

**Response to Ofcom's consultation to inform regulations on How should
On-demand Programme Services be made accessible?
By The National Association of Deafened People (NADP)
Registered Charity No. 294922**

The National Association of Deafened People (NADP) is a nationwide charity run by its members who are deafened. Our members have experienced hearing loss to varying degrees during their lifetimes. Some have had a hearing loss since birth or early childhood, others may have become deafened suddenly during adulthood. Many share a gradually deteriorating hearing loss with age and have become increasingly reliant on using subtitles when viewing television broadcasts as their hearing has deteriorated. Many of our members either use hearing aids to enhance their limited hearing or have a Cochlear Implant which means they are likely to use both audio and subtitles to enjoy viewing TV. An increasing number of our members have access to Video on Demand content primarily through an existing public broadcaster such as BBC iplayer, as an add on to an existing service such as SKY or through Amazon Prime, or as a subscriber to a service such as Netflix. They may also purchase one off content through an on demand provider such as Apple iTunes. Deafened people tend to be early engagers with new technology so it is no surprise that they have embraced the on demand market, but with very much limited success, compared to that enjoyed by the general public, due to the lack of accessibility.

NADP welcomes the opportunity to respond to Ofcom's consultation "to inform regulations on how should on demand programme services be made accessible?" on behalf of its members.

Q1 Do you agree with our assessment of the key issues involved to inform regulations in this area?

The focus of our response is on one particular area of accessibility, subtitles, since our members are deafened and so use English as their primary language. On this basis we do not fully agree with the assessment of the key issues being involved to inform regulations. We believe that all pre recorded content should be shown with subtitles. As such there simply are no questions as to what, which or when the content should be subtitled. This is already demonstrated by Netflix in the fact that with very little exception all its U.K. content is captioned despite not being regulated in the U.K. but is required to caption all content on its US platform under FCC regulations. From our perspective therefore the question is "How the content should be subtitled" noting the difference between the US form of captioning and U.K. subtitling. We come back to this point later in our response.

We are also slightly dubious of using the "success" of the Broadcasting framework for accessibility to help set targets for subtitling on ODPS. Experience of our members suggests that they would like to see more content subtitled by smaller broadcasters particularly local channels which are showing repeats of content previously broadcast on larger channels with subtitles. Furthermore, our members have reported that in their experience some channels which have minimum required target of subtitled content of less than 100% rarely exceed the minimum target.

As such NADP does not believe there should be a differentiation between percentage of content subtitled between smaller and larger broadcasters. We believe all broadcasters should be required to subtitle all pre recorded content to provide a level playing field and fair competition. We believe the lack of this requirement has led to accessibility being left behind in technology developments. Whilst we recognise that in its consultation Ofcom suggests that one reason for lack of subtitles on broadcast content which has been previously broadcast is due to having to re-edit content due to adverts and timing, we do not believe this to be as significant factor for ODPS, since in our experience the content is more easily manipulated in ODPS. In any case the

original content is typically provided without commercial breaks, for example, movies shown in cinema, so providers should be encouraged to obtain this raw content for ODPS rather than a previously broadcast version.

Our other reservation in using the broadcasting regulations is that it is a dated model. When it was introduced following the Communications Act 2003, the cost of subtitling was considerably higher than it is now. Also the availability of previously subtitled content was more scarce. With advances of technology including voice recognition and crowd sourcing, along with the prescriptive requirements of captioning of content in the US, there is now such an abundance of subtitles available such that cost of provision should be insignificant. We address these points further later in this response.

Q2 Are there other 'access services' which you believe should be specified in any regulations?

Not at this point in time.

Q3 Do you have views on the relative importance of sign-presented programming and sign-interpreted programming?

We are unable to express a view on British Sign Language on behalf of our members as in the majority case English is their first language. However, we believe the provision of subtitles and provision of BSL translation should not be confused, nor seen as an alternative to each other and interchanged, but treated as languages in their own right.

Q4 To what extent can or should regulations require usability features including (but not necessarily limited to): provision of information; accessible catalogues; and best practice relating to the creation, selection, scheduling and presentation of accessible programming? If you do not believe that these features should be required by the regulations, should the regulations require Ofcom's resulting code to give guidance on these issues?

In relation to broadcasting we have continually expressed a need for subtitles to be included as an item that can be used to filter content in an EPG whether this is by highlighting subtitled content or low lighting non subtitled content or another method. We acknowledge the counter argument that many channels subtitle the majority of content but this is not the case for all channels, particularly those which have a low audience share such as local stations. If all content was subtitled then there would not be an issue.

In terms of ODPS we believe all content should be subtitled. However, were this not to be the case whether or not content is subtitled should be shown clearly in every view of the content i.e. at each level that it is selected. For example with Now TV it is possible to view the same content through different sub sections but subtitles might be highlighted on one and not another.

