levels of ODPS accessibility see our latest report

Figure 1: Progress in broadcast accessibility, 2005-2018, shown as the <u>percentage of programming</u> carrying subtitling/signing / audio description on those channels with a requirement to provide access services
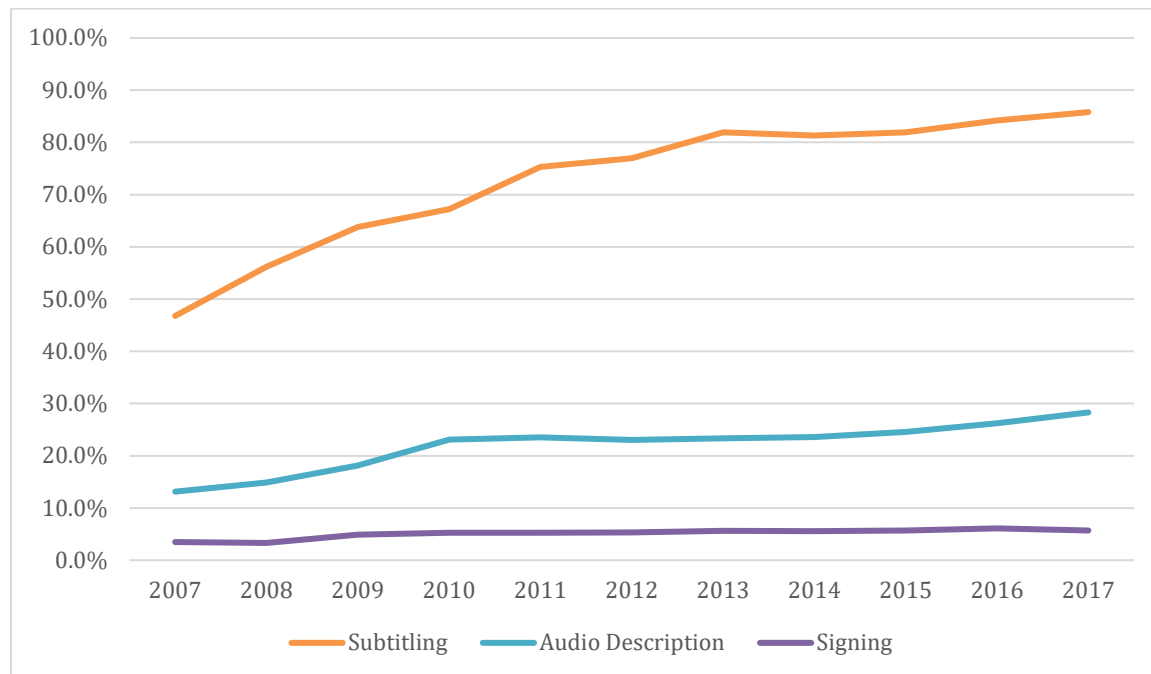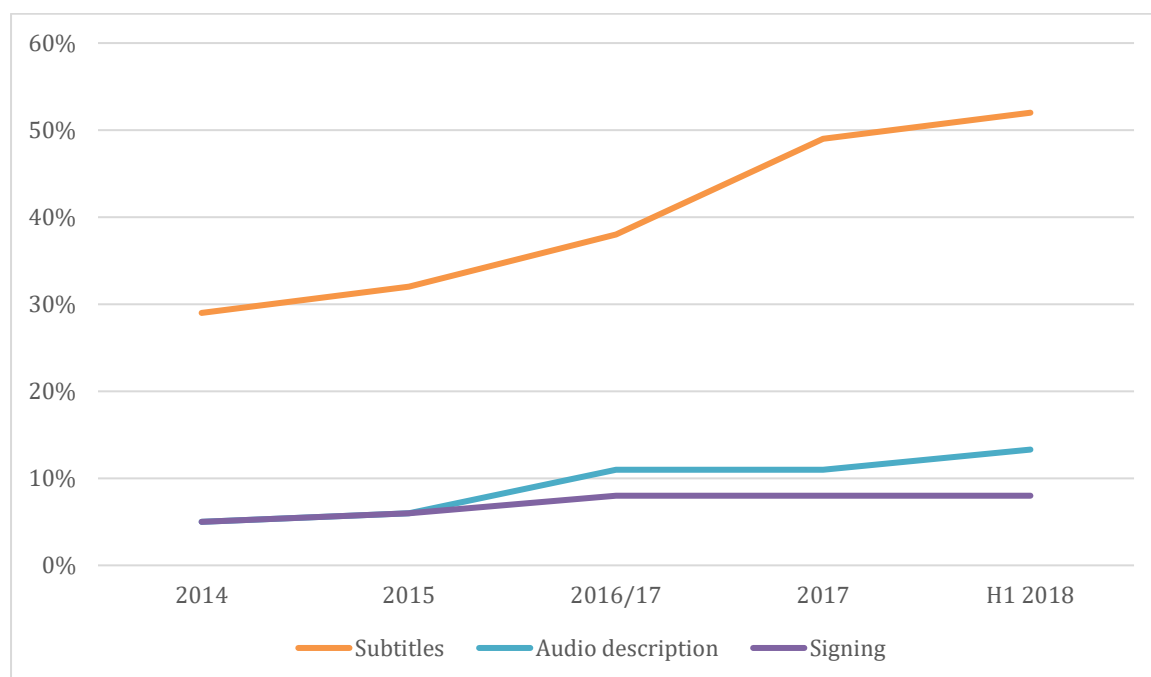

