Making on-demand services accessible

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

The Television On-Demand Forum (TODIF) is an informal information sharing body through which UK notified On-Demand Programme Services (ODPS) can share information and engage with industry and policy stakeholders such as Ofcom and the DCMS.

Consultation questions:

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

No.

TODIF members agree that there should be exemptions based on affordability but worry that using overall turnover will lead to perverse outcomes. Members' businesses are based on a wide variety of business models and structures. Some are VOD only; others combine VOD (catch-up and on-demand) offerings with multi-channel linear broadcast packages; while others form distinct sections of broadly diversified entertainment, telecoms or retail companies.

So while overall turnover may be a reasonable starting point for VOD-only businesses, for members with more complex business structures, it will hold no resemblance to the amount of revenue generated by a member's VOD activity, and consequently the VOD part of the business' ability to afford to provide access services.

We appreciate that lack of profitability in and of itself does not always mean a business cannot afford to provide access services, especially for businesses in the initial growth and investment stage of development, but conversely just because a business may generate significant revenue in a sector distinct and distant from the provision of on-demand video, does not mean the business is structured in such a way to allow it to divert those revenues to on-demand access service provision.

One possible outcome of the 'overall turnover approach' is that a VOD section of a broader business, burdened with an unreasonably high cost of access service provision which could not be supported from its own revenues, may look to rationalise the amount and diversity of VOD services offered.

We would like to suggest that Ofcom looks again at the concept of 'relevant' VOD turnover, in line with its method of calculating affordability for access service on linear broadcast services.

Although to date VOD revenues have been difficult to isolate, because of the way in which some businesses bundle VOD alongside linear offerings, we think that it would be possible, using for example a proportional analysis of linear and VOD viewing data for comparable content, to arrive an acceptable industry wide proxy for VOD revenue for members that are

not VOD-only.

We also think that for non-VOD-only members, Ofcom should take as it's starting point whether a member with an associated linear broadcast offering has yet been required to provide access services using the established 1% of relevant linear turnover test. It stands to reason that if a member cannot afford to provide access services at 1% of its (considerably larger) relevant linear revenue, it would not be able to afford to provide it on VOD.

This appears to align with the approach Ofcom had adopted for its signing options.

While supporting the notion of relevant turnover, rather than overall turnover, some members voiced concern that global players should not be able manipulate their corporate structure or country of establishment, to artificially suppress the turnover of their video operation.

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

Yes, TODIF members agree that small companies should be exempt, as long as the corporate structure has not been deliberately manipulated to artificially delineate an ODPS provider as a small company within a wider group.

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

No.

For VOD-only businesses the threshold of 1% may correlate reasonably to the 1% of relevant turnover used by Ofcom for calculating an exemption threshold for linear broadcasters however, for members with more complex structures and revenue sources, a blanket 1% of overall revenue will lead to a distorted pattern of obligations, that some have referred to an access services tax.

In our response to Question 1 above we asked Ofcom to look again at the concept of relevant turnover for VOD providers using a mixture of currently available audience and revenue data to arrive at a proxy value for VOD revenue for non-VOD only service providers.

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

We note with interest that Ofcom has found that for those non-VOD only members for whom it has data that costs for providing VOD access services average out at 0.6% of overall turnover.

The following questions are applicable to ODPS providers only:

Questions 4 to 9:

TODIF does not have this information

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

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

- When gathering data from services on, Ofcom continues to be vigilant against non 'common sense' outcomes that, as per paragraph 3.28 of the Consultation, "exclude popular services or include niche services"

- Whilst Ofcom may be reluctant to specify in legislation exactly which alternative metrics may be used if services cannot provide "unique visitor" data, the possibility that alternative measures may be used, should be clearly stated in legislation

- That Ofcom takes account of the distinction between 'unique visitor' and 'unique viewer', in that not all visitors to a site will be there to watch content.

- We would seek further clarity on how Ofcom defines a platform when applying exemptions on a platform-by-platform basis? For example, while Ofcom in paragraph 3.33 of the Consultation considers iOS apps and smart TV apps to be different platforms, how would it classify the set-top boxes of different broadcaster/retailers, such as Virgin, Sky and BT, which although in the same technical 'genre' as each other, may all have technically diverse delivery requirements?

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

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

And, as per our response to Question 11, we are concerned that Ofcom may be applying its threshold of 200,000 unique visitors to notional 'platforms' (e.g. 'smart TV', 'set top box') that do not in fact share underlying operating systems or means of delivery.

Question 12:

TODIF does not have this information.

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

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

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

It has been suggested that all platforms not directly within the control of an ODPS should be subject to a technical difficulty exemption, with the ODPS only required to provide third party platforms with access service files - on the terms of the third party platforms - to the extent that those terms and costs were reasonable. i.e on a par with the costs an ODPS provider would incur on their own platform.

Concern has been expressed that Ofcom's current approach risks exposing ODPS to unlimited liability for development and provision for platforms they do not control.

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

Yes

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

Members have stated that live sport should also be exempt.

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

Members cautioned against basing an approach to requirements too closely on broadcast services, and were in favour of all providers having the choice of providing sign-interpreted/presented content or providing a financial contribution.

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

Members' opinions varied on this depending on their circumstances.

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

Members were in favour of the industry still supporting BSLBT, however worried that new regulations could have an adverse impact on contributions to BSLBT with funds being diverted into provider's own product development

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

TODIF members agreed that low revenue providers should be given the option of providing addition subtitling, but cautioned that Audio Description and subtitling served a different access need to signing. Providing the former in lieu of signing should not be grounds for exemption in isolation. Subtitles are a good alternative to signed content however many deaf people have BSL as their first language.

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

TODIF does not have this information.

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

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

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

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

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

TODIF members have the following concerns:

- **They have stated on a number of occasions that they find the respective targets for the two, and four, year deadlines too steep.**

- **In view of the considerable investments that these requirements will entail, an approach that offers the most clarity for the services which will be expected to provide services in the calendar year is essential.**

- **With this in mind we ask that the notification period <u>before</u> the first year of provision is sufficient to allow service providers to set up workflows and agree technical requirements with platforms.**

- **Given that the initial period of provision is likely to throw up a number of organisational and technical issues for service providers, TODIF members think that Ofcom should not commence breach proceedings without careful consideration of a service provider's reasons for not having reached a target. These reasons may legitimately extend beyond a significant change in circumstances or the failure of a third party.**

- **Special consideration should be given in circumstances where services had failed to reach targets on particular platforms because of the need to time consuming, or unreasonably cost technical development.**

Question 23:

TODIF does not have this information