

## Cover sheet for response to an Ofcom consultation

### BASIC DETAILS

Consultation title: Signing on television

To (Ofcom contact): Peter Bourton

Name of respondent: Oliver Foster

Representing (self or organisation/s): ITV Plc

Address (if not received by email):

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Name Oliver Foster

Signed (if hard copy)

## ITV Plc response to Ofcom consultation – Signing on television

### Overview

ITV is committed to ensuring that its programming is as accessible as possible to all our viewers. Not only do we consider this an important social responsibility, but commercially valuable in ensuring that ITV's channels are attractive to as many people as possible. However, ITV welcomes Ofcom's recognition that in the particular case of signing on some smaller channels, the value delivered to the audience may be outstripped by the cost. As such, we welcome the opportunity to respond to this consultation on the future of signing on television, and commend Ofcom's willingness to consider reform of this important area. According to current audience share, the proposals contained in this consultation paper would currently affect ITV4, Men & Motors, and CiTV, with ITV3 a possible borderline case. Our response should therefore be considered in that context and we would also wish to point to our SignPost business, which provides signing services for many more channels than just those in the ITV family.

This year ITV will provide sign interpreted programming on all its qualifying channels, which includes ITV1, ITV2, ITV3, ITV4, CiTV and Men & Motors. For example, on ITV1 this will include factual programming such as *The Jeremy Kyle Show* and *Wedding Day*. ITV has long scheduled its signed programming in a convenient block in the early hours that is consistent and familiar to viewers who rely on signed programming.

ITV has some remaining doubts about the basis on which change to sign delivery has been reached, and whether in fact maintaining the status quo, or option two containing an alternative fall-back to the status quo if the Sign Zone does not work, would not meet the needs and interests of the sign-reliant community. On the Sign Zone proposal specifically, Ofcom will be aware that this concept has only existed at a somewhat vague and theoretical level. We therefore welcomed the decision to extend the consultation response period to allow for more detailed thinking to take place in order that we – and other stakeholders – could make a meaningful and informed response to the proposal. Whilst we have had further constructive and more detailed dialogue with the Community Channel, there remain some significant questions about how achievable the channel will be in practice, including as to whether there will be a sufficient number of participants to deliver success. Aligned to this is ITV's concern that if it does not succeed for perfectly legitimate reasons, the price of that failure being mandated sign interpreted programmes is disproportionately high.

Ultimately the most important goal is to ensure the deaf and hard of hearing community is well served and is receiving, as far as is reasonable both technically and commercially, the programmes best suited to its needs and interests. We believe the Sign Zone proposal offers some considerable merits in achieving this, and we are willing to work towards its successful establishment.

We provide detailed responses on these various issues in response to Ofcom's questions below, but in summary we would wish to make several key points before turning in detail to Ofcom's questions:

1. We question the basis upon which the policy proposals are based, in particular the question of demand for change to signing provision and why the status quo cannot remain as an option going forward. Ofcom uses as its main evidence base the March

2006 'Provision of Access Services' research. However, it is clear to us that, taken overall, this does not make a clear case for the overall policy changes proposed, and at best its conclusions are contradictory and require further detailed follow-up.