Figure 2: Progress in ODPS accessibility, shown as the <u>percentage of providers</u> offering each access service

*Please note that Figure 2 refers to the percentage of **providers** offering each access service, whereas Figure 1 refers to the percentage of **programming** accompanied by the specified access service.*

Policy Objectives

A3.9   Ofcom strongly believes that consumers with hearing and/or visual impairments should have access to on-demand television. We have a duty under section 368C(2) of the Act to "encourage" providers of ODPS to ensure that their services are progressively made more accessible.

A3.10   As explained paragraphs 2.6-2.7, the DEA amends the Act to state that the Secretary of State may by regulations impose requirements on providers of ODPS for the purpose of ensuring that their services are accessible to people with disabilities affecting their sight and/or hearing. In accordance with the new framework, the Secretary of State has asked Ofcom to consult stakeholders likely to be affected by the regulations, and to inform them of the outcome of the consultation and other matters that we think should be taken into account for the purposes of the regulations.[59] This impact assessment considers options for the regulations to inform our recommendations to the Secretary of State. In line with the new statutory provisions, we are therefore starting from the position that there is clear and significant value in increasing the accessibility of ODPS to people with sight and/or hearing impairments.

A3.11   Taking account of our regulatory principles[60], we aim to inform regulations which ensure measurable progress in the accessibility of ODPS, while being flexible and fit to apply to a diverse and developing video on-demand industry. While the regulations must acknowledge the complexities of the on-demand landscape, we believe that they must also be relatively simple to implement, relying on principles which can be clearly understood by industry and consumers alike. From an industry perspective this helps planning and reduces administrative costs. From a consumer perspective this helps people to know what to expect and where.

Consultation and responses

A3.12   In our consultation, we sought input from respondents on various options for the form of requirements, including whether we should recommend percentage targets for the proportion of content which has to be made accessible, whether there should be a phased introduction of requirements, and whether certain services should be exempt or subject to reduced requirements on the basis of audience size, practicability (including technical

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59 Ofcom has further duties under the Digital Economy Act 2017 to draft a code giving guidance on the relevant regulations when they come into force (see paragraph 2.9 of this document).
60 Ofcom's regulatory principles are set out on our website

difficulty) and affordability. The consultation responses are referred to in detail in the main document.

A3.13   In outline, consumer groups felt that people with sight and/or hearing impairment have a right to access the full choice of services and content available to sighted/ hearing people, and that this is highly important for enjoyment and inclusion in society. They generally felt either that all ODPS content should be made accessible, or that targets should be set at the same levels as for broadcast content.

A3.14   Industry respondents highlighted the various costs involved in providing access services on ODPS, and pointed out that, in comparison with costs for linear accessibility, development and running costs are exacerbated by the proliferation of platforms and devices on which ODPS content is available. The majority of industry respondents objected to the idea of setting targets or felt that it would be disproportionate to set targets at comparable levels to linear. Several respondents raised concerns that the introduction of targets might deter providers from innovating, causing them to remove content from platforms or avoid expanding their content catalogue.

Option 1: A no-targets approach

A3.15   We first consider the option not to set targets, but to introduce 'softer' requirements on ODPS providers. For example, the regulations could only require ODPS providers to publish a plan each year on how they intend to increase the provision of access services on their service over the coming year. This could incentivise ODPS providers by requiring them to formalise a strategy and make their plans accountable to public scrutiny. Alongside the current reporting requirements, it could provide further transparency to Ofcom and consumers regarding the commitment of ODPS providers to improving accessibility.

