BBC

BBC response to Ofcom's On-Demand Accessibility consultation

April 2018

Executive Summary

The BBC welcomes the opportunity to respond to Ofcom's consultation *How should On-demand Programme Services be made accessible.*

On-demand is a growing habit amongst all audiences. As set out in response to Ofcom's draft Annual Plan, it is clear to the BBC that the changes in viewer and listener behaviour are profound as younger viewers and listeners, in particular, shift from linear broadcasting to on-demand services.

As a publicly funded broadcaster with a public service mission, the BBC has a strong track record of pioneering in access service provision both for linear and on-demand. For example, since 2012, we have made 100% of programmes from our main channels available on-demand with subtitles via BBC iPlayer. The BBC remains committed to continue to serve all licence fee payers on linear and on-demand through high-quality and value-for-money delivery of our programmes and services.

Ofcom rightly highlights a gap in access service availability on-demand: 62% of ODPS (on-demand programme service) providers offer no subtitling at all, and circa 90% offer no audio description or signing. This does not factor in video-on-demand (VOD) services which Ofcom judges to be beyond UK jurisdiction for which Ofcom thus has no statutory access to data on access service availability. While the policies of some such providers suggest significant levels of access service provision (including Netflix), we would encourage Ofcom to consider the completeness of its assessment and proposals in the absence of consideration of the UK market leader for VOD.

In this response, we make three key recommendations reflecting both the specific importance of access service provision and the wider need for flexible and proportionate regulation in fast-moving online markets.

(1) Access Service provision on on-demand services managed by broadcasters should, for now, continue to be channel-led, with the important addition of a principle that *what is accessible via live broadcast should also be accessible via IP on-demand* on a 'comply or explain' basis for broadcasters and platforms.[1] This should ensure that the levels of scrutiny of on-demand provision by broadcasters would reflect the staggered approach applied to linear provision, without unduly increasing the regulatory burden.

(2) For 'VoD-only' ODPSs which are thus not subject to linear requirements and so not able to follow a channel-led approach, Ofcom should test whether the interests of audiences would merit quotas (subject to applying proportionality checks such as audience reach and share).

(3) Ofcom should also consider the impact of the jurisdictional limitations it sees in relation to the ODPS regime upon UK users of access services.

We would recommend that the framework is subject to periodic review to keep in line with trends in audience consumption and expectations as well as content supply, with the forward-looking objective towards a levelling in requirements as those trends merit it.

We make these recommendations in view of:

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[1] The considerations set out in Section 303 8(a) to (f) of the 2003 Communications Act remain a useful reference point for testing the principle in practice - covering areas such as technical challenges that may need to be surmounted

- the overwhelming majority of consumption and content supply for broadcasters in practice remaining channel-led: with broadcast viewing standing at 96% for the BBC and Channel 4, and over 98% for ITV[2]
- 'VOD-only' providers competing on consumption and content supply with broadcasters, particularly among younger audiences, with Netflix now accounting for more viewing amongst 16-24 year olds than all of BBC TV (including iPlayer) combined, and its budget for content alone nearly three times the BBC's TV content budget
- rapid market evolution such that the landscape will likely look very different in five years' time.

These trends will require content providers and regulators to be flexible and agile in their approaches. We would also encourage Ofcom to ensure that the focus of any regulatory intervention is targeted at the problem identified in the consultation: the lack of provision of any access services on many ODPSs (and, where relevant, jurisdictional limitations).

As Ofcom has previously noted, regulation has played an important role in widening broadcast accessibility, observing that "until 2004, subtitling was largely confined to a small proportion of programming on a handful of public service and digital channels. Following the coming into force of the (Communications) Act … there was a step change in the number of channels providing subtitling".[3]

The Communications Act provisions were directed at an era of growing multichannel choice. Today, we are in an era of growing on-demand choice, and it is one where public service broadcasters have again led in access service innovation. In the case of the BBC, our breakthroughs in on-demand services have moved ahead of the market and of regulation, driven by our Charter-enshrined commitment to universality, our unique funding model and audience expectations.