2. Notwithstanding ITV's concerns about the overall basis for change, and the fact that the Sign Zone proposal raises several important issues that were either not discussed fully or at all before it was proposed (and certainly not since the revision of the Access Services Code only one year ago), it is the 'next best' option in terms of proportionality to broadcasters and value to viewers. We therefore welcome Ofcom's invitation to explore the proposal in more detail. However, whilst this proposal appears on paper to be a more workable solution than providing sign-presented programmes on our own channels, there remains some uncertainty about whether the zone would work in practice and what steps would be taken should the initiative fail to deliver in the way anticipated. Constructive dialogue with the Community Channel has provided more clarity but we remain a long way from certainty that the initiative will work in practice, not least because it is not confirmed how many channels will participate. While ITV supports the Sign Zone in principle, it will be impossible to have certainty on it until the consultation has closed and channels sign up. This will not be possible until the consultation has closed.
3. ITV is very concerned about the fall-back position to sign-presented programmes on our own channels. It is an entirely new concept which needs to be considered in much more detail, particularly in relation to its commercial implications and proportionality. Furthermore, there is a large degree of inequality between the options of sign-presented programming and the Sign Zone. Sign-presented programming would be extremely costly, whilst also taking up valuable airtime with programming that will inevitably be of appeal to a tiny number of viewers. Indeed, the very context for the consultation recognises the fact that on smaller digital channels even interpreted programming offers benefit to a small number of people in a competitive marketplace. Sign-presented programming is likely to be even more off-putting than sign-interpreted programming to the general audience.
4. The outcomes of this consultation phase should be considered as temporary or transitional with scope left in the longer term to examine ways in which signing might be better provided by new technology in future, such as via broadband.

## Questions

### **1. Do consultees agree that these are appropriate policy objectives for Ofcom in considering possible alternative arrangements for signing on television?**

ITV supports Ofcom's intentions to review the access services requirements for smaller digital channels, and we believe it is appropriate to consider whether alternative arrangements might better deliver in the interests of hearing impaired, signing-reliant viewers and broadcasters of lower-audience channels. However, ITV does not believe that the overall case for the policy changes proposed has yet been made. The evidence base used in support of Ofcom's policy objectives is in places contradictory and representative of only some parts of the deaf audience.

For instance, based on Ofcom's 'Provision of Access Services' research findings:

- Only "4% of hearing impaired respondents claim to view signed services on all available programmes, whilst two thirds say they never use them. However, this is unsurprising given that over three fifths of the hearing impaired population (62%) have no understanding of sign language".
- "Amongst those respondents who are hearing impaired, use both subtitling and signing and claim to have strong BSL knowledge, over two thirds (67%) prefer subtitling, and 9% would opt for signing. Subtitling is considered easier to follow and less distracting"
- "Just 1% claim to 'understand sign language and sometimes use it to communicate', 3% have 'some knowledge of sign language and use it occasionally' and a further 1% have 'some knowledge but do not use it to communicate'. Therefore, in total only 5% of hearing impaired respondents in the sample have the ability to understand signing on TV to a sufficient degree"
- "Awareness of BSL is relatively low, hence usage of signing services is limited. The majority of respondents with hearing impairment lack the knowledge of BSL to get the most out of the services"
- "Hearing impaired respondents express a clear preference for subtitling over signing. Among those who claimed to have used both services, and understand BSL, the preference for subtitling is overwhelming – over two thirds (67%) prefer subtitling, and just 9% would opt for signing"
- "This preference for subtitling is especially marked for films and drama (*n.b. for ITV this is particularly relevant to our ITV3, ITV4 and Men & Motors channels*). Conversely, there is most call for signing for news and current affairs, but even here the demand for subtitling outweighs that for signing by a wide margin"
- Only 5% of hearing impaired respondents claim to use sign language as their first language rather than English.

Because the signing-reliant population is small it is unsurprising that the usage figures are small. This brings a real risk that the policy objectives are based on inconclusive evidence and are therefore potentially flawed. ITV would question in particular Ofcom's assertion that it is "the clear preference of sign language users for sign-presented programming" and that the solution, which has until now not been considered, is more sign-presented programming. An analysis of Ofcom's arguments (and support) for these proposals shows that it is based not necessarily on the opinions of viewers directly, but a handful of special interest lobby groups (see A5.20) – in particular the conclusion in 3.25 that "deaf groups would prefer sign-presented programming to sign-interpreted programming", despite acknowledging in 3.19 that "sign language users do not watch much signed television". ITV recognises the important and persistent work conducted by these groups in their respective areas of interest. However we are concerned that such an important decision (for both the deaf and hard of hearing community and broadcasters alike) can be taken without considering the demand for change in more detail across a wider sample of opinion. In addition, it is far from clear whether the views of children and young people have been taken into account at all.

