



# **Designation of Television Selection Services: The principles and methods Ofcom will apply when preparing reports for the Secretary of State**

Sky Response to Ofcom Consultation

February 2025

## Introduction

Ofcom's consultation sets out the principles and methods that Ofcom is proposing to apply when making reports to the Secretary of State with recommendations for designation of Television Selection Services (TSS). Designated TSS will be subject to new requirements pursuant to the Media Act 2024 to ensure that the PSBs' designated internet programme services (DIPS), such as BBC iPlayer, are available, prominent and easily accessible on these platforms.

Sky operates TSS that could fall in scope of designation by the SoS, and therefore become subject to these new requirements.

While Sky supports the new prominence and must-offer/carry obligations introduced by the Media Act, these are nonetheless significant regulatory interventions which will inevitably restrict Sky's ability to develop our platforms as we might otherwise do. As Ofcom notes, it will be important to *"strike an appropriate balance between the audience benefits and the impact of the regulatory obligations arising from designation as a regulated TSS."*

It is therefore essential that platform providers have sufficient clarity on the approach that Ofcom will take when making its recommendations to the SoS on designation of TSS, so that they can take this into account when planning their product roadmaps.

Unfortunately, the principles and methods that Ofcom has proposed in its consultation document are at a high level and so it is difficult at this stage to envisage how they will operate in practice and to what extent different TSS providers are likely to fall in scope of designation. Ofcom should strive to give more clarity at this stage as to how it intends to determine what is meant by a 'significant' number of users, as this is the key factor on which it will rely for recommendations to the SoS on individual designations of TSS.

We appreciate that Ofcom will want its first statement of principles and methods to be as flexible as possible and that greater clarity will be provided when Ofcom consults on its first report to the SoS later this year. However, Ofcom could provide greater clarity for TSS providers in this (and/or subsequent) statement(s) of principles and methods, such as by providing (i) examples of scenarios in which Ofcom would normally consider a TSS to have a significant number of end users in the UK and (ii) examples of scenarios in which TSS would not normally be considered capable of operating as a regulated TSS.

As Ofcom refines its approach to assessing TSS over time, we recommend that Ofcom updates its statement of methods and principles at regular intervals in consultation with stakeholders to provide as much clarity as possible to TSS providers on Ofcom's approach.

Notwithstanding the above overarching concern, we have set out in this response our comments on Ofcom's high-level proposals.

Ofcom has rightly identified that certain older models of internet television equipment (ITE) and older versions of internet television selection services may not (if designated) be able to meet the new prominence and accessibility

requirements. Prior to making any recommendations to the SoS it will be essential that Ofcom obtains a clear understanding directly from providers of how they support their TSS and associated ITE. This will help to avoid placing obligations on TSS providers (and DIPs providers) which would be either impossible to comply with or disproportionately onerous, in particular where the user base is small or decreasing.

We also caution Ofcom against imposing excessively prescriptive technical requirements under its forthcoming prominence and accessibility codes and guidance. This will ensure that more TSS will be capable of functioning as regulated TSS (RTSS). To the extent that Ofcom is minded to impose new requirements that would be technically challenging for some older TSS to implement (such as text to speech functionality or any prescriptive prominence requirements impacting search functionality), Ofcom should consider providing specific exemptions for such TSS (if designated). These exemptions could be set out in Ofcom's forthcoming codes of practice on prominence and accessibility, in the same way that older models of TV equipment are exempt from the more onerous accessibility requirements under Ofcom's EPG Code.

## Individual designation

The Media Act sets out the matters Ofcom must consider when preparing a report to the SoS recommending individual designation:

- a) The number of members of the public in the UK using a TSS and whether that number is significant;
- b) The manner in which the TSS is used;
- c) Whether the TSS is capable of functioning as an RTSS, and whether it can be made so capable; and
- d) Such matters as Ofcom considers likely to affect the above matters

In the following sections we discuss Ofcom's proposed methods and principles for addressing each of these matters.

### 'The number of members of the public in the UK using the service and whether that number is significant'

Ofcom sets out a range of factors it intends to take into account when assessing the number of members of the public in the UK and whether that number is significant, including:

- Using the "*best available evidence*" to provide an objective and reliable basis to measure the number of people in the UK using the service
- Seeking to ensure that public service content is widely available
- Determining the threshold "*in a proportionate way*".

