Channel 4 response to Ofcom's further consultation on making on-demand services more accessible

Executive Summary

Channel 4 has a strong commitment to access services and has consistently pushed boundaries and driven change both internally and across the wider sector to ensure that TV content is as accessible and inclusive as possible. We support the objectives set out by Ofcom to make access services more widely available on on-demand platforms, however we remain concerned that introducing new, blunt, quotas at this moment is problematic given the complexity of the rapidly changing VOD market. As a result we are concerned that the regulations as currently proposed will not only impact upon PSBs ability to compete with global streaming services but could also have a number of unintended and negative impacts on provision for access service users, including reductions in both our linear provision and in the level of AD and subtitles on All4.

These concerns stem from a number of key issues with Ofcom's proposed approach:

- It risks limiting On Demand Programme Services (ODPS) providers ability to prioritise investment. Investment in access services on VOD is clearly important, but should be driven at a rate that reflects viewing habits and enables ODPS providers to focus resources where they will provide greatest benefit for access services users.
- Quotas based on an ODPS providers *catalogue size* are fundamentally flawed in terms of Ofcom's proportionality requirement and disincentivise large content libraries which are key to competing with the global streaming services for audiences. As the UK's largest free streaming service Channel 4 is disproportionately affected by the changes.
- The signing requirements and their timeframes do not take into account issues with the capacity of access service providers, the availability of appropriate sign interpreters and the preferences of the BSL audience. Given the high cost of signing it is vital that proposals are based in evidence on audience benefit.
- The proposals are based on a number of flawed assumptions about efficiencies, the level of control ODPS have over some platforms and the nature of BVOD services.

To address this we believe a highly nuanced regulatory approach is required and in particular it is very important within this phase of consultation to get the details of implementation right.

In particular we would ask that:

- Ofcom consider mechanisms for ensuring that ODPS providers are not penalised for having a large content library relative to their overall revenue or for acquiring large volumes of VOD only content so that new regulations do not inhibit innovation or damage PSBs ability to compete with large global streaming services.
- Ofcom looks carefully at the issue of technical difficulty and exemptions on this basis and ensure they take account of the timeframes involved in developing bespoke solutions for multiple platforms and that evidencing 'reasonable endeavours' is not unduly burdensome on ODPS providers.
- Quotas for subtitling and AD are applied flexibly across platforms not prescriptively on every non-exempt platform to reflect the realities of platform development and requirements around how frequently providers are required to refresh content on their service are not implemented at present.
- Quotas for signing are phased over the 4 year introduction period and take into account issues around capacity and audience benefit. Alternative arrangements support the current BSLBT model and take account of where ODPS providers have already paid into this system for linear channels.

Introduction

Channel 4's approach

Channel 4's public service remit is at the heart of all that we do, providing the framework for how we operate creatively and commercially. We have a firm commitment to inclusion and have been working hard to increase and improve our provision of access services both on linear and on our on-demand services. Driving progress in this area is central to our role as a champion of diversity and inclusion and key to our remit to innovate and inspire change. We are constantly looking to push boundaries, find innovative and creative solutions and drive change.

Over recent years Channel 4 has invested considerable time and resource into improving and increasing our provision of access services: this has included voluntary commitments to over-deliver on our formal licence obligations on our core linear services and pioneering access provision on our on-demand services. We are doing this within an extremely complex and ever-changing environment where technological developments mean that considerable time and resource are required just to maintain our current level of access services provision on our ODPS. The technical complexity involved in delivering access services across multiple bespoke solution platforms, and the limited efficiencies both across platforms and when repurposing access services from linear to VOD, means that our investment in ODPS access services far outweighs our investment on linear, despite the linear audience currently still being greater than that on BVOD.

Our approach to date has focussed on targeting resources where they will have the greatest benefit for audiences and do the most to drive social inclusion. All of this work has been informed by regular engagement with user groups, including an access services audience survey on channel4.com which was promoted on air and received 1816 responses, providing valuable insight into where we could improve our services.

Linear TV provision

On linear TV, we have a strong track record in exceeding our quota obligations – in 2011 making a public voluntary commitment to subtitle 100% of our programmes across all of our channels. we have always exceeded all of our quotas across subtitling, signing and AD.

For those with hearing impairments, we achieved 100% of subtitles on our programming across Channel 4, E4, More 4, 4Seven and Film 4 for the ninth successive year.

For BSL audiences we continue to develop our sign zone on All4 which includes a selection of signed boxsets including all series of 'Friday Night Dinner', 'The Inbetweeners', 'This Way Up', 'Game Face', and 'Derry Girls'. Throughout the coronavirus crisis we have worked to provide signing on almost all of our coronavirus current affairs programmes as well as a range of our lockdown academy programming, including Grayson Perry Art Club, Jamie's Keep Cooking and Carry On, Richard and Judy's Book Club and Kirstie's Keep Crafting and Carry On.

For Film4, More4 and 4Seven, we have alternative arrangements whereby we support the British Sign Language Broadcasting Trust (BSLBT). The alternative arrangements provided by the BSLBT model are an established and important part of the linear regulatory regime and play a vital role in serving Deaf BSL speaking audiences. Channel 4 plays an important role in the functioning of the alternative arrangement system. As well as making a significant financial contribution to the BSLBT, we provide a designated slot to show their sign-presented content every Monday morning at 8am on Film 4. This arrangement ensures that the BSLBT content funded by contributing broadcasters is regularly broadcast on a mainstream channel with significant reach, supporting BSLBT in delivering their Ofcom requirements and making up a significant proportion of views of BSLBT content. As our linear channels are 100% subtitled, it also provides the only platform where this content is always broadcast with the option of subtitles, broadening the inclusivity of the content and enabling BSL speakers to enjoy it with non BSL speaking family or friends. The new regulations on ODPS will only make the alternative arrangement system and the service provided by BSLBT more important and Ofcom must be careful to ensure the new regulations strengthen rather than undermine the BSLBT model.

For those with visual impairments, we have made particular progress on Audio Description (AD), with around 40% of programmes audio described on every channel, more than any other broadcaster and well above our 10% requirement. And we are proud that 76% of programmes on E4 have AD, making it one of the most audio described channels in the world. We want to raise awareness and lead innovation around AD, and over recent years we have worked with the RNIB, Ofcom, broadcasters and advertisers on awareness raising campaigns.

We are working hard to overcome a variety of challenges around accessibility and we have had a number of firsts over recent years. We are the only broadcaster airing foreign language drama series with audio description and spoken subtitles in English. We first achieved this with Deutschland 83 in January 2016 and have since gone on to do so with 12 further Walter Presents boxset foreign language dramas which are available on All 4.

We also worked to overcome obstacles to see hit show Gogglebox audio described for its first transmission on Channel 4 at 9pm, ensuring one of our key programmes is accessible on the first showing. This was an important achievement, as, because of its nature, the programme is filmed, edited and delivered to Channel 4 very close to transmission. Audio describing this content in such a tight time frame is very challenging and achieving this required a great deal of resources, and collaboration with commissioning and our wider teams. However as the content is both extremely topical and popular we felt it was particularly important to overcome the challenges in proving AD on first showing. This is an example of where we have prioritised providing AD for a programme that is particularly difficult and resource intensive, on the basis that we believe doing so has a particularly high value for our visually impaired viewers and has a significant impact on inclusion. Gogglebox's huge popularity during lockdown has only served to reinforce why this was worthy of prioritisation.

These examples illustrate the important point that it is not only the quantity of programmes, but the type and range of programming that matters when it comes to inclusivity. Viewers with accessibility needs must have access to the broadest range of programmes possible, including our most high-profile content as that has a particular impact on social inclusion. An approach which puts too higher value on the volume/quantity of content and the number of platforms over the type, range and quality of content may damage provision for users rather than improving it by pushing providers to focus on quicker, easier, cheaper content in order to maximise volume. The consumer's range of choice has to be of paramount importance across accessibility.

Live events

Channel 4 has also pushed boundaries with regards to access services around live events. Live events are particularly difficult when it comes to delivering access services; however certain live events have a unique power to bring the country together in a shared experience. That is why we have made key live events a priority in our access services work. As the Paralympic broadcaster we felt it was essential that we make our coverage of the opening and closing ceremonies of the Rio Paralympics as accessible and inclusive as possible. The promotional material for the games were transmitted with audio description, BSL and subtitles and both events were simulcast on 4Seven with live signing and live open enhanced commentary. This was unprecedented and a key moment for inclusion globally. Likewise, our 7 hour live signed simulcast of Stand Up To Cancer on 4Seven was the first time a broadcaster had attempted a simulcast with live signing for an entertainment programme. We hope these achievements have been game changers when it comes to access services. Allowing ODPS providers the flexibility to prioritise resources and innovate in this way in order to deliver on inclusion and drive change should be key criteria for any regulation.