When there are significant question marks about the level of actual demand for signed programming, ITV questions whether the right approach is to concentrate investment and effort in generating more sign-presented programming as would have to happen under the default option, unless a viable alternative can be found.

Moreover, the paper's summary, and specifically the section covering Ofcom's policy objectives<sup>1</sup>, does not cover what, in terms of its policy solutions, is the key issue at stake, namely that "hearing-impaired sign language users...benefit little from sign-interpreted programmes on low-audience channels, and that their interests and needs would be better served by the provision of more sign-presented programming (even at the expense of a significant reduction in the amount of sign-presented programming)".

Added to this is the fact that the Communications Act requires broadcasters to provide a proportion of programmes 'presented in, or translated into, sign language'<sup>2</sup> and that it makes clear it is up to broadcasters whether they choose to provide sign-presented or sign-interpreted programmes. In other words, ITV questions Ofcom's powers to dictate that broadcasters should provide sign-presented programming rather than sign-interpreted programming.

Given the inconclusive evidence base and selective use of research findings, we are not clear how the key policy objectives for an increase in sign-presented programming were actually reached. The omission of the key objective upfront in the summary of the consultation paper raises questions from the outset as to what the key desired outcome of this process actually is.

Nonetheless, ITV has been and continues to be willing to participate in discussions around how to best deliver future signing obligations. While ITV continues to question both the basic rationale for change and the recommendation that the status quo should not be an option, ITV is willing to engage in seeking to find a proportionate, workable way forward and as such has actively engaged in discussions about the Sign Zone.

## **2. Do consultees agree that Ofcom has identified appropriate options?**

On the face of it, the three options identified by Ofcom would appear appropriate. However, once the detail of each option is considered and, following separate dialogue, it is clear that in fact only one option really exists, and, as discussed elsewhere, this option itself raises some concerns.

Taking each of the options in turn:

### *Option 1: Status quo*

Despite Ofcom's rejection of the status quo option, it is argued that sign language users *do not watch much signed television* and therefore that the current requirements on low-audience channels cannot continue because they would not meet the policy objectives. To support this position Ofcom uses as its main evidence base the March 2006 'Provision of Access Services' research. However, it is clear to us that, taken overall, this does not make the case for the policy changes proposed, and at best its conclusions are contradictory and require further detailed follow-up. The protection of choice and diversity in sign-accessible programme genres on all platforms should be a stated Ofcom policy objective in any final statement. Moreover, Ofcom policy can only meet the needs of its stakeholders when it has

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<sup>1</sup> Paragraphs 1.11/1.12

<sup>2</sup> Communications Act 2003, 2303 (5) (d)

accurate and robust research – both quantitative and qualitative – about what sign language users watch and want to watch. Until that is clear, the status quo should remain in place.

### *Option 2: More subtitling*

It is clear that the vast majority of hearing impaired viewers are able to rely on subtitling, and indeed tend to prefer to use subtitling to signing (cf page 3). Increasing subtitling might therefore be an appealing way to increase the provision of programming to the hearing impaired audience.

Ofcom claims that increasing signing provision “would not meet the policy objectives, since it would not meet (sic) increase the amount of sign presented programming and therefore would not meet the needs of those sign language users who found it difficult or impossible to use subtitling”. This is a broad statement to make, particularly without any obvious link to the evidence for it. Furthermore, to claim that increasing subtitling provision would not deliver much incremental benefit “since many broadcasters already provide more subtitling than they are required to under the Code on Television Access Services”, sets a precedent that has the potential to discourage broadcasters from ever improving on Ofcom quotas and delivering services that are enjoyed by the deaf and hard of hearing community (the 2006 Ofcom Provision of Access Services research study concluded that “claimed usage of subtitling is high; in particular three quarters (76%) of respondents with severe/profound hearing impairment say that (sic) use them at least some of the time, and findings indicated that there is considerable appetite for increased provision of the service.”). Over time, ITV believes that an increase in subtitling might be left open as an option in the context of future audience research.