A3.16   However, as set out above (A3.5), ODPS providers have been subject to reporting requirements since 2014 (and encouraged to submit data voluntarily since 2011) with the aim that this will encourage them to increase the accessibility of their ODPS content. Improvements in subtitling provision have been slow and inconsistent.

A3.17   Broadcast television services, which are subject to targets, have shown significant progress in the provision of access services (see Figure 1).

A3.18   Given the slow progress in ODPS accessibility, we are not convinced that only introducing further 'softer' powers, such as the requirement to set out a plan, will sufficiently incentivise providers to achieve measurable progress. Additionally, we do not consider that it will bring sufficient coherence and clarity to industry and consumers about the levels of accessibility that providers will achieve.

A3.19   In summary, we do not consider that Option 1 will ensure significant progress in ODPS accessibility or enable us to meet our policy objectives.

Option 2: Introduce targets, with additional requirements

A3.20 We have decided to recommend that the regulations introduce targets on ODPS providers which will be 80% subtitling, 10% audio description and 5% signing over 4 years. For a full summary of the recommendations, see Section 1 of the main document.

A3.21 .We recognise that there might be some circumstances in which complying with the regulations may impose disproportionate costs on providers, and so we are recommending that the regulations include provision for ODPS services to be exempted from requirements or subject to reductions in requirements (or alternative arrangements) on grounds including affordability, practicability and audience benefit. We recommend that reduced requirements consist of reduced targets for subtitling (either 66% or 33% of full requirements).

A3.22 We are also recommending that the regulations require ODPS providers to report annually to Ofcom on the extent to which they have met the requirements, on any plans to make their services more accessible, and on measures they have taken to ensure that the required access services are of sufficient quality and can be used effectively by their intended audiences.

A3.23 We set out below our consideration of how the recommendations we have decided to make may affect different stakeholder groups:

a) Consumers

b) ODPS providers

c) Platform operators and device manufacturers.

A3.24 The form of the exemptions, reduced requirements, and alternative arrangements, along with their impact, is a matter for future consultation on Ofcom's ODPS accessibility code. However, at a high level, we consider below the likely impact of our recommended statutory provisions.

Potential Impact on Stakeholders

Consumers

A3.25 On-demand viewing is a popular source of entertainment and information for people in the UK. While viewing to broadcast television remains the most popular viewing type for UK audiences, in recent years there has been significant growth in the viewing of on-demand services. For example, the total number of SVOD subscriptions in the UK to Netflix, Amazon Prime or Now TV has increased by over 250% from 4.6 million in Q2 2014 to 16.1 million in Q2 2018.[61] In 2017, on average, 71% of all video content that individuals watched per day

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[61] Source: BARB Establishment Survey Q2 2014 – Q2 2018 Includes multiple SVoD subscriptions within one household and may include those on a free trial.

was to broadcast content, of which 9% was to broadcaster video-on-demand services, while 18% was to subscription video-on-demand services. [62]

A3.26   While on-demand viewing has become increasingly prevalent, people with sight and/or hearing impairment are missing out. In response to our consultation, consumer groups pointed to the significant qualitative benefits of increasing the accessibility of on-demand content. They highlighted its importance for the enjoyment and social inclusion of those with sight and/ or hearing loss, and detailed the current frustrations and exclusion experienced. Individual respondents generally felt that they have a right to the full range of choice of services and content available to sighted/hearing people.

A3.27   In preparation for the consultation, Action on Hearing Loss said: "we surveyed people who had previously supported our Subtitle it! Campaign and asked their views on key issues. TV accessibility is one of the most popular issues we address as a charity, and we received almost 100 responses a day (total responses 1,113 during a 12 day period between 26/2/18 -9/3/18)". Action on Hearing Loss and NADP point to the costs incurred by those who have purchased services that are only partially accessible to them.

A3.28   The CCP pointed to their 2017 research[63] which suggested that those with a hearing or visual impairment are discouraged from using on-demand services: "Among those with a hearing and/or visual impairment, 28% said they used any of the free non-linear services and 19% said they used a paid service. These usage levels were significantly lower than the general UK population where 44% said they used any free non-linear service and 41% any paid non-linear service."

A3.29   The benefits of increasing accessibility are wide-reaching and likely to continue to expand. There are around 11 million people in the UK with hearing loss[64], and around 24,000 people in the UK who use British Sign Language as their main language.[65] The number of those living with hearing loss is expected to grow to 15.6 million by 2035.[66] There are also around 2 million people in the UK with poor or no vision[67], and this is expected to grow to over 2.25 million by 2020 and nearly 4 million by 2050.[68] In addition, in their consultation responses, the BBC and NADP pointed to BBC iPlayer research which suggests that even those without hearing loss are watching programmes with subtitles displayed, demonstrating a broader audience value in the provision of these services.