All 4

Channel 4 is also committed to increasing the accessibility of All 4, our on-demand service and we have been putting considerable effort into delivering access services on All 4 – with significant strides made in subtitling provision. However, the provision of access services on All 4 is inherently more complex and challenging than on linear – largely because of the technical considerations in a still relatively nascent and fast changing area. All 4 is now available across 28 platforms, each with individual and highly complex specifications and technical challenges. Significant work has gone into, and continues to go into, making our content accessible on each of these platforms.

Subtitles are now available on All4.com (96% of hrs), iOS (96% of hrs), Playstation (96% of hrs), Amazon Fire TV (96% of hrs), Android (Dash) (96% of hrs), Sky OnDemand (94% of hrs) and Freeview Play (96% of hrs). Audio Description is available on All4.com (21% of hrs), Android (Dash) (26% of hrs), iOS (17% of hrs) and Freeview Play (26% of hours).[1] We are continuing to develop technology for rolling out access services across further platforms, with a focus on the platforms and devices identified by user groups as a priority, including Sky On demand and a selection of big screen devices.

For BSL audiences we continue to develop our sign zone on All4 which includes a selection of signed boxsets and throughout the coronavirus crisis we have worked to provide signing on the majority of our coronavirus current affairs programmes as well as a range of our lockdown academy programming.

When it comes to signing the challenges are very different to subtitles and AD. We do not face the same issues in developing bespoke technical solutions as the signed programme is a different file which plays out as normal, however there are still elements of development required to increase provision and functionality. Aside from development costs, the cost of sign interpretation is far higher than AD or subtitling. Given that Channel 4 is the BVOD player with the largest content library this means there will be a disproportionate cost to Channel 4. The capacity of signing providers is also of considerable concern as we do not believe that current studio capacity is adequate to meet the increased demand required for all ODPS providers to meet the new quotas within the proposed timeframes. This makes it all the more important that the signing quota is phased over four years as the quotas for subtitling and AD are. There are also shortages of suitable broadcast sign interpreters and we are concerned that if this is not addressed the quotas will drive large volumes of poor quality sign interpretation at a cost that far outweighs the corresponding benefit. As we set out below, this cost is further inflated by the need for internal software upgrades or replacements to accommodate the significantly increased number of additional signing files.

Obstacles to progress on On-Demand Programme Services (ODPS)

The main obstacle to greater provision of access services on-demand is the number of different platforms and devices in the market, each of which has individual and highly complex technical specifications and presents a range of technical challenges. All4 is currently across 28 different platforms and extensive development work is required in order to deliver access services to each. Given the growing number of platforms and the extensive development work required we have to make difficult decisions about where to prioritise our resources. For each platform that All4 is available on we also have to carry out maintenance work and respond to both hardware and software upgrades for each platform. Internal upgrades to All4 or our internal systems also require further technical work, as do changes in provider. One example of this is the move to HD on platforms that support it which has significantly disrupted our AD provision as set out in 4.3.

[1] Our AD figures for All4.com and iOS are currently slightly lower than normal as we update to HD (see question 4).

Ofcom's proposed approach

In our response to Ofcom's previous consultation on improving the accessibility of ODPS services we cautioned against the introduction of quotas at a time when the landscape was still so fast moving and complex, with the development time for delivering access services to an additional platform ranging from 6-24 months, with numerous factors outside of our control which can change without notice and disrupt ongoing development.

Channel 4 is not against the use of quotas in principle, they can play an important role in driving the development and roll out of access services. However, quotas in this area require a highly nuanced regulatory approach and risk perverse consequences if not used appropriately. We believe they would be most appropriate at a point when technology has improved and the VOD market has reached maturity. The details within this phase of consultation are therefore vital.

We are concerned that introducing new blunt quotas of the kind being proposed at this moment is problematic given the complexity of the rapidly changing VOD market, the technological challenges, the timeframes involved in delivering access services to additional platforms, and the disproportionate cost of providing access services on VOD in comparison to linear. We believe that in Channel 4's case this will be detrimental to our ability to maintain our current provision and to continue to push boundaries around access services and prioritise our investment on the basis of audience benefit. We also believe that quotas have a disproportionate and distorted impact when applied on BVOD services and that this could be detrimental to UK PSBs ability to compete commercially.

Proportionality when mirroring linear requirements for VOD

The link to overall revenue also provides issues in terms of proportionality, as it links a requirement on VOD services to overall revenue, which is still to a large part generated by linear. As PSBs are already subject to requirements linked to their linear service, this links a secondary, larger financial obligation to their revenue stream, essentially more than doubling PSBs requirements. As noted, providing access services on VOD is considerably more complex and costly than on linear, but currently it is the case that Channel 4 linear viewing and revenues still outweighs those of VOD . As such we believe there is a real risk that the proposals mean that the cost of providing access services on VOD are disproportionate to overall audience benefit, could push providers to redirect resources in ways that reduce, rather than increase overall audience benefit and could inhibit competition and innovation and interfere with commercial decisions about acquiring content or providing ODPS on certain platforms.

Proportionality and catalogue size

Research from Ampere Analysis conducted in July 2020 looked at each PSB BVOD library and found that All 4 is the UK's biggest free streaming service in terms of total hours of content available. In contrast our revenue is lower than that of he BBC and ITV, as well as Netflix who will not be subject to the proposed requirements. This shows why quotas based on an ODPS providers catalogue size are fundamentally flawed in terms of Ofcom's proportionality requirement. An ODPS providers catalogue size is not a good proxy for its ability to pay for access services given that it is not proportionate to turn over or content spend, but rather dependent on a number of different factors including rights models and levels of VOD only acquisitions. Because of this, Channel 4 is disproportionately impacted by the new regulations, particularly as they relate to signing. What's more, deterring ODPS providers from accumulating large catalogues will not only damage their ability to compete but will be to the detriment of all audiences.

The impact on PSBs ability to compete in an evolving market and deliver audience benefit

This is particularly problematic coming at a time when Ofcom has been emphasising the need for PSBs to evolve and compete with global streaming platforms for audiences. Central to this is the need to appeal to young audiences and research from Kantar and Jigsaw commissioned by Ofcom has shown that choice and variety are key factors in young people's on-demand viewing habits.[2] One of the ways in which Channel 4 is increasingly responding to this is by acquiring larger quantities of 'All4Exclusive' VOD only content including more than 900 hours of content from Vice, much of our Walter Presents catalogue, and a considerable number of other multi series box sets of acquired content. So far this year Channel 4 has launched over 1,000 hours of this type of content. These sorts of deals often involve acquiring a large volume of content in one go, at a cost-effective price point. However, the implications of having to meet the new quotas on this high-volume content change the commercial implications of such acquisitions and could therefore restrict the amount of new VOD exclusive content sent to All 4 and other ODPS. Whilst we want to see more of this content provided with access services, this additional cost presents a major imbalance when trying to compete with the US digital giants who are not subject to any of the same requirements and are therefore at a significant competitive advantage when acquiring large volumes of content. We believe that Ofcom should look to safeguard PSBs' ability to compete for VOD only acquired content including by considering categorising VOD exclusive content in a distinct way for the purposes of the regulations, at least in the short term.

Digital growth is also clearly key to future proofing PSBs and the important role they play in UK society. Driving All4 viewing among young audiences requires technological development to improve user experience on our ODPS and the ability to quickly flex and adapt our distribution model and the ways in which our content reaches audiences in line with changing viewing habits. This will mean that the platforms our ODPS is available on change over time.

The only fully owned and operated platform through which our content is available is All4.com. Other platforms require individual development work and negotiations, including the All4 app which varies considerably across different platforms. As such we must work through each of the platforms on which we provide our content, investing considerable time and resource to develop bespoke access services solutions for each and aligning these solutions with ongoing developments in other areas of our technology architecture. Given the significant time and resource required to develop bespoke access service solutions for each new platform, and additional implications of both internal and external upgrades, the ability to work to our access services road map - which is prioritised on the basis of audience benefit and takes account of the changing SVOD landscape – is crucial. This is key if we are to avoid wasting valuable time and resource on platforms which become outdated, are not taken up by access service users, or are replaced - as we previously saw in the cases of Youview, BT and Freesat.