### *Option 3: Sign presentation or a suitable alternative (the Sign Zone)*

If the status quo cannot be considered an option, ITV’s ‘next best’ preference would be to establish the Sign Zone and become a participant member of it. On current audience levels, this would see signing obligations on ITV4, Men & Motors and CiTV transfer to the Zone. ITV has been involved in constructive dialogue with the Community Channel about the Sign Zone proposal and we have some reassurance about its structure, purpose and governance. With that in mind ITV is keen to play its part in seeing the project succeed.

However, ITV has some significant outstanding concerns about the Sign Zone proposal:

- Viability of the Sign Zone: ITV has some outstanding concerns about how the Sign Zone might be made to work in practice;
- That stakeholders are being asked to comment on something that has yet to be clearly defined, and is therefore difficult to support or otherwise;
- Little detail is provided in the consultation paper as to how the Sign Zone on the Community Channel might work, i.e. the governance of an independent trust overseeing it (or other schemes if they emerge in future), the criteria by which these services would be deemed acceptable by Ofcom, and how the day-to-day running of the channel(s) might operate.

- Ofcom should commit itself, as part of the policy statement resulting from this consultation paper, to keeping the 1% threshold under review as well as other possible options.

One of our key concerns is outside our control. Most obviously, even if ITV does its level best to get the initiative off the ground, it will only succeed if there are enough channels committed to it. This has created something of a ‘chicken and egg’ situation, whereby we put our weight behind the project speculatively, rather than setting out in the knowledge that there are enough channels committed to participating. The problematic nature of the situation is exacerbated by the price of failure – with a highly costly and interventionist fall-back position.

From a cost perspective in particular, the inequality between the options is stark:

- Whilst the cost to broadcasters of participation in the Sign Zone would be around £20k per annum, using Ofcom’s own figures<sup>3</sup>, for ITV4 or Men & Motors it is clear that the alternative fall-back position of sign-presented programming quotas could cost up to £360k over a year (based on £60k per hour x 6 hours, i.e. for half an hour’s sign-presented programming per calendar month).
- The cost of the alternative fall-back is significantly higher than the cost per hour of the programming it would replace on the relevant ITV channels (both compared to the lower cost of acquired and repeated programmes, as well as original programming). Furthermore, this does not take into account the opportunity cost of the slots in which such programming might appear.
- The implications for sign-presented programming on the actual viewing of the channels are an important consideration. Given ITV4’s latest average audience share is 0.43% (0.53% in multichannel homes), and Men & Motors is 0.1% (.12% in multichannel homes), and their output is based largely on relatively low-cost programming, it seems clear to us that the inclusion of more sign-presented programming would appear incongruous from an editorial perspective given the characteristics of the channels, would alienate the vast majority of the audiences, would deter advertisers, and would therefore have severe commercial consequences.
- In conclusion, we are concerned that the fall-back position of quotas for sign-presented programming is highly interventionist, commercially damaging, disproportionate and of little value to the relevant audience.

Yet in the absence of any other alternative (and it is hard to see one at present given technical limitations) this option would kick into effect in the event that the Sign Zone could not, for justifiable reasons, be made to work. As such, we believe that channels should be guaranteed a further option – to choose to retain their status quo obligations, at least for a grace period of, say, one year.

### **3. Do consultees agree with Ofcom’s reasons for rejecting the ideas described in paragraph 3.18?**

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<sup>3</sup> Paragraph A5.23, Ofcom consultation ‘Signing on television’

ITV notes Ofcom's assertion that it cannot drop the requirement on broadcasters to provide signing under its duties in the 2003 Communications Act. However, we do not agree, from this position, a conclusion can be drawn that prevents an option allowing the status quo to continue for those who choose it. As stated above, we continue to question the basic rationale for change and the recommendation that the status quo should not be an option.

