

Designation of Television Selection Services

ITV plc response to Ofcom consultation.

ITV welcomes the opportunity to respond to this consultation.

As a general comment we believe that Ofcom's proposed approach to designation of Television Selection Services (TSS) is broadly sensible. Much of course will depend on where Ofcom suggests setting the threshold for designation (thus determining which platforms will be caught) and we would appreciate a further consultation on the approach Ofcom plans to take to this crucial issue.

In that context, it would make sense to consider taking a pragmatic position with platforms that might be slightly above any threshold that is set. It would certainly be appropriate to designate such platforms but we would urge that such a designation should remain in place for a sensible period of time (a number of years) regardless of modest fluctuations in the number of users over time that could cause the total to dip below the threshold. Of course, we recognise that this should be subject to proper periodic consideration of de-designation for technical reasons or proportionality of cost reasons or if a platform experiences a precipitous decline in user base.

A further point that Ofcom and government should consider is whether demographic data might be taken into account when determining if a platform is in scope. So, for instance, in a borderline case if a platform was used by a high proportion of younger audiences compared to others that might perhaps tip the balance towards inclusion given (a) the imperative of PSBs to reach younger audiences and (b) the government's initial decision not to include gaming platforms in the regime.

In the meantime, we have a limited number of comments in response to Ofcom's consultation, primarily focussed on the technical and cost considerations of designation (pages 22-25 in the consultation document)

The Need for some flexibility in designation/de-designation: ITV's experience in launching ITVX

The interaction between TSS and IPS services is far more complex than the old world of TV channel carriage by a very small number of relatively static broadcast TV platforms a world which is now in decline.

Illustrating this, ITVX was a far more sophisticated and technologically advanced streaming player even than the ITV Hub streaming service it replaced. As a result, in the run up to the launch of ITVX we had to confront head on some of the technical challenges of inclusion within a number of platforms, particularly older ones.

Our experience was that, as a general rule, if the software on a platform was still being supported by a manufacturer then it was likely that we could include ITVX with reasonable

levels of functionality. So as Ofcom suggests, a presumption (albeit perhaps a rebuttable one) that the proposed designation regime should apply for a minimum of 5 years from when a platform is first put on the market feels reasonable.

By contrast, the position between 5 and 10 years is rather less straightforward and there could be real issues with a mechanical application of designation and hence must carry and must offer on either or both sides. In our experience of the launch of ITVX it was in this period that consumer expectations of the longevity of TVs came up against the reality of modern TVs as computers which (a) did not have the same lifespan as older less complex TVs and (b) became obsolete more quickly as computing power and software innovation continues at pace.

In this 5-10 year window it would seem sensible to try to build more flexibility into the designation regime, perhaps via regular reviews of the designation of older platforms with input from both the providers of IPS and TSS services. Such reviews (which could be on Ofcom's own initiative and/or in response to industry requests) could take into account the continued scale of use of the platform, technical feasibility for both the TSS and IPS of continued inclusion, on-going cost and time to maintain for engineering teams vs other priorities etc. In this context, Ofcom's proposal to take particular account of industry practice in relation to both TSS and IPS services seems sensible. Clearly there may also be a significant difference between maintaining an app on an older platform where it has been for some time or launching a new or improved app onto the same older platform which may be much harder.

A further point to make that became very clear in the context of the launch of ITVX was that even within the universe of devices that could include ITVX at sensible cost and with sensible engineering effort, those devices had varying levels of technical capability (in terms of CPU power, GPU power and memory). Accordingly, in order to deliver an acceptable level of overall viewer experience across all devices we apply three separate application profiles for ITVX depending on what the device can handle. These profiles vary in the number of hero images, tiles per rail, rails on the homepage and the presence (or not) of a auto content rotator. Alongside those features, where appropriate a number of other technical features are used to minimise CPU, GPU and memory usage on constrained devices, including reducing animations, replacing video with static images etc. In other words, there is no one size fits all ITVX service or TSS platform in order to make sure that all consumers get as good a service as their particular device will support.

We would make a small number of additional points:

1. It's crucial that Ofcom recognises that DIPS services will be unlikely (for rights reasons) to be able to go onto platforms that do not offer effective DRM protection. Problems around effective DRM was a reason why ITVX did not launch on a small number of platforms.
2. Where an established platform that would ordinarily be designated as a TSS brings out a version of their platform with a new operating system that should not present an opportunity for the platform providers to argue that this is the launch of a

completely new platform with no users and hence that it should not be regulated. An example of this might be [.] However, the regime ought to recognise that in this situation providers of IPS services are likely to need considerably longer in practice to actually accommodate a new operating system given the very significant additional work that is required as compared to a platform using an established web based IOS or Android operating system for instance.

3. One of the critical questions not covered in the consultation concerns the responsibilities of TSS and DIPS for making the necessary changes in order to facilitate inclusion and who pays for such changes. We assume that the terms of the inclusion of a DIPS on a RTSS and the related costs e.g. of modifications, access services etc will be part of the overall commercial negotiation subject to adjudication by Ofcom?