As developing bespoke access services takes between 6-24 months per platform depending on a number of factors, many of which are out of our control, working though this road map necessarily takes significant time. Even if a new platform were to enter the market that was so popular we took the decision to dramatically alter our road map and make it our number one priority, a range of factors mean that it could still take two years for us to be able to successfully deliver access services on that platform. With this in mind, it is crucial that the way the quotas are applied, and the exemptions and timeframes in any new regulations take account of this and are carefully considered. It is vital that quotas do not set ODPS providers up to fail or push investment in development work at the wrong moment which risks wasting valuable resources. It is right that Ofcom should expect ODPS providers, and particularly the PSBs, to invest in access services on their catalogues. However, it should not push them to do this in ways that do not provide value for money and maximise benefit for the relevant audiences.

[2] An exploration of people's relationship with PSB, with a particular focus on the views of young people, page 8.

We also believe that Ofcom's proposals are based on a number of flawed assumptions about efficiencies and the nature of BVOD services.

Firstly, the extent to which BVOD services can simply repurpose content broadcast with access services is overestimated. The complex rights models on VOD mean that some content broadcast with access services is not licenced for VOD or would provide limited audience benefit due to its shelf life or short licence period. As we have set out above we also have a considerable, and growing, quantity of VOD only content, the impact of which is not negligible as Ofcom suggests.[3] The characterisation of BVOD services as predominantly a catch-up service is also not helpful in our view, and does not accurately reflect Channel 4's All4 service, which provides the largest library of free online content in the UK.

As we set out in detail in our answer to question 11, there are also a number of flawed assumptions about the level of control ODPS providers have on certain platforms, particularly their apps on different platforms, and the efficiencies and technological cross over within families of platform. This results in a number of problematic statements and flawed proposals in terms of how platforms should be defined and grouped. This is an incredibly complex area and new regulations must properly reflect that even when that is difficult. If regulation is based on an oversimplification of the issues and particularly an unsuitable definition of what constitutes a 'platform' (something which is absolutely fundamental to the regulations) then it will not be fit for purpose.

Given all of these issues, it is vital that any new requirements are designed in a way that is workable, addresses issues around proportionality wherever possible and allow OPDS providers - and particularly PSBs with an ODPS - to allocate resources across linear and VOD according to assessments of audience benefit.

Consultation questions

COST

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

1.1 Whilst we agree that there should be exemptions based on affordability, we worry that using overall turnover will lead to perverse outcomes. Channel 4 has shown a long running commitment to investing in access services but as UK PSB operating on a not-for-profit model we need to do this is a way that derives maximum benefit for audiences from the resource we have. As such it is important that new regulations do not force unacceptably disproportionate investment in access services on VOD over linear, or on one type of access service over another. An affordability exemption could in principle be one way to ensure that regulations do not push this imbalance to an untenable level. However, we are concerned that the exemption as proposed will do little to prevent this.

1.2 UK ODPS providers have a wide variety of business models and structures. Some, like Channel 4, combine VOD (catch-up and on-demand) offerings with multi-channel linear broadcast packages; others are VOD only; while others form distinct sections of broadly diversified entertainment and/or telecom companies.

1.3 Overall turnover may therefore hold no resemblance to the amount of revenue generated by an ODPS provider's VOD activity, and consequently the VOD part of the business' ability to afford to provide access services. For broadcasters who combine a VOD service with a multi-channel linear service a significant majority of revenue is still generated by linear rather than VOD. In 2018, the last year for which Channel 4 has published accounts, digital revenues of £138m made up 14% of Channel 4 total revenue.

[3] Ofcom, 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, pg 37.

1.4 One possible outcome of the ‘overall turnover approach’ is that the VOD element of a broader business facing disproportionately high costs for access service provision which cannot be supported from its own revenues, may look to rationalise the number and range of VOD services offered, either by reducing their catalogue or by making their OPDS available on less platforms. Alternatively, they may have to divert revenue from their linear access service provision to VOD. to the detriment of linear viewers, who still continue to make up the largest proportion of their viewers. Whilst Channel 4 and other ODPS providers may be able to divert linear revenues to VOD that may not have the best outcome for access service users.

1.5 Whilst on-demand viewing has been growing in importance, particularly among younger audiences, linear still remains by far the most common form of viewing, with roughly 12% of our viewing hours watched on demand compared to 88% on linear. Channel 4 already spends significantly more on access service provision on VOD than on linear and the new rules may further exacerbate this imbalance, particularly as repeats can make up part of the linear quota. We have to bear this in mind when considering how best to invest resources in order to achieve greatest impact for viewers. Additionally, as the VOD market is rapidly evolving and is still in its early years, whereas linear is a mature market, with well-established technology, providing access services on linear is cheaper, comparatively more straightforward and involves less risk in terms of resource. As such, the disproportionate cost and risk involved in providing access services on VOD means that diverting money from linear access services to VOD in this way will mean less audience benefit is generated from the same revenue.

1.6 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 services on linear broadcast services. Although VOD revenues can be difficult to isolate, we do not believe this is insurmountable. However, in considering this Ofcom should consult on any methodology for calculating relevant turnover to ensure it is workable and consistent across the industry.

1.7 We also believe that large ODPS providers should not be able to escape these requirements by recording their turnover outside the UK, as is the case for many of the global ODPS providers. There is already a significant legislative burden on UK PSBs that does not apply to the US digital giants, many of whom provide limited access services. Any regulation which adds to this inequality and damages the PSB’s ability to innovate, evolve and compete for content could have a very detrimental impact on the UK broadcasting ecology.

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

2.1 We agree with the proposal that any ODPS provider that meets the definition of a “*small company*” should be exempt from the requirement. However, ODPS providers should not be able to avoid the requirements simply by restructuring their group company.

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

3.1 For the reasons set out above we are concerned about the proportionality of a 1% threshold. For VOD-only businesses the threshold of 1% of may correlate reasonably to the 1% of relevant turnover used by Ofcom for calculating an exemption threshold for linear broadcasters, however for ODPS providers with more complex structures and revenue sources a blanket 1% of overall revenue could lead to a distorted pattern of obligations where the cost of access services on VOD is entirely disproportionate to both the cost of access services on linear and the relative revenue generated from VOD.

3.2 As we have set out in our response to question one above, we believe that Ofcom should consider relevant turnover rather than total turnover. If this is deemed too difficult an alternative could be to set the threshold at a lower percentage of turn over for companies where VOD revenues are only one part of their business.

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?**

4.1 Whilst we tried to provide relevant cost information during the previous consultation phase, the true costs of access service provision on VOD as they apply across the business are hard to isolate and we are concerned that they were not fully captured.

4.2 We were concerned by Ofcom's assertion that, **"**the majority of costs are incurred in creating or repurposing access services, rather than setting up access service capability on new platforms**."**[4] This is incorrect. Whilst the cost of access service files – either repurposed or newly created – may in some cases be the largest single cost, it is significantly outweighed by the combined costs of technological development. These development costs include the cost of development required to deliver bespoke solutions for providing access services on additional platforms; development necessitated in response to updates on platforms where we already deliver access services; changes to relevant providers; development required to internal systems such as Pirate to support our access service delivery at higher volumes, particularly in the case of signing; and development required to accommodate product development and other technological and business enhancements resulting in changes in our internal technological architecture, such as our Broadcast Services Migration project or our move to HD on All4. We have sought to capture as much of this as possible in the detailed cost data in appendix one.

4.3 We would also like to reiterate to Ofcom that it is not just the cost of development on additional platforms that is at issue, it is also the time involved. The development work can take up to two years per platform and all development work must be integrated with ongoing changes across different areas of the business and the platform in question. For example, we are currently in the process of upgrading SD content on All 4 to HD, requiring the replacement of relevant assets. This process has resulted in additional costs and disruption to service delivery as the AD is not available for a period of time whilst it is re-versioned, redelivered and the whole asset re-transcoded. This takes time and due to the catalogue size of All 4 this process will take many months to complete. In 2019 we had approximately 25% of content with AD on C4.com, mid 2020 this had fallen to approximately 12% as a result of this process. By the end of 2020 we should be back towards the 25% level. We will have to repeat this process for all other platforms that accept HD content.

4.4 This is why our road map for access services delivery is so important. It enables us to prioritise platforms and development based on audience benefit, technological stability and our understanding of other planned changes both internal and external so that we can optimise resource and reduce the risk of disruption or redundant development work that would waste our limited resources.

4.5 We would also like to note that the more platforms adopt uniform standards the more ODPS providers will face lower costs associated with the launch of VOD services, upgrade to new version/variants and the enabling of access services. It is, therefore, in Ofcom's interest to encourage the uptake of standard technology, including by limiting ODPS providers' obligations on non-standard platforms. This would give ODPS providers more scope to encourage the take up of standard platform technology by platform operators and use available resources to greatest effect.