We also believe that there should be consistency in the way this information is presented for U.K. content. For example with iTunes, content may be displayed with subtitles in various languages but not in English although a different descriptor of CC may or may not be used. This can easily confuse a viewer. Ultimately we need a consistent and clear way that viewers can easily identify whether content is subtitled or has closed captions.

Related to this issue we would like to see ODPS providers offering "pay per view" content financially penalised when content states it is subtitled and when, after the viewer has paid, finds that the content is not subtitled. Whilst many providers offer their apologies in these circumstances and a refund, the user has been inconvenienced and potentially distressed by this situation. A penalty system may encourage providers to ensure the information is correct.

Similar to our comments on EPGs we believe it should be mandatory that content can be filtered according to whether or not it is subtitled.

We agree that, in line with broadcasting content, a mandatory standard should be set with regards font and size, colour of text and background, positioning and the number of lines of text. However, we are mindful that the standards currently in place were set at a time when screen size was smaller and screen definition lower than currently available and we expect this to continue. We also expect viewer preferences to vary considerably more with ODPS content due to the wider range of devices and screen sizes on which content can be viewed. We therefore believe that the size of text should be reflective of the size of screen. In addition we believe that it should be strongly recommended that viewer choice is offered so that a consumer is able to tailor the presentation of subtitles by font, size, colour and background themselves which would help accommodate those deafened people who are partially sighted. This would also help overcome the issues reported by members of viewing content on the BBC iplayer on some platforms which is displayed on a contrast background which makes reading text more difficult.

Given the portability of content by device, we believe that the preferred settings, if offered, should be shared with other devices although with option that the user can personalise subtitles on each device.

A common complaint from our members is that subtitles do not accurately follow the audio. There are two elements of this complaint. Firstly subtitles are edited and do not truly reflect what is said. Secondly that the subtitles contain grammatical or spelling mistakes. In the former we do not believe subtitles should be edited particularly for news items or other factual information. They should reflect the same content as is said and heard by hearing audience. However, we are mindful that some people may have a slower reading speed than listening speed, so in some situations e.g. talk shows, editing may assist with the viewing experience. Saying this research by BBC R&D¹ suggests subtitles should be at the speed of speech in all situations.

In the latter situation we believe suitable checks should be in place to ensure grammatical and spelling mistakes are eliminated as these detract from the viewing experience. These points are particularly important for ODPS content where subtitles could be produced automatically or crowd sourced. We have no problem with these sources of subtitles being used provided they are accurate and suitable checks are in place.

Similarly suitable checks need to be in place to ensure timing of subtitles coincides with the relevant audio. Guidance is already available with regards length of text and timing but broadly speaking this should be consistent with the time that a suitable sized sentence starts and finishes. We believe a review of the guidelines could be carried out using more recent research. It is essential that deafened viewers are included in any such review and we would be happy to help coordinate this with our members who may wish to be actively involved.

Q5 Do you agree that audience benefit, cost, and practicability are appropriate grounds for differentiating services/content for the purposes of regulations? Are there other grounds on which you believe ODPS programmes/services should be differentiated (prioritised, excluded, or subject to different requirements)?

We believe that all content should be subtitled.

Whilst we recognise the three determining factors are based on those used for regulating provision of accessibility for broadcasts, this is based on legislation that is now considerably dated and viewing habits now are significantly different. When these factors were derived

¹ <http://www.bbc.co.uk/rd/blog/2015-09-how-fast-should-subtitles-be>

subtitled content was minimal, costly to produce and technology limited. Since then there is an abundance of content subtitled driven partly by legislation and law suits in other territories.

In addition, since the Communications Act was passed in the U.K. the Disability Discrimination Act has been replaced by the Equality Act 2010. More recently Article 7 of the Audio Visual and Media Service Directive requires broadcasters and service providers to ensure content is accessible in all modes of broadcasts including those that are IP based. We do not believe the cost or technological constraints are sufficient to justify subtitles not being provided. Furthermore ODPS providers have had almost 10 years of “encouragement” by Ofcom and ATVoD to make services accessible. In our opinion this has been sufficient time for providers to adapt their technology to ensure subtitles can be shown. The Rt Hon Ed Vaizey in his role as Minister for DCMS at the time gave the industry the opportunity to self regulate or be regulated.

We strongly believe that had subtitling of content been a requirement from the outset then accessibility would have been included in the design of new technology rather than an afterthought which in our experience is the reason why ODPS providers may argue that it is technically too difficult to offer subtitles. In addition, we understand that Universal Design principles should be followed by manufacturers which includes accessibility.