In acknowledging broadcasters' concerns about being encouraged to allocate to sign-presented programming the resources they currently allocate to sign-interpreted programming and rejecting this proposal here, it is surprising for Ofcom to go on to propose exactly such a requirement for channels with small audience shares as part of its preferred option 3.

#### **4. Do consultees agree with the proposals outlined in paragraph 3.32?**

Whilst ITV recognises Ofcom's intentions to seek alternative approaches to signing on television, we do believe, particularly given the uncertainty of the Sign Zone, that the status quo should be offered to channels as a default fall-back position, at least for a grace period.

Moreover, the somewhat arbitrary nature of this proposal is mirrored in the requirement to restrict the times that sign-presented programming would be broadcast, if this became the default requirement. Such onerous obligations do not extend to other access services – and indeed in licence genre requirements only news is subject to daypart specific obligations. This seems particularly inappropriate when a) signing has often been provided in early morning but consistent blocks and b) more and more viewers have access to PVRs and other recording equipment. We are particularly concerned by the implications this would have for channels which only broadcast at certain times of the day (particularly ITV4 which is on air from 18:00 to 4:00) and whose schedules would be severely disrupted by sign-presented programmes appearing at these commercially valuable times.

Otherwise, as we have raised several times above, one of our main concerns with the package of proposals in this paper is that channels are being asked to join the Sign Zone without any guarantee of it being approved or, if approved, succeeding. We equally do not believe it is just for Ofcom to ask channels to decide between two options that are unequal in terms of cost and one of which has no guarantee of success.

Ofcom's proposal to review these changes "after they have been in place for 12 months" is, however, welcome. This should take place in conjunction with both the Sign Zone Trust and individual broadcasters. In discussions with broadcasters, Ofcom has indicated that, in the event of channels signing up to the Sign Zone but it then ceasing to operate and the sign-presented obligations automatically kicking in, some degree of leeway would be given in assessing quotas. It is because of the potential for a situation such as this to occur, that we believe channels should be able to opt for the status quo obligations. In any case we believe Ofcom should confirm in advance what degree of leeway would be given, otherwise channels will be required to meet their sign-presented obligations as soon as they are no longer involved in a voluntary arrangement that provides "what Ofcom considers to be a suitable alternative". In essence, further clarity is required as to what 'meeting obligations' means in terms of supporting and funding the Sign Zone even in the event it were to fail, and what period of time thereafter we would be considered to have met our obligations.



**5. Do consultees agree that the aim should be to put any new arrangements in place from the start of 2008?**

ITV is unclear about the urgency to rush to a 2008 implementation and would question why, if there was such urgency to meet a start date of January 2008, the consultation process did not start earlier than May 2007. The Communications Act requires a review of the Code “from time to time”. In our view, it is better to get it right even if this means the process taking longer. Furthermore it is worth noting that at the Sky Sign Debate “Do you agree with the timescale to launch the Sign Zone in January 2008”, 22 people said no and only 3 said yes (representing 88% who were against) – of the 13 deaf people present, only 1 said yes; of the 12 broadcasters present, only 2 said yes.

ITV believes that time would be best spent trying to further develop the Sign Zone with a view to launching with proper programme plans and safeguards in place. Establishing the Trust, putting funding and governance arrangements in place and commissioning and making programmes is a long and complex task. The Zone’s success will rest on all these things happening properly. Stakeholder discussions with the Community Channel indicate that the Sign Zone is unlikely to begin broadcasting at the earliest in September 2008. This may well slip, whilst ITV and others will be spending time and money on the Sign Zone. For this reason, ITV would welcome clarification that our regulatory obligations will be considered as being met as soon as we become engaged in the Sign Zone, even if this means that the Sign Zone is not yet broadcasting. On this basis and assuming that we are in such a position in January 2008, ITV would transfer the signing obligations from our qualifying digital channels from the New Year with a view to supporting the Sign Zone aimed at getting programming on air later in the year.