[4] Ofcom, 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, page 26

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

5.1 Unfortunately we are able to provide limited information on the relative proportions of our ODPS catalogue which are archived and replaced in a given month or year. Due to the complexities of our rights models over time this will vary significantly from month to month and year to year and there is no one size fits all when it comes to the length of time a programme will be on All4.

5.2 Fluctuations in content hours are the result of a number of factors. The length of time which content remains on All4 is largely down to how that content was contracted and the rights granted within the contract. Programme contracts have changed over time as a result of changes to the Terms of Trade, and also vary from programme to programme. In some cases the length of time which a programme remains on All4 can also be impacted by clearance costs or compliance issues.

5.3 Pre 2004 we had rights for most projects in perpetuity so provided there were no compliance issues or clearance costs these programmes remain on All4 in our archive. Post 2004 commissioned projects came with a licence period, the length of which varies, so they are able to remain in the All4 archive until their licence expires. However sometimes we remove content before that point. For some originations we will have a three year licence and in these instances content will go into the archive if there are no excessive clearance costs or compliance issues. For returning series we will generally keep all episodes on All4 while the series is still going out. We often have catch up and archive rights for this content, but if there were compliance issues or clearance costs the content may not go into archive but rather go up on All4 for 30 days on each TX.

5.4 Many programmes will have 30-day catch up rights. However even this varies from programme to programme depending on the contract. On some projects we may only have the rights for 30 days after the programmes first run, on others we may have 30 days for all runs, and on others we may have full archive rights so the content can stay on for the duration of the licence period.

5.5 Furthermore, in some cases where a programme has performed well, we have recommissioned a show or there are other reasons why we would like to extend availability we will go back to the producer to extend the rights so it can remain on All4.

5.6 This complex picture means that the size of All4's content library is constantly changing adding another layer of complexity when planning access service provision. This is another reason why implementing quotas is so difficult on VOD because the volume of content with access services and the total content library are both so fluid. In order to try and build up a library of content with access services BVOD providers may choose to prioritise content with a longer licence period, and this should be supported, but the system must also support the provision of access services on programmes that only have short catch up rights if we are to ensure choice and promote inclusion for access service users.

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?**

6.1 All 4 has many programmes that are not broadcast on linear, including exclusive commissions and acquisitions. For example, a large percentage of the 'Walter Presents' catalogue is only available on All 4. We currently subtitle this programme content and Audio Describe a selection. As viewing habits evolve this content is of growing importance so it is important that it is considered within Ofcom's proposals. Any new requirements for access services on this content impact upon the cost implications of acquiring new content and in some cases could impact upon our commercial and creative decisions. This has implications in terms of the market, in terms of our ability to compete with digital giants such as Netflix, and for viewers. As such, this VOD exclusive, non-broadcast, programming has to be taken into careful consideration when looking at the practicality of and rationale behind the regulation of access services on ODPS's.

6.2 At present we have around 12,000 hours of content on All4, 1400 hours of which is All4 exclusive content so around 91.5% of content is repurposed from broadcast television. However, these figures relate to the full library so a significant part of that broadcast content is older archive content. Conversely, much of the VOD only content is relatively recent, as this is something we have introduced and chosen to do more of as part of our strategy over recent years.

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?**
   N/A

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

We do not expect to make additional revenue by providing access services on our content.

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. We are keen to work closely with Government, to support them in making a full impact assessment and to provide information and evidence to inform their approach to legislation.

AUDIENCE SIZE

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

10.1 Channel 4 believes that audience benefit should be a key consideration in the prioritisation and delivery of access services across different platforms, and that generally the costs borne by ODPS providers should be proportionate to benefit delivered to audiences.

10.2 Given the considerable costs involved in development work for each platform it is vital that ODPS providers can prioritise their resources where they will have greatest benefit for access service users. This is one of the main reasons why we have consistently argued against quotas, and their application across all platforms. We believe they risk being detrimental to ODPS providers ability to target resources to greatest effect and may, in fact, have a negative impact on choice for users as they drive investment in a breadth of provision across platforms over investment in the quantity and variety of programmes available on the platforms most used by audiences who use access services.

10.3 Channel 4 is constantly evaluating how it can optimise the impact of its access services work and achieve the greatest impact for audiences with the resources we have. In doing so we weigh up the costs, practicability/technical challenges involved, and, crucially, the audience benefit. This audience benefit is assessed through a combination of factors. When looking at which programmes to prioritise we consider audience data around the popularity of programmes and other indicators of its appeal to audiences as well as assessments around the public value of particular content and its role in inclusion. This includes looking at the suitability of a programme for a particular access service, particularly AD, with some genres tending to benefit more than others as discussed in our answers to questions 14 and 15. Importantly, we also consider the mix of programming which is available and try to ensure an equitable mix of programming which covers the broadest possible range of genres and types of programming in order to maximise viewer choice.

10.4 When considering which platforms and devices will provide greatest audience benefit and should be prioritised we are led by consultation with disability groups and organisation such as The Digital Accessibility Centre (DAC). This consultation has shown that audience benefit is best served by focussing on platforms and devices that have native in-built features that make them accessible to deaf, blind and partially sighted viewers. Which is why we have we have been concentrating on iOS, Android, Sky On demand and a selection of big screen devices.

10.5 This does however highlight a flaw in Ofcom's approach to audience benefit. Say for example, a new platform came into the market which became the platform of choice for BSL users, and there was evidence that whilst the platform did not meet the 200,000 visitor threshold set by Ofcom, the majority of the estimated 87,000 for whom BSL is their first language, or even the full estimated 151,000 people who can use BSL[5] were choosing to use this platform over any other. ODPS providers would be exempt from providing signing on this platform but would be required to meet the 5% signing quota on numerous other platforms which BSL users were not using. This could also be the case for legacy platforms.

10.6 Legacy platforms also highlight another potential issue with Ofcom's approach. In paragraph 5.12 Ofcom state an intention that consumers should not need to purchase new services/ devices in order to enjoy on-demand content[6]. However, our data suggests that the very small number of platforms which would be exempt from regulation under this criteria would be older legacy platforms that have now been replaced by newer technology.

10.7 These examples highlight why we have continually argued that audience *benefit* should be the driving factor when making decisions about which platforms should be prioritised for the development and delivery of access services. Audience size is one element in audience benefit, but it is not the sole or deciding factor. A more appropriate measure would be *relevant* audience size, based on the number of users of a particular access service using a particular platform. This is clearly more difficult to measure which is why we have instead been driven by consultation with disability groups.

10.8 One potential benefit of this criteria as drafted is that it would go some way to ensuring ODPS providers are not deterred from providing their service through new fledgling platforms with initially small audience sizes on the basis of cost. This is important if we are to ensure that the costs of providing access services are not disproportionate to overall audience and ODPS provider benefit and avoid the risk of inhibiting innovation or even imperilling overall service economics. However, this is undermined if there is a hard threshold of 200,000 at which access service obligations kick in. Developing bespoke access services takes between 6 -24 months per platform depending on a number of factors, some of which are out of the ODPS providers control. As such we have a carefully considered and evolving road map which guides our access services development work based on assessments of audience benefit, viewing trends and the risk posed by ongoing technological development. Working though this road map necessarily takes significant time. Even if a new platform were to enter the market that provided such high audience benefit and low risk that we took the decision to dramatically alter our road map and make it our number one priority, it could still take two years for us to be able to successfully deliver access services on that platform. With this in mind, we believe a grace period of 4 years is necessary when a new platform reaches Ofcom's audience size threshold. Otherwise the risks around stifling innovation in the market will not be mitigated. However, were Ofcom to adopt the approach we propose in 13.7 whereby an understanding that ODPS providers can only be expected to develop one bespoke solution at a time is built into the technical difficult exemption, this grace period would not be necessary.

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

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[5] According to the British Deaf Association British Sign Language (BSL) is the preferred language of over 87,000 Deaf people in the UK for whom English may be a second or third language (A total of 151,000 individuals in the UK who can use BSL - this figure does not include professional BSL users, Interpreters, Translators, etc unless they use BSL at home).

[6] Ofcom, 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, Page 27

11.1 Channel 4 does not have an opinion on whether 200,000 unique monthly users represents an appropriate threshold for assessing audience size, however it is our view that the metric which Ofcom is currently proposing is the wrong one.

11.2 Ofcom proposes to measure audience size by reference to "*monthly average unique visitors*".[7] However, if this measure is to be a proxy for audience benefit, it is important that it reflects actual viewing. There may be many visitors to ODPS providers' app or website that do so for purposes unconnected with the provision of ODPS. These visitors do not generate revenue for Channel 4 or use our ODPS service and it is, therefore, not clear they should be factored into any calculation of 'audience size'. For this reason, we propose that audience size be measured by reference to monthly active unique *viewers*.