In the experience of our members the use of audience benefit as a determining factor for accessibility for broadcasting is flawed. How can one tell if a particular program is more or less of interest to someone who is deaf than the population as a whole? We believe there should be consideration of the type and age of content to be made available by each channel which is reflective of its target audience and likelihood of having a hearing loss. Currently, it would appear that many of the smaller broadcasters are more likely to show repeated programs. Clearly by definition these are historic. The older the content the more likely they are to be attractive to the older population, yet this population is much more likely to have a hearing loss and require subtitles to enjoy the program in the same way as when they had better hearing. Our members continually report back to us that they have been unable to watch a program on channels because there are no subtitles.

Whilst it would be easy to suggest that this scenario would not apply to ODPS as it attracts a younger population than the population that continues to view broadcasts, this is a changing dynamic. The younger population will age and unfortunately it is known fact² that an increasing proportion will have a hearing loss. If smaller ODPS providers are not required to subtitle content then the younger population will face the same dilemma that the older generation currently experience. By not making a decision to subtitle all content now, the government would simply be deferring this situation.

The issue of cost of accessibility suggests that the government would be offering an unfair playing field of ODPS providers of not all had to provide subtitles. If smaller ODPS providers did not offer subtitles then they would effectively be discriminating the deaf population. Larger providers which did provide subtitles on all content and abiding by the Equality Act in doing so would be at an unfair advantage. We do not believe Ofcom would want to counter the Equality Act in this way.

Furthermore there is sufficient evidence to suggest providing accessibility attracts more viewers. Clearly this is an obvious fact but the BBC research of BBC iplayer has shown that 20% of adult content and 40% of children’s content is shown with subtitles displayed. This number exceeds the 1 in 6 of the population believed to have a hearing loss. It would appear that many ODPS providers do not recognise the attraction of providing subtitled content. By requiring all content to be subtitled there is an argument that the government would be implicitly improving the potential business success of U.K. regulated ODPS providers. In any case we believe that if a start up

² <https://www.actiononhearingloss.org.uk/about-us/our-research-and-evidence/facts-and-figures/>

ODPS provider is unable to afford the cost of making subtitles available then it is less likely to succeed in the long run.

We are mindful of the FCC regulations relating to regulation of captioning of online content in the US, and felt that the progressive timescales of ensuring all content was captioned commencing with newly created content and previously broadcast content captioned over time. We believe that this model worked well to ensure all content was subtitled over a pre determined timescale. Since the majority of U.K. ODPS content is either sourced from the US or destined for it, by default a significant amount of content should already be captioned. We therefore believe timescales for fully subtitled content on ODPS should be considerably shorter.

Q6 Should the regulations impose more stringent requirements on public services broadcasters' ODPS than on ODPS provided by others?

Notwithstanding our view that all content should be subtitled we recognise the higher dependence of our membership of timely and accurate news items which tend to be provided by PSBs. However despite this content being available with subtitles whilst broadcast live, often the same content shown on websites or catch-up do not have this content subtitled. Where it is available the same errors and latency appears suggesting no editing has taken place. In response to this question we believe that a higher priority should be given to PSB providing accurate subtitles on all its content, and particularly where this information is timely and factual.

Q7 Should the regulations limit accessibility requirements to programmes/services which have previously been broadcast with access services, or impose more stringent requirements on these programmes/services?

No. We do not believe there should be any limitations in place on what content has subtitles as this may discourage content providers from including subtitles in the production stage. This would be detrimental to the efforts being made to encourage accessibility to be considered alongside audio and visual when producing and delivering content.

However, we do believe that stricter penalties should apply to ODPS providers which do not provide subtitles when that same content can or has been available on line or broadcast elsewhere with subtitles.

We are mindful that much content will be available with captions rather than in the U.K. preferred subtitle format and therefore consideration would need to be made as to whether this would be an acceptable compromise potentially for smaller providers which do not broadcast content and therefore would be more likely to receive content with captions rather than subtitles.

Similarly where a particular organisation provides access in another territory such as the US then the same content should also be available in the U.K. with that access included. However, ultimately we would expect that subtitles would be provided rather than captions.

Q8 Do you consider that ODPS programmes/services should be excluded from the full requirements on the grounds of audience size? If so, should there be different requirements for excluded programmes/services?

No. How does one know what proportion of this potential audience needs subtitles? As mentioned earlier in our response many of our members have complained of being unable to view content that was previously broadcast. With ODPS this content would typically include box sets now commonly available on demand. This content is likely to appeal to a smaller audience but because it is historic it is more likely to appeal to older generations who are now deafened.

We are conscious that the increasing popularity of bundling TV, broadband and telephone services adds another complication in that if content is not accessible then it is extremely difficult for a deafened person to realistically compare products and packages to meet their needs. This information is not available on comparison sites. Often our members have reported switching provider to find that the on demand content is not subtitled. They are then left to attempt to unbundle the package, revert to their previous provider or simply put up with it for the duration of the contract. By ensuring all content is subtitled by all providers deafened people will be able to access the same deals and enjoy discounts through healthy competition rather than consider secondary level questions of accessibility which may or may not be answerable by sales personnel.