As noted above, Ofcom's proposed principles and methods are at a high level such that it is difficult at this stage to predict how they will operate in practice, in particular when Ofcom is recommending the threshold(s) for what constitutes a 'significant' number of users. As this is the key factor on which Ofcom will rely for recommendations on individual designations of TSS, Ofcom should seek to give more clarity in its principles and methods. For example, Ofcom could provide examples of scenarios in which Ofcom would normally consider a TSS to have a significant number of end users in the UK.

In addition to our overarching concern outlined above, Ofcom's final principles and methods should explicitly state that Ofcom will request usage data and other relevant information from operators of TSS and take this into account when considering such usage to be 'significant'.

The principles and methods should also make clear that Ofcom will gather and consider data demonstrating historic trends in the usage of TSS. As Ofcom notes, it may not be appropriate to recommend designation of a TSS if evidence suggests user numbers are declining and are unlikely to be over the threshold for a reasonable period following designation.

Ofcom's principles should also take into consideration the launch of new platforms which will necessarily start with a small number of users. Availability of PSB DIPS can be determinative of a decision to launch a new platform, and therefore Ofcom should be open to designating such new services where there is compelling evidence that the platform is likely to reach the relevant user thresholds. While we note that the draft principles and methods state that Ofcom may also take into account "*growth projections*", under S362AF(2) of the Communications Act the SoS may only designate individual TSS where they consider it to be used by a significant number of members of the public in the UK. It would be helpful if Ofcom could clarify whether, in its view, this precludes an individual TSS being designated at (or even prior to) launch.

### Supplemental Question 1

Ofcom has requested views on the potential use of 'number of TSS installed on ITE devices in UK homes' as a proxy for 'the number of members of public in the UK who use a TSS', and on the potential use of an absolute number of UK users when setting a threshold for significant use.

Sky broadly agrees with this potential approach. We agree that the number of TSS installed on ITE could be a proxy for setting a threshold for significant use, although as stated above we would welcome more clarity on how Ofcom would use that data to define what it understands to be 'significant', and how it would account for issues such as multi-homing/multiple devices attached to the same screen. To aid Ofcom, we would be able to provide data on the number of Sky Q boxes, Sky Glass panels and Sky Stream devices in customers' homes. However, we do not have data on the number of users per household and so would not support an approach that relied solely on such data.

Note that Sky Glass and Sky Stream are based on a Sky/Comcast global platform and are collectively known as "Entertainment OS". All Sky set top boxes prior to Glass and Stream (including Sky Q) are based on a different technology and constitute an entirely separate platform.

### 'The manner in which that service is used by such persons'

Ofcom proposes to generally take account of the extent of the *active* use of the TSS when assessing the manner in which the service is used.

Subject to Sky's overarching concern above about the general lack of clarity in this consultation, Sky broadly agrees that when assessing the way a service is used, Ofcom should take into account the extent of active use of the TSS.

Ofcom should make clear that it will request and take account of active usage data and any other relevant information from operators of TSS in order to inform its view on active use.

### Supplemental Question 2

Ofcom has requested views on a potential approach to assessing the 'manner of use' of TSS based on analysis from market research company, Omdia, which measures the 'active installed base' of TSS by considering the number of ITE shipped into the UK, the TSS installed on those ITE and statistical modelling and consumer research to estimate those that are being actively used.

While Sky has no objection to Ofcom using such data provide by Omdia, it should not rely solely on this data but – as noted above – it should request active usage data and any other relevant information from operators of TSS to inform its view on active use.

### 'Whether that service is capable of functioning as an RTSS and whether it can be made so capable'

Ofcom proposes to generally consider a TSS to be capable of functioning as an RTSS if:

- a) It is capable of carrying DIPS;
- b) It is capable of presenting IPS and programmes with different levels of prominence; and
- c) It is capable of including features to ensure it is accessible to people with disabilities.

In considering if a TSS is capable of functioning as an RTSS, Ofcom proposes to take into account its current capabilities and any modifications that may be needed for the TSS to carry out the above functions.