A3.30   We consider that the introduction of targets as the primary tool for improving accessibility will considerably expand the amount of accessible content on ODPS, thus providing significant benefits to consumers. It is also an easily understood tool, which will provide clarity to consumers about the improvements to expect and when to expect them.

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[62] Source: Ofcom/BARB/BARB TV Player (census data)/TouchPoints/comScore as published in Ofcom's Media Nations report, p.18

[63] Access to broadcast and on-demand content: Time to Catch Up!

[64] Action on Hearing Loss, 2015, Hearing Matters

[65] Action on Hearing Loss statistics

[66] Action on Hearing Loss statistics

[67] The economic impact of partial sight and blindness in the UK adult population, July 2009, Access Economics, p. 45)

[68] RNIB statistics

A3.31   Where ODPS providers are exempted from the full requirements, we are recommending that exemptions are determined with reference to the likely benefits to audiences. In effect the requirements would therefore prioritise those services with the greatest audience benefit (for example the more widely viewed content). This would help to ensure that access services are provided where they make the biggest difference to audiences.

A3.32   We are also recommending that the regulations require ODPS providers to report on measures they have taken to ensure that the required access services are of sufficient quality and can be used effectively by their intended audiences. . We consider that the usability and quality of access services has a significant impact in enabling people with sight and hearing impairment to find and enjoy content, as illustrated by our consideration of consultation responses in Section 4 (paragraphs 4.56-4.67). We therefore consider that our recommended statutory provisions will encourage providers to consider the usability and quality of their access services and will help to maximise the benefits brought by the targets.

A3.33   We acknowledge that our recommendations will result in costs to ODPS providers (see below) which may in part or whole be passed on to consumers, e.g. in the form of higher subscription prices. However, the impact on costs is likely to be small (see Figure 5) and will be limited by an exemption on the grounds of affordability (see paragraph 3.93). Therefore, we do not believe that there is likely to be a material increase in costs to consumers. We also note in this regard the response of Action on Hearing Loss which pointed to the costs incurred by those consumers who purchase services that are only partially accessible to them.

A3.34   Overall, our view is that there are likely to be considerable (non-quantifiable) benefits to consumers from our recommended form of the regulations on ODPS accessibility. These include increased social inclusion, and increased ability to use and enjoy a range of on-demand services (and therefore in some cases receive full benefit from services which have been purchased).

ODPS providers

A3.35   In this section we assess the impact of our recommendations on ODPS providers. This is not a straightforward assessment due to the complexities and uncertainties of ODPS distribution, as previously discussed (see paragraphs 3.65-3.74). For example, costs relevant to developing ODPS accessibility are not always easy to separate from those relating to broadcast services. Nevertheless, we have estimated likely costs based on information provided to us in consultation responses, and our knowledge of regulated ODPS.

A3.36   We have estimated the impact of our recommendations on a range of ODPS providers, varying in type and size. In order to do this, we have used:

a.   **The cost of providing subtitles / audio description / signing per hour, per platform.** See Figure 3 for a description of the cost categories we understand to be involved in

> providing access services for the first time on a given platform, and the assumptions we have made in using these cost categories in our impact assessment.

b. **The catalogue size of each example ODPS**, in order to assess the likely costs for a given ODPS per platform. See Figure 4 for the assumptions we have made in relation to catalogue size.

c. **The turnover of each example ODPS provider**, in order to assess the affordability of the likely costs. Figure 4 also outlines the assumptions we have made in relation to provider turnover.

A3.37 As a general point, in making these estimates we have where possible taken a conservative approach in order to provide the upper limit of likely costs, except in cases where estimates have diverged significantly (where we have taken an average).

Figure 3 – Cost categories and assumptions

Cost category	Detail	Estimates / sources	Assumptions
Development	Set-up costs in relation to each platform. This includes establishing the workflow and technology to allow the distribution of access services via a given platform. This could include e.g. introducing the capacity to convert subtitle files to the format required by a given platform. Platform updates – once access services are available on a particular platform, that platform can still change, requiring additional expense to adapt access services.	✂ Average estimated cost per platform based on three confidential estimates = £200,000	A small number of consultation respondents provided confidential estimates of development costs per platform. For our impact assessment we have used an average of the estimates relating to a set-up costs on a single platform. For multiple platforms we multiply these costs accordingly. However, costs are likely to be significantly reduced over multiple platforms and therefore this approach is conservative. This is because some platforms accept access services in common / shared technical formats, and therefore costs of setting up the system to convert files to a given format do not necessarily need to be replicated for every platform. ATVOD's working group on access services found in 2015 that of 37 platforms, all but 4 could support subtitles in a common format.