Q9 Should the regulations impose different accessibility requirements on ODPS made available via certain platforms, and if so which?

No. How does one know what platform a deaf person is using to access content? For example our research suggests that gaming platforms such as Xbox and PlayStation allow access to superior quality playback due to the requirements of the gaming system at an affordable price. Why should a deaf person have to buy a more expensive or lower quality device or additional device simply to access subtitles?

Furthermore the experiences in the US demonstrates that these platforms can offer access so there should be no reason why it can not be provided in the U.K.

We understand that the BBCiplayer team required each platform to ensure that accessibility features could be displayed were available before it would allowed access to BBC iplayer on that platform. This demonstrates that it can be done on each platform provided there is sufficient motivation which regulation could provide.

Q10 Do you have any views or information on appropriate and available means of measuring the audience impact of ODPS?

We understand that it is possible for the BBC to monitor if content viewed on its iplayer has accessibility features switched on. Whilst we recognise that a viewer with normal hearing may switch on subtitles, it could provide an indication of the type of program that is more or less likely to be viewed with subtitles on.

Another instance that subtitles may be used may be when the quality of sound is poor and, as with many people with a mild or moderate loss, the viewer may simply use the subtitles to complement what they hear. It is therefore likely that there would be a direct correlation between sound quality of the content or platform and an increase in the use of subtitles.

Q11 Are there particular types/genres of programming which should be excluded from requirements, or subject to reduced requirements, on the grounds of limited audience benefit?

No. Deafness does not differentiate who it is likely to impact. It can affect anyone in the population, gradually or suddenly at any time in their lifetime. We do not believe deaf people need more or less restrictions on the content that they view than the population as a whole.

Q12 Do you consider that ODPS programmes/services should be excluded from the full requirements on the grounds of affordability? If so, should there be different requirements for excluded programmes/services?

No. We believe the cost of providing subtitles is considerably cheaper than in the past. There is an abundance of content available with subtitles. In any case ODPS content is much less likely to be available live which is much more costly to produce.

We believe that it is essential that the subtitle file is included with the audio and video file when supplied and not as an after thought. Our members have often reported that when they have complained to an ODPS provider about lack of subtitles the response they receive is that the subtitle file wasn't provided to them by their supplier. We believe there is a responsibility at both ends of this chain and believe the government should ensure this responsibility is enforced on both parties.

As mentioned earlier, if affordability of providing subtitles is prohibitive for a particular provider then we would question their long term viability. However, we do believe that captioned content could be made available as an interim measure should this be proven to be less onerous but with agreed targets in place for fully subtitled content to be available.

Q13 Do you have any views or information on appropriate and available means of quantifying: ODPS-specific revenue; and costs associated with ODPS access services?

No.

Q14 If you are an ODPS provider, do you have information on the likely costs involved in providing access services on your ODPS?

N/A

Q15 Do you consider that ODPS programmes/services should be excluded from the full requirements on the grounds of technical difficulty? If so, should there be different requirements for excluded programmes/services?

No. We believe the ODPS industry has been provided with sufficient time to ensure that the technology in place is sufficient to show subtitles on content. We understand that the industry has agreed that Timed Text should be the preferred delivery of ODPS. In our view if a particular provider has chosen to adopt a different method of delivery then it should ensure that it can provide subtitles. We understand that Netflix uses Timed Text and delivers 100% subtitled content on all platforms we have monitored.

Q16 Should regulations include quotas on percentages of programming available with access services? If so, what should the quotas be? If not, what other methods do you consider appropriate for the purpose of setting access service requirements for ODPS?

No. We believe all providers should offer all content with subtitles.

Q17 Do you think that there should be a phased introduction of requirements? If so, please give details.

We are mindful of the lack of progress made by many ODPS providers in the U.K. despite more progressive developments in the US. Where a provider offers ODPS content in the US, by default it must be captioned. For the same content we would expect this to be subtitled in the U.K.

A phased approach could be adopted for other providers to enable them to review contracts with providers of content to ensure subtitles will be provided with that content. As such captioned content could be offered as an interim solution to ensure accessibility is offered at outset, albeit not in the preferred format.

Q18 Do you think that the introduction of requirements should prioritise particular types of ODPS programmes or services?

We believe there is some merit in adopting a similar approach as adopted in the US for accessibility. We understand that this focussed initially on new content being made available with captions and a timeline for historic content to be captioned.

Q19 Should ODPS providers be able to propose alternative arrangements, and if so what type of arrangements?

N/A

Q20 Do you have any other comments or information you wish to share in relation to the drafting of regulations on ODPS accessibility?

We would welcome the opportunity to be involved in the draft regulations and input into discussion with providers to give the perspective of deafened users of ODPS content.