Ofcom has rightly acknowledged in its consultation document that the fast pace of technological change means that hardware and the associated TSS running on it can become outdated, and that there are people using older devices on which a particular version of a TSS is no longer updated and supported, either because the hardware is technically incapable or supporting it or because the TSS provider has made a commercial decision to no longer support it.

The table at Annex 1 to this response sets out each generation of Sky set top box and its key capabilities. Each generation of device has its own profile of processing, memory, storage and security facilities, and so technical limitations will vary according to each profile.

As shown in the table a number of Sky set top boxes remain in the field that are no longer retailed or technically supported by Sky. If Ofcom were to require Sky to update these boxes to accommodate new prominence or accessibility requirements, this may no longer be technically possible (it would likely take considerable resource to find out whether this was the case) and, even if it were, it would cause Sky to incur significant costs in respect of a dwindling customer base. Over time, both the cost and the risk profile of making changes to a device significantly increases.

While Sky Q STBs still receive a degree of support, software updates are much less frequent than for Sky Glass/Stream which currently receive regular and frequent software updates. As Ofcom is yet to consult on its proposed codes/guidance on prominence and accessibility, it is difficult for us to assess at this stage whether Sky Q would be able to support any specific requirements under these codes/guidance. We will not be able to provide a definitive view on this until the codes/guidance have been published (at least in draft form), which according to Ofcom's roadmap will not take place until after the SoS has already designated the TSS in scope.

Notwithstanding the points above, we support the spirit of the prominence regulations in terms of making PSB content widely available and prominent. This could be achieved by ensuring the prominence and accessibility requirements under the Ofcom's new codes and guidance do not impose excessively onerous or prescriptive technical requirements, such that more TSS are capable of functioning as an RTSS. To the extent that Ofcom is minded to impose new requirements that would be technically challenging for some older TSS to implement (such as implementation of text to speech functionality or any prescriptive prominence requirements impacting search functionality), Ofcom should consider providing exemptions for such TSS (if designated). These exemptions could be set out in Ofcom's forthcoming codes of practice on prominence and accessibility, in the same way that older models of TV equipment are exempt from the more onerous accessibility requirements under paragraphs 19 and 20 of the Ofcom EPG Code.

In addition, as noted above, the final principles and methods should also include greater clarity on Ofcom's approach, such as examples of scenarios in which TSS would not normally be considered capable of operating as a regulated TSS. For example, we would welcome clarity on whether a platform such as Sky+HD, which is not capable of carrying apps, but which surfaces PSB catch-up and archive content via its "progressive download" service, would be considered capable of carrying DIPS, and therefore capable of operating as a regulated TSS (putting aside the fact that Sky+HD is no longer in support, and therefore may be unable to comply with more technically onerous prominence or accessibility requirements).

### Supplemental Question 3

Ofcom has requested views and supporting evidence on the following topics, to which we have responded in line below:

- **The number of people using older versions of TSS that are no longer supported by their provider;**

Please refer to the table at Annex 1.

- **When TSS providers release a new version of their service, for how long do they normally support it?**

A typical support period for Sky would be 8-10 years, but there would also typically be a period of overlap with the next generation device or platform. We would also consider the size of the user base before ceasing to support the device. For example, while Sky has launched Sky Glass and Sky Stream, Sky continues to support Sky Q boxes (launched in 2016), albeit with less frequent updates than previously.

- **When IPS providers release a new version of their service, for how long do they normally support it?**

To date no content partners have sun-setted their apps as they have all continued to update their apps on our platforms.

Ofcom has also previously asked Sky whether we have any issues supporting newer versions of **PSB** apps on our platforms:

- As a platform provider, we need to manage many different apps on our devices and ensure that both the apps and the devices can continue to operate to an appropriate standard. As different providers launch new apps or update their existing apps and the features therein, we can come up against performance issues on our older devices (e.g. in relation to memory, processing power and DRM capabilities) and may also experience challenges on our newer devices. Where this is the case, it can take up significant resource to solve these issues. This issue is not limited to PSB apps but applies to all third-party apps.
  - Likewise, apps providers experience challenges ensuring their apps can operate across a range of platforms. Some apps providers (including the PSBs) require platforms to go through a certification process, with test and approval requirements which will be unique to each app partner. Following these processes requires dedicated resources and planning.
  - In practice, Sky and apps providers share all relevant technical information and work together to ensure successful delivery of apps onto our platforms. PSB app providers are aware of the capabilities of our existing deployed devices and so we do not typically experience significant barriers to supporting PSB apps, though we have in the past needed to work through certain technical challenges.
- **The technical limitations and/or costs that are associated with supporting older versions of TSS and older versions of IPS still available in the market.**
    - *Supporting older versions of TSS:* As noted above, each generation of Sky device has its own profile of processing, memory, storage and security facilities, and so technical limitations will vary according to each profile. Support costs will vary according to the frequency and complexity of any updates required.
    - *Supporting older versions of IPS:* To date we have not had any issues supporting older versions of PSB apps, as all the providers have been actively updating. When an application partner indicates they have a new update for a Sky device, we will test it against the deployed models of Sky Q, Glass and Stream devices and provide test results back to the application partner indicating issues they must fix before it can be deployed. Our cost in managing, testing, and publishing the updates for a PSB app is typically around [REDACTED] (across the complete range of our deployed devices).



### **‘Such matters as Ofcom considers likely to affect the matters referred to above’**

Ofcom intends to consider whether it would be appropriate to consider “*any other factors*” that are likely to affect the first three matters, taking into account its relevant statutory duties. Ofcom provides a non-exhaustive list of factors, such as level of use by different audience groups and market factors contributing to the way in which public service content is accessed.

Subject to Sky’s overarching concern, Sky broadly agrees with the additional matters Ofcom proposes to consider. We note that Ofcom may take into account growth projections, which aligns with our view that it may be appropriate to designate a new platform with low (or zero) usage in circumstances where there is evidence that its user base is likely to increase significantly over a reasonable period.

## **Designation by description**

The Media Act sets out the matters Ofcom must consider when preparing a report to the SoS recommending designation by description. These are:

- a) Which TSS are likely to fall within the description in question; and
- b) Such matters as Ofcom considers relevant to that assessment.

The Media Act goes on to state that regulations designating a description of TSS may refer to:

- a) A TSS being used, or being used in a manner specified in the regulations, by no fewer than such number of members of the public in the UK as may be specified in the regulations;
- b) The date on which a TSS is first made available to members of the public in the UK; and
- c) The functions that a TSS is capable of carrying out or may be made capable of carrying out.

In the following sections we discuss Ofcom’s proposed methods and principles for addressing each of these matters.

### **‘Which TSS are likely to fall within the description of TSS in question’**

When considering which TSS are likely to fall within a description of TSS, Ofcom proposes:

- In relation to factors (a) and (c) above, to apply the same methods and principles as for its proposed approach for individual designations
- In relation to factor (b), to use the “*best available evidence*” to determine the TSS that meet that description.

Our comments above in relation to factor (a) (assessment of number of end users) and factor (c) (ability to function as an RTSS) for the purposes of individual designation apply equally for designation by description.



Ofcom's proposal to assess factor (b) based on "*best available evidence*" is vague and we would welcome some additional detail around this.

In addition, we caution Ofcom against recommending a description of TSS based solely on the number of end users, without also considering the ability of the TSS to function as an RTSS and, where appropriate, granting exemptions from requirements that would entail material technical changes, as described above. An exception to this might be for TSS launching into the market after a future date (e.g. post 2026) to ensure that such TSS are developed with the capability to operate as RTSS from (and for a reasonable and proportionate period following) launch.

### **'Such matters as Ofcom considers relevant to the assessment'**

Ofcom proposes to consider whether it would be appropriate to assess "*any other factors that are likely to affect which TSS are likely to fall within the description*", taking into account its relevant statutory duties.

In line with our over-arching concern, these principles are too vague for Sky to be able to comment meaningfully and we would welcome some examples of the additional factors that Ofcom may wish to take into account when considering designations by description.







Sky

February 2025

## Annex 1

### Sky's Hardware Product Generations

#### Sky's Hardware Product Generations

	1998	2001	2006	2016	2022	2022
						
DSAT Tuner/s						
Local Storage						
Broadband						
In-Home Sharing						
Streaming & Apps						
PSB VOD			Progressive download only	PDL and apps	PSB app only	PSB app only
In support?				Occasional updates	Frequent updates	

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]