Running	Contract management with the provider of access services provider AND/OR Internal operating costs, including additional overheads relating to the provision of access services (e.g. additional staff)	✂	We do not have enough information to include these costs at this stage, but the limited information we do have suggests that the costs are relatively small and will not have a material impact on our overall cost estimates. We also believe that some estimates of production/repurposing costs (see below) will have already included these costs.
	Purchase of access service assets (e.g. subtitle file) from content provider AND/OR	✂	We have used confidential estimates provided by a respondent.
	Costs of creating access services from scratch AND/OR	✂	For 'on-demand only' services and broadcast services without requirements under the broadcast accessibility code, we have assumed that all required access services have to be created. This is likely to be a large overestimate as many access services can be purchased from content providers as above. However, we do not have a robust estimate of the proportion of programming to which this applies.
	[69]Cost of repurposing broadcast access services for use on-demand, which may include automated file format conversion and manual intervention (e.g. to remove ad breaks from broadcast	✂	For broadcasters with existing access obligations we have assumed that costs are all repurposing costs. We are aware that broadcasters provide some 'VOD first' programming which has not previously been broadcast with access services. However, we don't think that including this would lead to a material increase in our assumed costs. The large majority of content on such services is currently 'catch-up' content from broadcast

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[69] For consistency, we have used the most comprehensive figures provided to us (confidentially) by one industry respondent. However, we note that these figures are consistent with partial estimates provided by other industry respondents.

	assets where necessary).		services – it is highly likely that our recommended targets can be met with this content alone. As no repurposing costs estimates have been provided for signing, we have assumed as an upper estimate that creation costs will be replicated.
Additional	Monitoring	N/K	ODPS providers (currently excluding providers of adult services) are already obliged to monitor and report on their access service provision. We therefore do not believe our proposals in this area will involve significant additional expense, although we acknowledge that the more extensive reporting obligations will require some additional costs, particularly relating to staff time.
	Reporting	N/K	

A3.38 In line with Figure 3 our assessment of likely costs assumes that upfront set-up costs are £200,000 per platform and that running costs per hour are as follows. We have rounded running costs to the nearest ten pounds, in order to avoid spurious accuracy given the uncertainty around costs of repurposing in particular.

a) For creating content: ✂

b) For repurposing broadcast content: ✂

Figure 4 – Assumptions in relation to catalogue size and turnover

	Assumptions
Catalogue size	We have used data returns submitted to Ofcom in relation to 2016 provision of 'European Works'. It is our understanding that the catalogue sizes referenced in that return in practice relate to the typical catalogue size of an ODPS on any given platform (although this may vary). Catalogue size refers to the number of hours of unique programmes available during the course of a whole calendar year.
Provider turnover	We have used Companies House data for 2016 (i.e. matching the year to which the

	catalogue size data relates). As detailed in our statement (paragraph 3.58) many ODPS providers say that they are unable to separate turnover relevant to ODPS provision from other turnover (e.g. when a VOD service is bundled with a linear service for sale to consumers). We have therefore used the same approach here as we do for setting ODPS fees, namely to use the overall turnover of the providing entity.

A3.39   Figure 5 shows estimated costs for a range of ODPS providers, as a percentage of provider turnover.

A3.40   These figures estimate the costs of meeting a given target in one year, from a starting point of zero provision. We have not modelled the introduction of requirements across a number of years, because we do not have sufficient confidence in data on the extent to which on-demand content is renewed / replaced over time, or data on the extent to which content is repeated. These factors are also likely to vary by provider and by year. We have assumed therefore that content is replaced entirely over the course of a year (i.e. for broadcasters' catch-up this would broadly reflect the year's 8760 broadcast hours being added and removed across the year). This leads to an upper limit estimate – costs are likely to be <u>significantly</u> lower as programmes with access services remain on the service or are put on the service for a second time (and therefore contribute to the target at very limited cost). In summary, costs are likely to reduce significantly over time.

A3.41   We have however modelled the impact of different targets, to examine the increasing impact as targets are increased in the first four years of provision.