11.3 Channel 4 strongly supports Ofcom's view that the exemption should be applied on a platform-by-platform basis, however we are concerned by the way in which Ofcom appears to be defining platforms and would seek further clarity on how Ofcom would apply this criterion in practice.

11.4 As we have set out above, and in our response to Ofcom's previous consultation, technical standards, and therefore the development work required to support access service, varies by platform, with the platform operator governing which technical standards to adopt and how often to update the hardware and software involved. These differences between platforms are fundamental to understanding the challenges around increasing the provision of access services on VOD and must be properly captured within the regulations, and particularly when defining what constitutes a distinct platform and considering exemptions.

11.5 In this context, our view is that "platform" should be defined by reference to the interface through which a user accesses the ODPS, rather than a broad, cross cutting notion of a "platform" which does not reflect the divisions and differences that exist between platforms. On this basis, Channel 4's view is that the following would constitute distinct "platforms" (the following list is illustrative not exhaustive):

- Individual browsers would constitute separate platforms: e.g. Safari, Chrome;
- Individual mobile operating systems would constitute separate platforms: e.g. iOS, Android;
- Each connected TV brand would constitute a separate platform: e.g. Samsung, LG;
- Where a connected TV uses a third party operating system, the operating system would constitute a separate platform: e.g. Amazon Fire TV, Android TV
- Other devices/sticks would constitute separate platforms: Roku, Chromecast, Apple TV (TVOS);
- Versions/variants of platforms that involve significant technical upgrades or wholly separate operating systems should each be considered a separate platform: e.g Sky+ vs SkyQ

11.6 Vitally, and contrary to Ofcom's statements in paragraph 3.33 of the consultation document, there are important reasons that the following cannot be considered "platforms" for the purposes of regulation:

- Connected TV platforms as a whole: in general, different connected TV brands have unique operating systems and technical specifications. Each brand/make should, therefore, constitute a separate 'platform' for the purpose of assessing the audience size threshold. However, where multiple connected TV brands utilise the same third party operating system (e.g. Android TV, Amazon Fire TV) we would consider the "platform" to be the operating system as this is what governs the technical standards on which access services are provided.
- Individual ODPS apps: one individual app (e.g. All4) may comprise numerous different versions, each created to conform to the particular technical specifications of an individual platform.

[7] Ofcom, 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, page 12

11.7 We are concerned that Ofcom has not recognised the considerable variations across these groupings of platform, as it is these differences in technical standards and specifications across a myriad of platforms that lies at the heart of this issue and our subsequent, deep rooted, concerns about the workability of quotas and Ofcom's proposed approach.

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)**

12.1 We have already provided this information to Ofcom earlier in the process but are happy to prove anything further that would be helpful.

TECHNICAL DIFFICULTY

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

13.1 Channel 4 agrees with Ofcom's proposal that providers should be exempt from the requirements where there are significant technical or operational barriers to providing access services on particular platforms. In our view, the way in which this is applied is one of the most important questions in terms of the workability of Ofcom's proposals. Within this, the way in which 'platform' is defined is again absolutely crucial.

13.2 We believe there are three key questions here, a) what should be captured within the technical difficulty exemption, b) how Ofcom will define 'reasonable endeavours' and c) the way in which Ofcom will require ODPS providers to evidence this. We appreciate that much of the detail on b) and c) will be looked at in due course when Ofcom consults on the associated guidance Code. Nonetheless we feel it is important to look at this criterion in the round so we touch upon the second two questions within our answers.

13.3 We believe this exemption should apply in a number of different scenarios:

Where a platform does not technically support a form of access service via any format/delivery, such as audio description on Brit Box or historically on Virgin.

13.4 We agree with Ofcom that where a platform does not technically support access services or a type of access service all ODPS providers should automatically be exempt from providing the access services in question to that platform. Ofcom should ascertain which platforms/services this applies to and should not require any evidence from ODPS providers in relation to these platforms.

Bespoke solution platforms

13.5 We agree that Ofcom should not provide exemptions on platforms that have well established support for all access service types that meet the standards of a number of independent platforms. However, as we have set out, many platforms utilise bespoke platform standards and as such require bespoke solutions which involve considerable time and resource, and negotiations with the platform provider. Channel 4 believes that for the new regulations to be proportionate and workable ODPS providers' obligations in relation to access service provision on platforms with bespoke standards must be limited under the technical difficulty criterion.

13.6 In 3.41 Ofcom states, "In general, we do not expect to make exemptions on those platforms which are largely under the ODPS provider's control (e.g. their own apps on TV platforms)." It is important that the degree of uniformity and the level of control that ODPS providers exercise over their apps on different devices is not overstated. One individual app (e.g. All4) may comprise numerous different versions, each created to conform to the particular technical specifications of an individual platform. At present Channel 4 can provide access services on the All4 app on Android and iOS mobile devices, and on Playstation and Xbox games consoles, but not on some other mobile devices, games consoles or on the various different Smart TVs. More broadly, the way in which Ofcom has tried to divide platforms into those controlled by an ODPS provider and those that are not, is somewhat misleading. The platform, properly defined, is never fully in the control of the ODPS provider. In the case of Channel 4, the one platform which is fully owned and operated is All4.com, however as set out in 11.5, even in the case of the website there is considerable variance depending on the device and browser through which the website is accessed.

'Reasonable endeavours' across multiple platforms

13.7 We also believe that where an ODPS is available on multiple platforms, Ofcom's definition of reasonable endeavours should take this into account. What could be deemed reasonable endeavours on a single platform is no longer reasonable if the same 'endeavours' (and therefore resource and time) are required across a multitude of bespoke platforms. Channel 4 is a relatively small broadcaster with a small development team and with the best will in the world, we do not have the resource to develop several solutions concurrently. Therefore, we believe that assessments of technical difficulty which consider each bespoke platform in isolation without reference to the number of bespoke platforms an ODPS provider is working to deliver access services on will be flawed. As such ODPS providers should be able to set out to Ofcom which bespoke solution platform(s) they are currently prioritising, on what basis and the expected timeframes for that work. Until that work is completed, those platforms should be exempt on the grounds of technical difficulty, as should all further bespoke solution platforms requiring development work.

13.8 Furthermore, given the length of time involved in developing bespoke solutions and the potentially disruptive impact of hardware and software upgrades, where an ODPS provider can demonstrate that they have carried out development work in the last two years which has been rendered redundant by a platform upgrade, as Channel 4 experienced with Youview, or are delaying development for a particular platform until after a scheduled upgrade to avoid this, the platform in question should be exempt for the intervening period on the grounds of technical difficulty.

New models/variants

13.9 As explained in detail at 10.8, when a platform introduces a new model/variant (outside of the control of the ODPS provider), each app operator must update its app to accommodate the new technical standards. Where a new model/variant does not accommodate existing technology ODPS providers must work with the platform operator to resolve the problem and develop a technical solution. As we have set out above, the time required for this work can range from 6 months to 24 months depending on a number of factors. However ongoing development work for pre-existing platforms may take precedence so this new development will not usually be able to begin immediately. Channel 4 believes that the new regulations must take this into account, and as such new platforms requiring bespoke development should be exempt on the grounds of technical difficulty for an appropriate period. Taking into consideration the current length of time required for the necessary development work, and the number of platforms which we are already in the process of developing bespoke solutions for, we believe this grace period for a new platform should realistically be a minimum of four years. This period may be able to be reduced in future should the number of new platforms requiring bespoke solutions entering the market decline.

Evidencing 'reasonable endeavours'

13.10 In 3.43 Ofcom states, "We should include details of how we would assess a 'reasonable endeavours' type obligation in our On-Demand Code; which might include requiring providers to offer their access services to third-party platforms and engage in dialogue with the platforms on setting up access service capability."

13.11 We look forward to engaging with Ofcom further as they develop and consult upon the Code and would ask that they look to ensure that evidencing reasonable endeavours is not unduly burdensome as this will involve time and resource for ODPS providers and is likely to impact upon the same teams who are delivering access services.

13.12 Resources will be able to be used much more efficiently if Ofcom seek data to evidence the technical difficulty of certain platforms themselves rather than requiring each ODPS provider to do this individually. As such we would ask that wherever data is readily available that can inform Ofcom's assessment – for example where Ofcom can establish that a platform does not support a particular form of access services or uses bespoke technical standards– or can be obtained by Ofcom though a single data request to that platform provider, Ofcom obtain this data themselves wherever possible rather than the burden for evidencing this falling on every single ODPS provider.

