

Making on-demand services accessible

Further consultation to inform requirements to make On Demand Programme Services more accessible to those with sight and/or hearing difficulties (“the Consultation”)

A+E Networks EMEA (“A+E”) is the international broadcaster and on-demand provider of brands such as History, Blaze and Crime+Investigation, with hubs in London, Munich, Rome, Warsaw, Madrid and Johannesburg.

Consultation questions:

Question 1: Do you agree with our suggested approach to assessing exemptions for affordability, i.e. using overall turnover?

No.

A+E bundles the majority of its VOD offering along with its linear channels, so its overall company turnover bears no relation to the revenue it derives from its VOD services.

To base affordability on A+E’s overall turnover would commit A+E to a level of access service provision that was disproportionately and uneconomically high, potentially resulting in a reduction of the number and the type of VOD services A+E offers, and thus a reduction in consumer choice.

We would like to suggest that Ofcom looks again at the concept of ‘relevant’ VOD turnover, in line with its method of calculating affordability for access service on linear broadcast services. Relevant VOD turnover would be revenue derived from a notified VOD service.

Although to date VOD revenues have been difficult to isolate, when bundled with linear, we think that it would be possible, using for example a proportional analysis of linear and VOD viewing data for comparable content, to arrive an acceptable industry wide proxy for VOD revenue.

What’s more, Ofcom should take as it’s starting point whether broadcasters with associated VOD offerings have yet been required to provide access services using the established 1% of relevant linear turnover test. It stands to reason that if a member cannot afford to provide access services at 1% of its (considerably larger) relevant linear revenue, it would not be able to afford to provide it on its VOD revenue.

This appears to align with the approach Ofcom has suggested for its signing options.

Question 2: Do you agree with our suggestion that ‘small companies’ should be exempted from the requirements?

Genuine small companies should be exempt.

Question 3: Do you agree that a threshold level of 1% for the remaining ODPS providers is proportionate?

No. In our response to Question 1 above we asked Ofcom to look again at the concept of relevant turnover for VOD providers, using a mixture of currently available audience and revenue data to arrive as a proxy value for VOD revenue for non-VOD only service providers.

This might alternatively result in Ofcom suggesting a lower percentage threshold of overall turnover for non-VOD only providers.

We note with interest that Ofcom has found that for those non-VOD only members for whom it has data that

costs for providing VOD access services average out at 0.6% of overall turnover.

Question 4: Can you provide any information on the costs of providing access services, including in relation to the various platforms by which services are delivered?

[X]

Question 5: Can you provide any information on the proportion of your ODPS catalogue which is replaced over a given month/ year (rather than archived)?

[X]

Question 6: If you have a broadcast television service, can you provide any information on the proportion of your ODPS catalogue which is repurposed from broadcast television over a given month/ year?

[X]

Question 7: If you have more than one ODPS, can you provide any information on the hours of unique content provided across all your ODPS over a given year?

[X]

Question 8: Can you provide any information on how much advertising/ subscription revenue you would expect to gain from providing access services on your content?

[X]

Question 9: If you have provided answers for any of Qs 4-8 above, would you be happy for Ofcom to share this information with Government on a confidential basis, for the purpose of their impact assessment to inform the drafting of regulations?

YES

Question 10: Do you agree with our suggested approach to making exemptions on the basis of audience size?

Yes, broadly we agree with Ofcom's approach to the making exemptions on audience size, subject to the following observations:

- **When gathering data from services on, Ofcom continues to be vigilant against non 'common sense' outcomes that, as per paragraph 3.28 of the Consultation, "exclude popular services or include niche services"**
- **Whilst Ofcom may be reluctant to specify in legislation exactly which alternative metrics may be used if services cannot provide "unique visitor" data, the possibility that alternative measures may be used, should be clearly stated in legislation**
- **We would seek further clarity on how Ofcom defines a platform when applying exemptions on a platform-by-platform basis? For example, while Ofcom in paragraph 3.33 of the Consultation considers iOS apps and smart TV apps to be different platforms, how would it classify the set-top boxes of different broadcaster/retailers, such as Virgin, Sky and BT, which although in the same technical 'genre' as each other, may all have technically diverse delivery requirements?**

Question 11: Do you agree with our suggested threshold for assessing audience size?

