



RESPONSE OF CHANNEL 5 BROADCASTING LTD TO OFCOM'S CONSULTATION ON ACCESSIBILITY OF ON DEMAND PROGRAMME SERVICES

Channel 5 welcomes the opportunity to respond to this consultation on how Ofcom collects data on access services on Video on Demand services. Channel 5 has always sought to be at the forefront of developing accessibility on its on-demand services, as has been recognised in previous surveys¹.

However, we are not persuaded that requiring On Demand Programme Services (ODPSs) to provide information to Ofcom twice a year will be as cost free as Ofcom suggests nor deliver the benefits it foresees. We are also surprised that, given Ofcom's aim to align its work on ODPS with its work on broadcast television, it did not consider the obvious alternative of requiring linear services to provide data annually.

We address these and other issues in our responses to Ofcom's consultation questions.

Q1: Do you agree with Ofcom's proposed changes to the way we collect data, and do you have further comments?

Ofcom says that collecting data bi-annually will enable it "to take more timely action in encouraging progress to improve access services where it is most needed". It is not clear to us what timely action Ofcom has in mind nor how the more frequent collection of data will facilitate it. Nearly all ODPSs of any size are engaged in making their services progressively more accessible, as was clear from the most recent

¹ For example, in its 2014 report ATVOD highlighted the ways in which Channel 5 was spreading provision across its outlets and hoped ITV and Channel 4 would follow our lead. See ATVOD, *Provision of Video On Demand Access Services: 2014 Report*.

ATVOD report². Requiring them to report more often - rather than engaging with them directly - of itself will not guarantee faster progress.

It is hard to argue with Ofcom's belief that its proposals do not represent "a substantial increase in regulatory burden". But that does not mean no extra work is required by ODPSs. Even for a relatively large ODPS like Channel 5, the need to fill in a detailed questionnaire takes time and resource away from other work more central to our commercial objectives. For smaller ODPSs, with few dedicated staff, this sort of requirement can represent a real imposition on limited resources.

Ofcom may also be mistaken in believing that "alignment of collection of ODPS and broadcast television data will improve efficiency and limit regulatory burden", as the information does not necessarily sit in the same place within companies. As far as Channel 5 is concerned, data about access services on our linear services is held by our scheduling and planning department while data about access services on our VOD services is held by our digital media department. Returning data to Ofcom involves two completely different processes, and no synergies or efficiencies would be created by combining them.

We recognise Ofcom's desire to more closely align its regulation of linear broadcasting and ODPSs. But in this instance the ambition could be achieved equally as well by reducing the frequency with which Ofcom collects data on access services on linear television. We are surprised Ofcom did not investigate this viable alternative.

It is not clear what purpose the current biannual collection of linear data serves, as Ofcom does not act on the data it publishes. As the Access Services Code is applied on an annual basis, it is only the publication of the full year data that can lead to regulatory action. For example, a channel with a subtitling quota of 80% may only subtitle 70% of programmes in the first six months of the year, but this would not be cause for regulatory action, as it can subtitle 90% of the programmes in the second half of the year and still thereby hit its 80% quota.

If Ofcom reduced the requirement on linear services to report on their access services provision from twice a year to just once, it would also contribute to satisfying

² ATVOD, *Provision of Video on Demand Access Services*, 18 December 2015

its deregulatory obligations. As Ofcom reminded us earlier this year, it is “required to minimise the burden it places on the companies it regulates” and has a duty to consider “the maintenance of burdens that have become unnecessary”³.

To move to an annual collection of data for both linear and on demand services would bring the treatment of both types of service closer together, would minimise the regulatory burden on stakeholders, and would still enable Ofcom to regulate the sector(s) effectively.

Q 2: Do you agree with Ofcom’s proposed changes to the type of data we collect, and do you have further comments?

Channel 5 has no objection to providing separate reports for differently branded ODPSs. However, Ofcom should be aware that different brands are not necessarily exclusive or unique. In the example Ofcom quotes, Milkshake is a separately branded ODPS aimed at young children; but all the Milkshake content is also available on our main ODPS service. Also, different brand names do not necessarily constitute different services; for example, we rebranded our main ODPS as ‘My5’ earlier this year but for a variety of brand and legacy reasons exactly the same service is presented currently as ‘Demand 5’ or ‘Channel 5’ on some platforms.

Q 3: Do you agree with Ofcom’s proposed changes to the way we publish data, and do you have further comments?

We fully accept that data on accessibility on ODPSs should be published at the same time as data on accessibility on linear services. However, for the reasons set out in our answer to Question 1, we believe there are clear reasons for this to happen on an annual rather than biannual basis.

Channel 5 Broadcasting Ltd

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³ Ofcom, *Annual Plan 2016/17* 30 March 2016, paragraph 3.25