A3.42   Several consultation respondents raised concerns about the proliferation of platforms and devices across which ODPS content is distributed, often requiring different file formats and delivery methods (these concerns are set out in detail in paragraphs 3.65-3.78). Our cost estimates account for set-up costs on each platform. These costs are amortised over a five-year period, the 'useful life' of the set-up costs. We have used a five-year period as a rough estimate: we are aware that on-demand platforms (and the associated ingestion / workflow process) can remain constant for over ten years in some cases; but on the other hand, more minor updates to platforms can be made on a much more regular basis and can have knock-on effects for access service support.

A3.43   Data submitted by ODPS providers suggests that the average number of platforms over which an ODPS is provided is 6 (this falls to 5 if large non-domestic services distributed over tens of platforms are excluded). For the purposes of this impact assessment we have modelled the introduction of the requirements across 4 priority platforms. However, in order to demonstrate that the proposals are affordable by key providers we have also modelled their introduction across the total number of platforms on which that service

currently appears. We have assumed that the most significant costs of converting access services for delivery across different platforms are included in the estimated set-up costs (which include system capacity to convert files). Running costs of conversion (or creation / repurposing) are not replicated for each platform. Both set up and running costs for conversion are likely to reduce over time in line with industry technical standardisation, which will reduce the need for multiple file formats.

Figure 5: Estimated costs to ODPS providers

	Cost of provision as % provider turnover (including amortised set-up costs of £200,000 per platform)						
Type of service	Subscription VOD service	Catch-up service [70]	Catch-up service B	Catch-up service C	Small online PPV service	Small free to view online service	Specialised subscription VOD service
Turnover (£s)	✂	✂	✂	✂	✂	✂	✂
Catalogue size	✂	✂	✂	✂	✂	✂	✂
No. platforms on which available[71]	✂	✂	✂	✂	✂	✂	✂
Level of provision (% programme hours)							
40% subs + 5% AD	1 platform: **0.3%** 4 platforms: **0.4%** All platforms: **0.5%**	1 platform: **0.3%** 4 platforms: **0.3%** All platforms: **0.8%**	1 platform: **0.04%** 4 platforms: **0.1%** All platforms: **0.1%**	1 platform: **0.1%** 4 platforms: **0.1%** All platforms: **0.3%**	1 platform: **0.2%** 4 platforms: **0.7%** All platforms: **0.4%**	1 platform: **96%** 4 platforms: **221%**	1 platform: **1.5%** 4 platforms: **4.6%**

[70] Variance in the affordability of targets across these example catch-up services is largely due to variance in how the providing companies are structured (e.g. whether the parent company or a subsidiary provides the ODPS).
[71] Taken from platforms listed on H1 2018 access services data submission

80% subs + 10% AD	1 platform: **0.7%** 4 platforms: **0.7%** Total platforms: **0.8%**	1 platform: **0.5%** 4 platforms: **0.6%** Total platforms: **1%**	1 platform: **0.1%** 4 platforms: **0.1%** Total platforms: **0.2%**	1 platform: **0.1%** 4 platforms: **0.2%** Total platforms: **0.3%**	1 platform: **0.3%** 4 platforms: **0.8%** Total platforms: **0.5%**	1 platform: **150%** 4 platforms: **275%**	1 platform: **1.9%** 4 platforms: **5%**
80% subs + 10% AD + 5% signing	1 platform: **74%** 4 platforms: **0.8%** Total platforms: **0.9%**	1 platform: **0.7%** 4 platforms: **0.7%** Total platforms: **1.2%**	1 platform: **0.1%** 4 platforms: **0.1%** Total platforms: **0.2%**	1 platform: **0.2%** 4 platforms: **0.2%** Total platforms: **0.4%**	1 platform: **0.3%** 4 platforms: **0.8%** Total platforms: **0.5%**	1 platform: **163%** 4 platforms: **289%**	1 platform: **2%** 4 platforms: **5%**

A3.44   As might be expected, the cost of setting up access capacity on different platforms has a much more significant effect on smaller services (e.g. with smaller catalogues of content). We consider it appropriate that our recommendations require larger providers to provide access services across a range of platforms, while acknowledging that it may not be affordable for smaller services to do so.

A3.45   We consider that in general ODPS providers of different types will be able to meet our requirements without disproportionate expense, which we judge here to be within 1% of their turnover[72]. Where this is not the case, exemptions on the grounds of affordability will ensure that ODPS providers are not obliged to incur an undue financial burden. How such exemptions are determined is a matter for the subsequent Ofcom ODPS accessibility code (and associated consultation). We recommend that the regulations allow for outright exemptions from the requirements, reduced requirements, or alternative arrangements.