Likewise, for other broadcasters, the conditioning effect of the existing linear quotas raises their level of access service coverage for on-demand, with Channel 4 also having a special commitment written into its statutory remit.

There is, however, a significant difference in levels of provision among those services without any requirements shaped by broadcast.

We therefore welcome Ofcom's objective that the revised framework should be *"effective, proportionate, flexible and fit to apply to a diverse and developing video on-demand industry"*, and make our contribution in light of those aims.[4]

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[2] Enders Analysis estimates based on BARB/InfoSys+/company reports/BBC iStats, published January 2018 for calendar year 2016
[3] Ofcom's Quality of Live Subtitling Consultation, 2013
[4] For example, we will be happy to share expertise on our digital accessibility guidelines, should Ofcom opt to publish guidance in this area.

Response to questions

We recognise that the questions largely relate to the design of the framework, and the balance of obligations between different providers, measured by their standing commitments, their ability to invest and their relative audience significance. We therefore outline our contribution to reflect those areas of interest, with particular focus on the following questions:

> *Should regulations include quotas on percentages of programming available with access services? If so, what should the quotas be? If not, what other methods do you consider appropriate for the purpose of setting access service requirements for ODPS?*

> *Should the regulations impose more stringent requirements on public services broadcasters' ODPS than on ODPS provided by others?*

> *Should the regulations limit accessibility requirements to programmes/services which have previously been broadcast with access services, or impose more stringent requirements on these programmes/services?*

For the BBC's part, as a publicly funded broadcaster with a public service mission, we seek always to be a pioneer for accessibility in audiovisual services. This includes with respect to the BBC's standard iPlayer product which guarantees world-class access features which aren't always available across video on-demand services across all TV platforms. The BBC's track-record has been recognised by leading disability rights charities[5] and is demonstrated by the being the world's first broadcaster to:

- broadcast live subtitling (on Blue Peter in 1984)
- become the first broadcaster to offer 100% of programmes with subtitles in 2007, enabled through pioneering the K-LIVE re-speaking live subtitling system
- have the first on-demand player in the world to provide audio description services on desktop in 2009, followed by another industry first in 2014 to roll this out on mobile and tablet devices and then in 2015 across all major IPTV and gaming platforms
- have the first VOD service that could be accessed using assistive technologies as well as subtitles and signed programming (2008)
- to make available 100% subtitling of programming for its main channels on its VOD service (2012) online as well as major TV, Mobile and Gaming platforms.

In each case, these commitments have not been driven by regulatory requirements but by a Charter and funding model that places universality at the heart of our mission and dictates that we meet audiences' particular expectations of the BBC.

However, whilst our constitution, audience expectations and funding model have been the three principal drivers for the BBC, we recognise the role Ofcom has played in encouraging industry dialogue, sharing of best practice and, though its regulatory approach, in ultimately helping raise access service provision across industry more widely.

In our view, revision of the current regulation should focus on where a problem has been identified, and account for existing incentives to provide on-demand access services.

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[5] In Charter Review for example, Action on Hearing Loss stated that *'the BBC to date has played an extremely important role within the broadcasting industry in promoting accessibility'*.

Our contribution therefore considers:

- the problem as it currently stands: as Ofcom identifies, the gap in provision of access services by on-demand service providers compared to broadcast channels[6]
- how a framework could be designed in a way that is compatible with the existing broadcast quotas
- how the revised framework may evolve over time to keep pace with trends in consumption and content supply.

Firstly, the requirements for on-demand should be designed to co-exist easily with the existing framework for broadcast. It should avoid duplication and apply the principles that best fit the current consumption and content supply of a service.

To achieve those aims, one important step at this stage would be a distinction between on-demand services provided by broadcasters, and those on-demand services provided by online-only content providers ('VOD-only'). The framework as a whole should be subject to periodic review, so that over time and as the market evolves, these two approaches can be integrated.

We detail how this framework might apply and the rationale as below.