13.13 ODPS providers like Channel 4 often have little or no control over third party platforms and may not have visibility let alone influence over an external platform's technical roadmap. We would value clarity as to what will constitute reasonable endeavours in these cases. In keeping with our proposal in relation to multiple bespoke platforms, we believe that where an ODPS provider has limited development capacity, and can demonstrate to Ofcom how any why they are prioritising that resource on a given bespoke solution platform or family of platforms, further bespoke solution platforms should automatically be exempt for that reporting period without additional evidence for each platform.

PROGRAMME TYPE

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?**

14.1 We agree that where certain types of programme are not suitable for certain types of access service these programmes should be exempt. Broadcasters have good insight into programmes that may need exemptions, with feedback from viewers, regular meetings with the disability groups and work with the access service suppliers. If Ofcom is given discretion in this area their approach should be informed by ongoing dialogue with ODPS providers, disability groups and access service providers.

14.2 Given the challenges presented by applying quotas to VOD libraries that are large and fluid we believe that Ofcom should take a different approach to exemption for certain types of programmes on ODPS. Where Ofcom decides that a certain type of programming should be exempt from a particular form of access service ODPS providers should be able to provide Ofcom with the number of hours of this type of programme makes up their qualifying ODPS library and this should not be included when calculating the ODPS's requirements to achieve their quota.

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?**

15.1 Whilst we agree with Ofcom that there should be exemptions for audio description on news and music programmes we believe this should also be extended to include live sports programmes which will have commentary and will generally not be suitable for AD, and that Ofcom should consider an exemption for AD and signing on all live programming for which it is often not possible to provide these services without great cost. That is not to say that we will never provide these types of access services on live programmes. We have done so on occasion for events including the opening and closing ceremonies of the Paralympic Games and our live Stand Up 2 Cancer event. However, the level of resource required to do this means that it would not be the best use of resources to do this as standard, therefore it should be exempt under the legislation and deducted from an ODPS service's qualifying hours (as set out above). However, where broadcasters choose to make that investment Ofcom should ensure there is adequate flexibility in the system for it to be included against that broadcaster's quota.

15.2 We also believe that Ofcom should consider categorising VOD exclusive content in a distinct way for the purposes of the regulations, at least in the short term. Throughout the consultation document assumptions are made about efficiencies and the ability of ODPS providers with a linear service to repurpose access services across their different services. This is clearly not the case for VOD only content. As set out in the introduction this content is of strategic importance when appealing to young audiences and the amount of VOD only content is increasing. These VOD acquisitions involve acquiring a large volume of content, at a cost-effective price point. However, the cumulative cost of meeting the new quotas on this high volume content will impact upon the commercial viability of such acquisitions.

15.3 [✂]

15.4 Regulation could therefore limit the amount of VOD exclusive content acquired for All 4 and other ODPS. Whilst we absolutely want to see more content provided with access services and we are hugely ambitious in our own provision, this additional cost presents a major imbalance when trying to compete with the likes of Netflix who are not subject to any of the same requirements and are therefore at a competitive advantage when acquiring large volumes of content. This in turn has implications for our ability to compete alongside the US digital giants in an evolving digital market.

15.5 As we have touched upon, Ofcom's research has highlighted the importance of an ODPS providers catalogue and the level of variety and choice offered as a key factor in younger audiences' choice of ODPS. According to the research, "Research participants acknowledge that it is hard for any one PSB brand to compete with the depth and breadth of content served up by streaming services."[8] As Ofcom are aware, the need for PSBs on-demand services to be free to implement effective strategies for appealing to young audiences is vital for their future sustainability. As such Ofcom should look to safeguard PSBs' ability to compete in this area and avoid damaging our ability to compete with global ODPS - for whom the requirements, and their corresponding impact on commercial calculations, will not apply – for acquired content.

15.6 We would ask Ofcom to consider the implications here at what is a highly important and financially challenging time for UK PSBs, and to assess whether any measure, even temporary in nature could be put in place to address this competitive imbalance.

SIGNING REQUIREMENTS

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

16.1 We are particularly concerned by Ofcom's proposals around signing. These concerns relate to the proportionality of Ofcom's proposals, their workability and their ability to deliver audience benefit.

16.2 Channel 4 fully supports Ofcom's desire to see BSL audiences better served and the social exclusion of the Deaf community addressed. Channel 4 is a world leader with the provision of access services, if it wasn't

[8] Jigsaw/Ofcom, An exploration of people's relationship with PSB, with a particular focus on the views of young people, page 58

for the significant technical, financial and logistical complications Channel 4 would have much more BSL content available on All 4 platforms.

16.3 As we have set out previously, the quotas penalise ODPS providers with large catalogues, and despite having a significantly lower revenue than many of our competitors Channel 4 has the largest library of any free UK streaming service. As signing is the most expensive form of access service this disproportionate impact is most significant here and the new rules would require Channel 4 to provide more hours of signed content on All4 than either the BBC on iPlayer or ITV on ITV Hub despite the BBC having over five times our revenue and ITV having over three times our revenue.

16.4 Research for Channel 4 from Ampere Analysis conducted in July 2020 looked at each the hours of content in PSB's BVOD library. By way of illustration, we have used this data and our current hourly signing cost to compare the cost of signing files for 5% of each PSBs library at that point and also each of these PSBs revenue in 2018 (the last year for which Channel 4 has published data). Whilst we have only done this exercise for the cost of signing files, the same disparities will apply for relative costs for subtitling and AD.

[✂]	[✂]	[✂]	[✂]
[✂]	[✂]	[✂]	[✂]
[✂]	[✂]	[✂]	[✂]
[✂]	[✂]	[✂]	[✂]

16.5 Given this demonstrable disproportionality caused by our large content library relative to our size and revenue, and the importance of building up a large content library as part of our strategy for attracting young audiences, we would ask that Ofcom give urgent consideration as to how this disproportionate impact can be addressed. We do not think the affordability exemption as currently proposed does this. This could be a cap on the number of hours required by the quota (for example at the level of the requirements on the broadcasters main linear Channel, or at the level of the broadcaster with the highest revenue) by limiting the singing quota to 5% of hours added in a given year, not 5% of the full catalogue, or through an exemption for broadcasters VOD only content.

16.6 Those ODPS providers who also have a broadcast service or services for which they make contributions to the BSLBT are also penalised by the proposals as they are already paying for sign presented linear content, however the means in which they do this means that they do not have access to a catalogue of sign presented content which can be repurposed for their VOD player. Not only does this have implications for those ODPS providers, it could also have implications for BSLBT's model if it becomes uneconomical for some ODPS providers who also have a linear service. Given the unique role BSLBT play Channel 4 believes it is vital that Ofcom look at this question carefully to ensure that their proposals do not damage the model and its long-term sustainability.

16.7 We also believe there is a very real danger that what Ofcom is proposing will involve significant cost but may not achieve the intended benefit for this audience. There are a number of reasons behind this:

- The limited additional capacity of existing suppliers of sign interpretation and the current shortage of suitable sign interpreters.
- The lack of information on the BSL audience and their preferences to underpin the approach and the danger of undermining the current alternative arrangements system.
- The likely impact on resource allocation across VOD and linear and across different forms of access service.

Capacity issues

16.8 Channel 4's signing is provided by a third part supplier and we are aware that at present the available providers have limited additional capacity given the number of studios and suitable sign interpreters. In order for all qualifying ODPS providers to meet the 5% quota in the proposed timeframes significant additional capacity will be required. This will take time and as we are concerned that the intervening imbalance between demand and supply may restrict ODPS providers ability to meet the quota within the necessary timeframes and could push the cost of signing up even further, meaning the cost implications are even more significant. Both Ofcom and DCMS should factor this issue into their impact assessments otherwise their calculations could diverge significantly from the financial impact on ODPS providers in practice.

16.9 We are aware from conversations with our supplier that there is already a shortage of suitable sign interpreters and this will also impact upon the speed at which capacity can be increased. Failure to address this shortage will either mean that the necessary capacity increases are unachievable or that the quality of sign interpretation is below the required standard, to the detriment of the BSL viewer's experience. If this results in significant variations in the quality of sign interpretation and a negative viewer experience it may actually have a damaging impact on inclusion, fuelling frustration and driving BSL viewers away from sign presented content on ODPS, including, importantly, Public Service content.

16.10 As such it is vital that Ofcom do not prioritise quantity over quality when it comes to signed content and that increases in the volume of sign interpreted content happen at a rate that is achievable whilst also maintaining the quality of sign interpretation.

Understanding the preferences of the BSL audience

16.11 As Ofcom identify the needs and views of the BSL audience, and the nature of that audience should be a central consideration here. Unfortunately, this is very difficult given the chronic lack of data on the size and preferences of the Deaf population in the UK for whom BSL is a first language. It is not only data on the relative size of the audience that is needed if we are to assess audience benefit, audience preferences are also key. We need to understand what type of content BSL audiences want to view and where, and what relative value is placed on sign-presented and sign-interpreted content.