Provision should be made in Ofcom's proposals for updating its approach to measuring audience size as more reliable and standardized data becomes available industry wide.

We are concerned that Ofcom may be applying its threshold of 200,000 unique visitors to notional 'platforms' (e.g. 'smart TV', 'set top box') that do not in fact share underlying operating systems or means of delivery.

Question 12: If you are an ODPS provider, do you have information on unique visitors to your service, including by the platforms through which your service is delivered? Would you be prepared to share estimated audience metrics with Ofcom on a confidential basis, for use in our impact analysis? (Please provide if so)

[X]

Question 13: Do you agree with our suggested approach to assessing exemptions on the grounds of technical difficulty?

We support the inclusion of an exemption category for technical difficulty. In its description of what Ofcom regards to 'reasonable endeavours' it would be useful to understand the extent to which ODPS providers could include the technical difficulties experienced by the platforms (at both a platform and device level) they are attempting to deliver to?

Also, given that most technical difficulties are surmountable if approached with a disproportionate amount of investment, it would be useful to understand how Ofcom might seek to decide if an amount of investment required to overcome a particularly stubborn technical difficulty was disproportionate, and there for exempt as a technical difficulty?

Question 14: If Ofcom is given discretion in this area, do you agree with our suggested approach to making exemptions for particular genres/ types of programmes?

Yes

Question 15: If Government wants to specify which types of programming should be exempt in the regulations, do you agree with our provisional view that the exemptions should only be for audio description on news and music programmes?

Yes

Question 16: Do you have any views on our preferred approach to determining applicable signing requirements?

Service providers should be allowed the greatest flexibility

Question 17: Do you prefer Option A or Option B for determining the levels of sign- presentation / funding for alternative arrangements and why?

Option B on the grounds that it gives the service provider the opportunity of choosing the approach that best suites their service.

Question 18: What alternative signing arrangements do you think should be in place for ODPS? Should this be an extension of the current arrangement with BSLBT?

We support an extension of the current arrangement.

Question 19: Do you believe there should be an exemption for signing in cases where it allows ODPS providers to offer subtitling and AD?

Low revenue providers should be given the option of providing additional subtitling.

Question 20: Do you have any information on the relative costs of providing sign- interpreted or sign-presented programming? If so, please indicate whether you would be happy for Ofcom to share this information with Government on a confidential basis, for the purpose of their impact assessment to inform the drafting of regulations.

We do not have any information on this.

Question 21: Do you agree with our suggested approach on how targets should be met across ODPS services and platforms?

We think that overall audience benefit is the best metric/objective by which to measure whether targets have been met, to which 'Option 1- The Flexible Approach', would be most suited.

Given that we have never had to provide access services before, allowing us initially meet targets in a flexible manner across their non-excluded platforms, will provide welcome flexibility when it comes to setting up workflows and agreeing technical requirements with platforms.

After a suitable period, Ofcom could review the extent to which ODPS had delivered access services across their non-excluded services, and then enter into a dialogue with specific providers as to how they were going to reach their new targets across all their non-excluded platforms.

Question 22: Do you agree with our suggested approach to implementing the requirements?

We have the following concerns:

- **The respective targets for the two, and four, year deadlines too steep.**
- **In view of the considerable investments that these requirements will entail, an approach that offers the most clarity for the services which will be expected to provide services in the calendar year is essential.**
- **With this in mind we ask that the notification period before the first year of requirements is sufficient to allow service providers to set up workflows and agree technical requirements with platforms.**
- **Given that the initial period of provision is likely to throw up a number of organisational and technical issues for service providers, we think that Ofcom should not commence breach proceedings without careful consideration of a service provider's reasons for not having reach a target. These reasons may legitimately extend beyond a significant change in circumstances or the failure of a third party.**
- **Special consideration should be given in circumstances where services had failed to reach targets on particular platforms because of the need to time consuming, or unreasonably cost technical development.**

Question 23:

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