A3.46   We envisage that reduced requirements would take the form of reduced subtitling targets (as is the case with the broadcast accessibility requirements). ODPS providers would be required to meet the highest target levels affordable (for example within 1% of their turnover as above). The estimates in Figure 5 are therefore an upper limit estimate of the burden on providers meeting the full requirements. We have not modelled reduced requirements in Figure 5 as their implementation would depend on the interplay of affordability and audience benefit in any particular case (see A3.46 below).

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[72] This is the measure of affordability used in relation to broadcast accessibility.

A3.47   Similarly, we have not modelled the impact of any alternative arrangements. The form of such arrangements would be a matter for Ofcom's ODPS accessibility code, in consultation with industry and user groups. Such arrangements would be designed to be an alternative in situations where it would be unduly burdensome for ODPS providers to meet the full requirements. We wouldn't therefore expect them to be more burdensome than the full requirements.

A3.48   However, Figure 5 suggests that if the exemption regime operated similarly to that used in relation to broadcast accessibility, only smaller services would be excluded from full requirements. Therefore, we believe our recommendations would lead to widespread improvements in accessibility with significant benefits (as outlined in A3.25-A3.30)

A3.49   As outlined in paragraph 3.92 of our statement, we anticipate that where providers cannot afford the requirements across all platforms, they will be subject to reduced requirements which take into account audience benefit (i.e. either lower targets across all platforms or full provision on fewer platforms). The same will be true for ODPS providers who are responsible for multiple services and cannot afford to provide the full requirements across all services on all platforms.

A3.50   We recognise that there will also be costs to ODPS providers of complying with reporting requirements. However, ODPS providers already report to Ofcom on the accessibility of their services. We do not think significant work or expense will be involved in the addition of reporting on future plans and on measures taken to ensure the usability / quality of services.

A3.51   As stated at A3.14, some respondents raised concerns over targets affecting innovation by constraining expansion to new platforms. We do not believe that the cost of providing access services on a new platform (see Figure 5) is large enough relative to turnover (or relative to other costs involved in expanding distribution to a new platform) to be a significant factor in deciding whether to expand provision. Indeed, exemptions on the grounds of affordability should avoid the situation where prohibitive costs are involved.

A3.52   Respondents to our consultation raised concerns that the requirements would negatively affect the ability of ODPS providers to compete with on-demand providers who are not regulated by Ofcom, pointing to Netflix in particular. s93 of the DEA, in its amendments to the Act, only makes provision for requirements to be introduced on ODPS. However, on-demand services not regulated by Ofcom can provide access services for commercial reasons or be subject to requirements from elsewhere (for instance, to the Federal Communications Commission's requirements for content previously broadcast in the US[73]). Moreover, we consider that our recommended provisions on exemptions will ensure that ODPS providers are not subject to disproportionate costs or technical challenges which might materially hinder their ability to compete with other providers. We therefore consider that any impact on competition with other on-demand providers is likely to be very small.

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[73] See the FCC's website

A3.53   Further, we consider that our regulations may have a positive impact on competition among ODPS. We consider that the regulations are likely to reduce the current distortion whereby broadcaster on-demand ODPS providers incur costs in complying with the access service targets for their linear content, while on-demand only ODPS providers are not subject to equivalent requirements.

Platform operators and device manufacturers

5.32   Any regulations drawn up under s368BC of the Communications Act will apply only to the providers of ODPS and not to the operators of the platforms or to manufacturers of the devices through which those ODPS are made available to consumers. However, we aim to encourage these parties to support ODPS providers in the delivery of access services. We already work with ODPS providers and platform operators to encourage a more standardised approach to access service provision, and in particular a standard technical format for subtitles. We aim to look at further ways in which we can influence the behaviour of these parties, for example through introducing an accreditation scheme whereby Ofcom publishes a list of platforms on which it expects that it is reasonable for ODPS providers to make their services accessible (see paragraph 3.87). We would aim for such a scheme to work as a transparency mechanism which encourages platforms to support ODPS providers in the delivery of access services, for example by investing in common technical formats for access services.

A3.54   While we expect there will be costs to ODPS providers and device manufacturers in supporting the provision of access services, we do not expect these costs to be disproportionate relative to their overall revenue. It is our understanding that any such changes to platform capacity are usually made alongside larger scale platform changes. Since platform operators and device manufacturers will not be subject to the statutory requirements, they remain able to weigh up the impact of any investment which we encourage them to make and avoid costs or technical challenges which they consider disproportionate.