On-demand services provided by those subject to existing broadcast quotas

As the consultation notes, broadcasters are already subject to existing quotas for their channels. In practice, these quotas serve to condition the availability of access services on their on-demand services.

Those quotas apply the principles of audience benefit and proportionality in a way that remains appropriate and in line with consumption and content supply trends. Testing requirements by channel reach as under the current system remains an important, effective and relevant test for broadcasters' content.

We would suggest therefore that for broadcasters, the approach remains channel-led for simplicity and practicality. It avoids duplication and reflects both audience consumption and content supply remaining channel-led at present.

However, we would suggest the application of two additional principles at this stage:

(1) the principle that what is made accessible via live broadcast should be accessible via IP on-demand – tested against a periodic 'comply or explain' requirement including broadcasters and platforms; and
(2) that the system should be open to being revised as consumption and content supply evolve – remaining subject to periodic reviews

These two principles reflect that, at the moment, audience consumption of broadcasters' content remains channel-led (96% for the BBC and Channel 4, and over 98% for ITV[7]), as does the vast majority of content supply onto the on-demand services[8].

A 'comply or explain' provision should ensure that the levels of scrutiny of on-demand provision by broadcasters would reflect the staggered approach applied to linear provision, without unduly increasing the regulatory burden. In a linear world, a staggered approach has been applied (with the PSB channels subject

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[6] Only 36% of on-demand service providers offer subtitles, 11% offer audio description and 4.5% signing
[7] Enders Analysis estimates based on BARB/InfoSys+/company reports/BBC iStats, published January 2018 for calendar year 2016
[8] Even in the case of BBC Three, all long-form content will be broadcast on BBC One and Two and so is subject to the same level of access service provision

to the highest quotas, other channels lesser quotas and those with very small audiences, none). 'Comply or explain' for on-demand would therefore place the greatest scrutiny upon PSB services.

Periodic review would, however, leave open the option to apply quotas should 'comply or explain be insufficient. Taken together, these principles would therefore apply effective pressure towards equivalence in provision over time.

On-demand service providers not currently subject to requirements

The consultation considers whether broadcasters and PSB in particular should be subject to more stringent regulation in on-demand than 'VOD-only' providers. Based on scale, we do not believe this is justified. 'VOD-only' providers compete for users and content supply with broadcaster ODPSs. As a matter of serving the interests of audiences, we do not believe this approach as a point of principle would best serve those with access needs.

We consider this in light of:

- iPlayer access service data demonstrating a clear audience value in the provision of these services
- The popularity of 'VOD-only' providers overall, and among younger audiences in particular, with the time spent by 16-24 year old with one 'VOD-only' provider which Ofcom states is out of jurisdiction (Netflix) than all of BBC TV (including iPlayer) combined, while iPlayer as the leading broadcast on-demand offer accounts for only 8% of all online viewing.[9] Other 'VOD-only' services like Amazon Video are also increasingly popular
- Content budgets and the ability to invest: Netflix alone has a content budget nearly three times greater than the BBC's[10] – spending more on The Crown than well over a dozen drama series on the BBC, from Sherlock and Happy Valley to Poldark and Line of Duty. Amazon Video also has significant and growing budgets.

We therefore believe that there is merit in Ofcom considering the audience case for quotas for 'VOD-only' providers, subject to appropriate proportionality checks and in reflection of audience interest. It should also explore the impact of jurisdictional limitations.

In practice, the channel-led approach for broadcasters outlined above would – when combined with their existing quotas – mean that broadcasters' on-demand services are already likely to be subject to far more stringent requirements than 'VOD-only' providers, even were proportionate quotas introduced for the latter.

We believe the framework outlined above would successfully match Ofcom's objective that the new regulations should be *"effective, proportionate, flexible and fit to apply to a diverse and developing video on-demand industry"* – addressing the growing regulatory gap Ofcom has identified whilst being flexible enough to evolve with the market.

ENDS.

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[9] Enders Analysis 2018
[10] Netflix has stated that it will spend up to $8bn on original content commissions in 2018