If the Sign Zone, for whatever reason, fails to become a suitable alternative arrangement, channels will automatically be forced into broadcasting sign-presented programming from 2008. This raises a practical obstacle given the long period required for commissioning and producing programmes, particularly such a genre as sign-presented, in which ITV has very limited recent experience within our family of channels, and for schedule and commercial planning.

**6. Do consultees have any comments on the impact assessment? Where possible, it would be useful for arguments about the cost of different options to be supported by relevant data.**

A5.6 – Whilst we would agree with Ofcom that it should be there to ensure the will of both Parliament and the Government is realised, we would also suggest that the setting of individual policy objectives (in this case the provision of more sign-presented programming) should always be subject to a demonstration by Ofcom of its justification. This impact assessment fails to do this and provides very little detailed analysis of the costs associated with the different options. In fact, much of the impact assessment is a textual repetition of previous statements made in the main body of the paper, without going into numerical or other evidence/justification.

A5.22 – “Broadcasters argue that the current requirements to provide signing, even late at night, imposes opportunity costs on them, so they would derive a benefit from a proposal that

allows them to reduce significantly the amount of sign-interpreted programmes broadcast in their schedules” – this statement seems to be based on the assumption that channels enter the Sign Zone, but it fails to consider the impacts on channels of a requirement to provide sign-presented programming between 7am and 11pm. By its very nature, the potential audience for sign-presented programming is dramatically less than that of other programmes that would ordinarily be broadcast in the same slot – it is ultimately a minority of a minority - and if the Sign Zone fails, the actual cost and lost opportunity cost is even higher given that sign-presented programmes on our digital channels are, at best, likely to be of interest to literally only handfuls of people.

A5.23 – an analysis of cost implications has been included in response to Question 2 (Option 3).

A5.24 - states “it may be the case that there would be a loss of advertising revenue if audiences for sign-presented programmes were significantly lower than would otherwise be the case, but conversely the cost of sign-presented programming could be relatively lower than the cost of the programming it might displace”. Firstly, there would almost certainly be a loss of advertising revenue as a result of lower audiences, and it is difficult to see, for reasons outlined above on the output of ITV4 and Men & Motors (i.e. repeated dramas, films etc), that the cost of sign-presented programming would be significantly lower than the cost of the programming it replaces as to make it viable.

A5.26 – states “there might be some loss of advertising revenue from a requirement to show the sign-presented programming between 7am and 11pm”. We would go even further to suggest that, by the very nature of the likely audience for such programming (as outlined above), there would almost certainly be loss of advertising revenue, in line with a major loss of audience.

## **7. Do consultees consider that the proposed revisions to the Code are sufficiently clear?**

Ofcom's proposed revisions to the Code are clear and reflect the objectives and proposals contained in the main body of the consultation paper. However, as we have stated above on various separate issues, we do not agree that these revisions are entirely appropriate, certainly not at this early stage in the process.

On a more specific point, and as stated above, it is crucial for guidance to be established on how the voluntary alternative arrangements will work in practice. For instance, one important consideration is the length of notice period channels should give if they decide to pull out of the voluntary alternative arrangement.

Paragraph 10c – a word is missing from the third line, which should read ‘...following amounts of programming presented in sign language.’

## **Other issues**

ITV SignPost is one of the UK's main providers of on-screen sign language access and the outcome of this consultation is clearly of interest to its ongoing commercial operations. ITV is aware of SignPost's separate submission to this consultation paper and we are broadly supportive of it, including its emphasis on the need for further research. More particularly ITV is concerned that Ofcom's Regulatory Impact Assessment fails to address the substantial damage which this proposed policy change will cause to ITV SignPost both as a profitable business and a major media employer of deaf people.

ENDS