A3.55   Some consultation respondents raised concerns that ODPS providers might remove or distribute less content on certain platforms or devices due to the costs or technical difficulty of complying with the requirements. However, as explained in our cost estimates above, in general we consider that the costs to ODPS providers of meeting the requirements are likely to be relatively low. Therefore, and in light of our recommended provisions for exemptions or reduced requirements, we consider that the risk of ODPS providers reducing the amount of content which they provide on platforms or devices is low.

Ofcom's conclusions

A3.56   We have decided to recommend Option 2 as we consider that it will ensure a significantly greater increase in the amount of accessible content available on ODPS, relative to Option 1. We recognise that our recommendations to introduce targets will incur more costs to ODPS providers than solely introducing 'softer' requirements, but we consider that these

costs are proportionate in light of the significant benefits to consumers with sight and/ or hearing impairment. We have demonstrated that the recommended requirements can be met without disproportionate expense by key ODPS providers. Further, we consider that the provision for exemptions and reduced requirements mitigates the risk of any disproportionate cost impact. However, we expect that outright exemptions will apply in limited circumstances, and therefore do not consider that it will lead to a material reduction in consumer benefit.

A4. Equality Impact Assessment

Introduction

A4.1 Ofcom is required by statute to assess the potential impact of all our functions, policies, projects and practices on the following equality groups: age, disability, gender, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation[74]. We refer to groups of people with these protected characteristics as 'equality groups'.

A4.2 We fulfil these obligations by carrying out an Equality Impact Assessment ("EIA"), which examines the impact our policy is likely to have on people, depending on their personal circumstances. EIAs also assist us in making sure that we are meeting our principal duty of furthering the interests of citizens and consumers, regardless of their background and identity.

A4.3 We have not considered it necessary to carry out separate EIAs in relation to the additional equality groups in Northern Ireland: political opinion and dependents. This is because we anticipate that our proposals would not have a differential impact in Northern Ireland compared to consumers in general.

Equality Impact Assessment

A4.4 We consider that our recommended form of the regulations would have a positive impact on the following equality groups:

a) people with disabilities

b) people whose age-related conditions may make them more vulnerable (who we consider under the protected characteristic of 'age')

c) people belonging to these or other equality groups to the extent that those people use access services for reasons other than sight or hearing impairment.

A4.5 In line with the new statutory provisions (see paragraph 2.6), our recommended regulations are primarily aimed at increasing the accessibility of ODPS content to people with sight and/ or hearing impairment.

A4.6 People with sight and/or hearing impairment also tend to be older. An estimated one in five people aged over 75 have sight loss[75], and more than seven in ten people over 70 live with hearing loss[76]. Age-related macular degeneration is the leading cause of blindness in adults[77] and age-related hearing loss (known as presbycusis) is the largest cause of hearing

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[74] As defined in the Equality Act 2010
[75] RNIB's Key Information and Statistics
[76] Action on Hearing Loss' Facts and Figures
[77] RNIB's Key Information and Statistics

loss.[78] Therefore, we believe that our recommended regulations will also have a positive impact for older people. Further, research has indicated that usage of access services is not limited to people with sight and hearing impairment (see A3.29), indicating broader benefits of our recommended regulations to the relevant equality groups, along with the UK population more widely.

A4.7   We consider that our recommended form of the regulations (set out in Section 1) will have a positive impact on the relevant equality groups, in particular by:

- Increasing the amount and choice of content available with access services on ODPS (via targets on subtitling, audio description and signing)
- Increasing the ease of finding and enjoying accessible content (via reporting requirements on the usability and quality of access services)

A4.8   We expect these measures to have a positive impact on the relevant equality groups in ways which are not quantifiable. ODPS content is an important and popular source of information and entertainment (see A3.25), and the measures are likely to result in increased enjoyment and inclusion in society, along with reducing the current frustrations faced due to the inaccessibility of ODPS content.

A4.9   Our recommended regulations make provision for exemptions from the requirements in cases where it would incur a disproportionate burden on ODPS providers. However, as set out in our Impact Assessment (see A3), we only expect outright exemptions to apply in limited circumstances, and therefore do not consider that it will lead to a material reduction in benefit to the relevant equality groups.

Conclusions

A4.10   Overall, we consider that our recommended regulations will have a positive impact on people with disabilities, people whose age-related conditions may make them vulnerable, and people belong to these or other equality groups who use access services.

A4.11   We do not believe that our changes will have any detrimental impact on any of the relevant equality groups.

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[78] Action on Hearing Loss: Age Related Hearing Loss