16.11 For example, if sign-presented content is valued over sign-interpretation, it may not serve audiences if the regulations drive large volumes of sign-interpreted content but a reduction in the volume of sign presented content because the number of broadcasters choosing to pay in to BSLBT declines and is not compensated for by an increase in ODPS provider contributions, leaving BSLBT with a reduced programme budget. It also may not serve BSL using audiences well if the new regulations incentivise changes to linear signing strategies, pushing broadcasters away from signing content – such as films and news which we understand BSL audiences value – which do not have VOD rights or have a short VOD shelf life.

The impact on resource allocation

16.12 It is important that the costs involved in meeting the signing obligations deliver demonstrable benefit for BSL audiences, particularly as the introduction of the new VOD requirements - which requires a far greater number of hours and much greater cost than its linear equivalent- at a time when Covid-19 and impending restrictions on HFSS advertising have led to reduced budgets, may mean resources have to be diverted form areas where we are over performing against our access services quotas. To manage the potential large increase in the cost of signing on All 4 could have a large impact to our Access Services supplier. To manage costs and budgets we may have to ask them to significantly reduce the quantity of both subtitling and audio description on linear and All4 close to the level of the new obligations. This would have a detrimental impact on the millions of viewers who use AD and subtitles that currently benefit from our over-delivery on our obligations. It will also impact upon our supplier Red Bee's Access Services division potentially necessitating a restructuring of both their staffing and their facilities.

16.13 We hope the research Ofcom is carrying out will help to address this and we are keen to explore ways in which broadcasters can support the collection of better data in this area on which to inform our decision making.

Development work

16.14 Further development work is also required when it comes to signing. At present signing involves an entirely separate file and a strategic signing solution is needed to enable the use of a single video asset that combines programme and signing with an on/off capability. This will be better for both audiences and ODPA providers. If and when such a solution is reached there is likely to be disruption and cost involved in moving to the new solution. Again Ofcom should factor this sort of necessary disruption to implement technical improvements into their approach.

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

17.1 As we set out in our introduction, we strongly believe that audience benefit and user preferences should be driving principles in access services provision. It is important that ODPS providers have sufficient flexibility to meet the needs of their audience through the best combination of sign-presented content, sign-interpreted content or BSLBT contribution (or equivalent provider of sign-presented content). For this reason, Channel 4 favours Option B which would enable ODPS providers to choose how they meet signing requirements in a way that best suits the needs of their particular audience.

17.2 Given the issues we have identified throughout our response regarding proportionality of linking obligations to catalogue size we have some concerns about the disproportion impact of either approach. We would ask that Ofcom look closely at how they can ensure the requirements on ODPS providers with large catalogues relative to their turnover are fair and proportionate.

17.3 As we have set out in our answer to question 16, there is a risk that those ODPS providers who already make contributions to the BSLBT are penalised by the proposals and may be disincentivised from using the alternative arrangements system, as it may be more cost effective to provide sign-interpreted or sign-presented content on their ODPS than to pay the relevant contributions for both/all services. We would not want this to undermine the current system for alternative arrangements, particularly at a time when BSLBT has seen revenues (and projected future revenues) grow significantly and has been in the process of restructuring their organisation to better serve both the BSL audience and their subscribers. Given the unique role BSLBT plays we would ask that Ofcom look at this question carefully to ensure that the level for alternative arrangements is set at a rate that supports the current model and its long-term sustainability.

17.4 As Ofcom suggests that ODPS providers will be able to meet their signing requirements flexibly we assume that there will be some sort of ‘top up’ rate where ODPS providers can make a smaller contribution to BSLBT (or an equivalent provider) should they not fully meet their obligations through sign-interpretation or sign-presented content. We assume this could take the form of a ‘per hour’ cost roughly equivalent to the cost of an hour of sign-interpretation. One way to avoid disadvantaging those who have already made linear contributions to BSLBT might be to reduce this ‘per hour’ rate for those providers. Any such measures should consider the preferences identified by Ofcom’s research and look to incentivise meeting the requirements in the way that derives greatest benefit for BSL viewers.

18. **Do you believe there should be an exemption for signing in cases where it allows ODPS providers to offer subtitling and AD?**

18.1 As we have set out it is important that ODPS providers can prioritise resources where they will have most benefit for access service users. Each ODPS has a distinct audience, and that audience may also vary depending on the platform. However, it is very difficult to make this sort of assessment given the lack of robust data on the size and preferences of the BSL audience. Whilst the BSL audience is small, their accessibility needs are distinct and important, especially given the social exclusion often experienced by the Deaf community. We look forward to seeing the outcome of Ofcom's further research with users and hope it will help to inform these sorts of question.

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

19.1 Yes, as set out above we believe that the current arrangement with BSLBT plays an important role in ensuring provision for BSL audiences and Ofcom should ensure that the any changes strengthen, not undermine this arrangement.

19.2 As well as providing a range of sign presented content, BSLBT also play an important role in ensuring Deaf talent are involved in creating content for Deaf audiences and are working to address shortages of Deaf talent in the production industry. This work is important in serving Deaf audiences, but takes time and we would like to see it continue and come to fruition.

19.3 This role could be strengthened further were there better data on the BSL audience and the viewing preferences of viewers for whom BSL is a first language.

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.**

20.1 Channel 4 cannot provide information on the relative costs of sign interpreted and sign presented content as we have not commissioned sign presented programming in many years. However, as we understand it the cost of sign presented content can vary significantly depending on the type of programming. BSLBT may be best placed to provide relevant data here.

20.2 There a number of different costs involved in providing sign interpreted content on All4 and we have set these out in appendix 1.

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

Applying the targets to on-demand platforms

21.1 In 5.5 Ofcom proposes that legislation requires ODPS providers to refresh their provision of access services at the same rate as they refresh content on their service more generally.[9] Whilst we understand and support the need to provide new content for access service users, it is unclear exactly how Ofcom envisage this working in practice and we are concerned by the implications. The complexities of licence periods on VOD and the popularity of archive box sets with viewers mean that such a rule could actually be detrimental for access service using audiences and could damage PSBs ability to compete with large global VOD providers.

21.2 As we have set out in our answer to question 5, on broadcaster ODPS services the length of time for which a programme is available varies considerably depending on the agreed contract and rights for that programme.

[9] Para 5.5

For many broadcast programmes Channel 4 will only have 30 day catch-up rights for VOD, however where a programme is very popular, or is a returning series we may choose to negotiate to extend that. For some originations we will have longer rights, which can be up to 5 years, and for some content commissioned pre-2004, before the changes to the Terms of Trade, we have rights in perpetuity. We also have growing volumes of VOD only content, the licence lengths for which vary.

21.3 Over the last few years we have invested in sign interpretation on a number of box sets which includes some popular archive content such as The Inbetweeners. We know this content remains very popular and it would make no sense to require us to take this down. We can strengthen the library of content available for BSL users if we prioritise some content, and particularly box sets, with longer licence periods or where we can negotiate extensions to licence periods for popular signed content. This can be a way to serve audiences, and will often involve costs for the broadcaster. It should not be portrayed as 'gaming' the regulations.

21.4 The regulations should not prejudice services that have a lot of content with short licence periods, particularly given that in the case of PSBs like Channel 4, those short licence periods are a function of the Ofcom regulated terms of trade. They should also not restrict ODPS providers from building up a large catalogue of content including by extending the licence period for popular content, particularly where it is provided with access services. As we have set out above developing a large and varied library of content has been identified in Ofcom research as key to appealing to young audiences as BVOD services like All4 compete head-to-head with VOD services including those from large global providers. As these services will not face the same regulatory burden Ofcom's suggested approach risks placing UK-native operators at a significant competitive disadvantage. It is vital that ODPS providers have the flexibility to develop their catalogue in ways that serve their audiences without restrictive requirements around refresh rates.

21.5 Given the complexities of the difference licence periods as set out in our answer to question 5, and the lack of available data on the amount of content added and removed in a given period, there would also be significant challenges in creating and implementing such a requirement. As we touch upon in our response to question 24, given the significant variations in the quantity of content being added to and removed from an individual ODPS over time, let alone the degree of variation across ODPS providers we do not think it would be appropriate to use averages here.

21.6 We would, therefore, dispute the need for, workability or desirability of regulation over the refresh rate of content.

21. 7 If at a later date it becomes evident that ODPS providers are 'gaming' the regulation in ways that are detrimental to access service users Ofcom has the ability to revisit and clarify its guidance in the future.

Applying the quotas across multiple platforms

21.8 Ofcom has suggested two approaches for ODPS providers that provide services across multiple platforms, the flexible approach whereby quotas can be met in a flexible manner as an average across all of their non-exempt platforms, or the prescriptive approach whereby quotas must be met equally across all platforms. Ofcom states that its preference is for the 'prescriptive option' because it wants to establish an expectation that on-demand services should be made available across all platforms, as far as possible.

21.9 Whilst it has been deemed outside of the scope of this review, it is important to note that by far the most rapid, cost effective and impactful way to improve the provision of access services across ODPS on different platforms would be to mandate standardised technological specifications for the delivery of access services across different platforms and devices.

21.10 As long as this does not occur, different platforms and devices will each require their own bespoke and highly technical solution which is time consuming, resource heavy and costly to develop. Unfortunately, unless adequate exemptions are in place, Ofcom's preferred approach is incompatible with these realities of platform development as outlined throughout our submission. ODPS providers cannot work to develop bespoke solutions for all platforms concurrently, instead they will work to a roadmap prioritising one platform, or where possible, family of platforms, at a time. The timeframes for this work can vary significantly depending on other cross cutting technological developments, upgrades or other factors such as changes in provider which the teams involved have to respond to. At the same time these teams will be dealing with updates to platforms where access services are already delivered and this landscape of perpetual change can cause significant disruption to planned timeframes and budgets and uneven delivery over time. The problems with the cross cutting and generic definition of platform used by Ofcom are also particularly relevant here as this definition/approach masks the complexity which makes prescriptive quotas not only undesirable but unworkable. There may be significant variation in the level of access services an ODPS provider can deliver even within what Ofcom deems one 'platform'.

21.11 Should Ofcom follow the approach to technical difficulty we propose in 13.7 the prescriptive approach may be workable, as generally once access service delivery is enabled on a platform we are able to achieve a roughly similar level of provision. However, this approach would still be flawed as it does not allow for fluctuations due to upgrades, such as we have seen as we move from SD to HD on certain platforms, and also takes no account of relative audience benefit including by reference to comparative cost and user preference and usage issues. For instance, as we have argued previously it may be significantly more beneficial for access service users for ODPS providers to invest in more content with subtitles, AD or signing on the platforms of choice for each of those user groups rather than investing in a lower level of provision across a wider range of platforms many of which may not be suitable for their needs. Platform preferences may be informed by the wider accessibility features available (or lacking) on certain platforms or the suitability of a particular platform for a certain type of access service, for example the usability of sign-interpretation on a mobile screen compared to a big screen device.

21.12 For these reasons, it is important that ODPS providers have sufficient flexibility to alter the level of access services provision between different platforms in order to maximise the audience benefit derived from available resources. Channel 4 therefore supports option 1 – the flexible approach to applying targets across multiple platforms.

Interim Targets

21.13 When Ofcom published their original recommendations at the end of 2018 we were very concerned by the suggestion that the signing quota would not be phased like the other requirements but rather ODPS providers would be expected to reach 5% within the first two years. It is our understanding that legislation will now include an interim target for signing, in line with interim targets for subtitles and audio description. This is important because it reflects the needs for ODPS operators to not only build up their volume of signed content but also to change their processes to accommodate the new requirements. In particular, as we have set out, in our view there is not currently adequate signing capacity at access service suppliers to meet the level of new demand required for ODPS providers to meet the new providers in the proposed timeframes. In order to resolve this it is likely that the new requirements will necessitate changes to resourcing at our access service suppliers. This will take time, as will establishing a system for alternative arrangement. There is no mention of an interim target for visual signing in Ofcom's consultation and we would be grateful for conformation that this interim target will be included in the legislation.

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

22.1 We support Ofcom's proposal that ODPS providers should apply for exemptions at the end of year. Given the many factors affecting access service delivery and rate of progress in this area, and the potential for unexpected changes to the landscape this seems to be the most workable approach. The only negative impact of this approach may be for the provider of alternative arrangements as the lack of visibility of their likely revenue may limit their ability to plan how to spend their budget.

22.2 As we have set out in our answer to the previous question, we think it is important that the signing quota is phased over 4 years like the quotas for subtitling and audio description. ODPS providers will need to build up their catalogue of signed content and for the reasons set out a 4 year target of 5% is ambitious and will stretch both ODPS providers and the capacity of access service suppliers. Pushing ODPS providers to reach the quota in 2 years would set them up to fail and would be more likely to result in the perverse consequences we have talked about.

23. If you are an ODPS provider, would you be able to provide Ofcom with the information outlined in 5.18 to 5.21 on a regular basis (e.g. every 2 years)?

23.1 Yes, however the resource implications should not be underestimated.

24. Do you have any comments on the cost assumptions included in this Annex?

24.1 We have a number of comments in relation to Ofcom's cost assumptions.

24.2 Firstly, the assumptions that for 'broadcasters with existing access obligation…costs are all repurposing costs' as most content is repurposed, and VOD only content is insignificant and would therefore lead to 'no material increase'[10] are inaccurate. As we have set out previously, in 2020 Channel 4 will have acquired over 1130 hours of VOD only content and the role of this type of content is only growing so it should be considered within Ofcom's work to ensure their approach is fit for the future.

24.3 Ofcom states, "many access services can be purchased from content providers." The purchase of access services is extremely rare for Channel 4. We need to edit all acquisitions for compliance and must then need create access service files for the edited content. Even in the rare case where an acquisition did not require any editing we would have concerns about the quality of purchased access services.

24.4 As we set out in our answer to question 4 there are ongoing development costs for platforms as a result of new devices and software upgrades that impact access services provision. Alongside this there are also general maintenance costs for each platform and there are also further costs incurred as a result of internal system upgrades, product development or changes in contractors which are not captured within Ofcom's cost calculations. This includes the impact of moving from SD to HD on All4, the necessary and costly software upgrades required to our systems in order to manage the increased volume of signed content.

24.5 The assumption that the new regulations will not involve additional cost for monitoring, reporting and compliance is also flawed. Running and collating all of the data required for this response has involved considerable time and resource across a number of different teams and we have still not been able to provide all of the information we would have liked given the time and resource implications. As such we anticipate that the new requirements could be considerably burdensome for broadcasters. As above, we would ask that Ofcom looks to avoid this by making the requirements for evidencing exemptions and 'reasonable endeavours' as straightforward as possible.

24.6 Given the significant variations across the business models of different ODPS providers and the complexities involved we feel that the use of average ODPS library data is inherently flawed and would therefore suggest that Ofcom avoid this wherever possible. For example, in 5.20 Ofcom acknowledge that the rate at which content is replaced and the amount of box-set archive content on an individual ODPS will impact upon costs and the calculation of their applicable obligations. They say, "Ideally, we would receive

[10] Ofcom, 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, pg 37.

relevant information from all providers on a regular basis in order to determine which target levels apply. However, if some providers are unable to provide this information, we may need to calculate average proportions of replaced/ repurposed content and use these averages in assessing which targets are applicable."[11] Given the significant variations in types and volumes of content with different VOD licences not only on each ODPS, but on a single ODPS over time we do not believe that using averages in these calculations would be a viable approach. However, as this data has proven very difficult to ascertain and doing so regularly will likely involve additional resource and new systems for data capture, we would ask that Ofcom consults further with ODPS providers on how this should be done.

25. **Do you agree with our assessment of the impact of our proposals on the relevant equality groups? If not, please explain why you do not agree.**

25.1 As we have set out throughout our response, Channel 4 is committed to promoting social inclusion and serving audiences with different accessibility needs. However, we are concerned that elements of Ofcom's approach could actually negative impact upon provision for certain audiences and disabled viewers by damaging our ability to prioritise resource to deliver greatest audience benefit and driving volume and breadth of provision over quality, suitability and variety. There is a risk that if even quotas are met this could mask an underlying reality whereby providers are focussing on quick fixes and easy wins rather than the platforms and content that are of most value to users.

25.2 As we have set out, the quotas may also result in resources being diverted from linear – where Channel 4 significantly over delivers on our obligations - to VOD at a time when linear still makes up the vast majority of or viewing. It may also necessitate that we redirect resources from subtitles and AD on VOD – where we are delivering above the new requirements on the platforms that are enabled – to signing. This will mean more sign interpreted content is available for BSL users but will mean less provision for the larger audiences who use subtitles and AD.

25.3 As we set out in our answers to questions 16-19, a number of factors make it difficult to assess the overall impact of the proposals in terms of audience benefit. We do not feel that Ofcom's Equality Impact Assessment takes all of these complexities into account, instead assuming that any impact will be entirely positive.

[11] Ofcom, 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, pg 28.