

How should On-Demand Programme Services be made accessible?

Response from the Commercial Broadcasters Association to Ofcom

April 2018



A VOICE FOR COMMERCIAL BROADCASTERS IN THE UK

Introduction

1. The Commercial Broadcasters Association (COBA) is the industry body for multichannel broadcasters in the digital, cable and satellite television sector, and their on-demand services. COBA members operate a wide variety of channels, including news, factual, children's, music, arts, entertainment, sports and comedy. Their content is available on free-to-air and pay-TV platforms, as well as on-demand.
2. COBA members are arguably the fastest growing part of the UK television industry, and are increasing their investment in jobs, UK content and infrastructure. They make this investment without public support, direct or indirect.
 - Scale: In the last decade, the sector has increased its turnover by 30% to more than £5 billion a year. This is rapidly approaching half of the UK broadcasting sector's total annual turnover, and has helped establish the UK as a leading global television hub.¹
 - Employment: As part of this growth, the multichannel sector has doubled direct employment over the last decade.²
 - UK production: In addition, the sector has increased investment in UK television content to a record £725m per annum, up nearly 50% on 2009 levels.³
3. For further information please contact Adam Minns, COBA's Executive Director, at adam@coba.org.uk or 0203 327 4101.

¹ Ofcom International Broadcasting Market Report 2013

² Skillset, Television Sector – Labour Market Intelligence Profile

³ COBA 2014 Census, Oliver & Ohlbaum Associates for COBA

Executive summary

1. COBA's key point in this response is the complexity of the on-demand landscape, and the challenges that this creates in providing access services. The number of on-demand platforms far exceeds that in linear television, and different platforms will demand that media and/or meta is provided in different technical formats. This will increase the costs and technical challenges exponentially.
2. For example, UKTV provides content to no fewer than nine on-demand platforms, each of which require different delivery methods, often involving different file formats. As TODIF sets out in its response:

“[W]hile, for example, there may be a demonstrable audience benefit for enabling access services on a particular programme on a service that is available, say, on a variety of set top boxes, via the web, and on a variety of mobile phone formats, the cost and practicality of creating a specific access services file type for each device and type of delivery may be prohibitive.”
3. Our second point is the lack of reliable and consistent data on on-demand audiences or revenues, compared to the BARB data that is available for linear. This makes it difficult to develop proportionate approaches to requirements.
4. These challenges, both the technical and the availability of data, are multiplied if Ofcom intends to introduce requirements for non-domestic services. Non-domestic services will be dealing with numerous different platforms in different markets, and facing different challenges in terms of audience measurement systems.
5. In the absence of other reliable and consistent sources of data, we suggest Ofcom should use a model based on the overall turnover of the provider, along the lines of the regulator's ODPS fees model (although not necessarily using the same bands as for fees). Those providers under a certain threshold would be excluded entirely.
6. To help ensure proportionality, there should also be a second step to determining which providers qualify for requirements based on robust audience data where available. This would exclude services that would be otherwise subject to requirements based on turnover if those services have only a small audience on certain platforms. This could mean that those providers are subject to requirements on some platforms, but not others. In this case, a provider that could supply credible audience data to Ofcom should be exempt on those platforms where its audiences are below a pre-determined threshold. Some providers may not be able to offer Ofcom robust data for audiences on each individual service. However, we feel it would be unfair to penalise all services due to this issue, providing of course this approach is used as a second step in

conjunction with an industry-wide metric such as turnover. Ofcom would of course need to set out guidance on measuring audiences – whether downloads count as views, for example – but we do not see this as insurmountable. Given the additional costs and challenges associated with providing access services on each platform, this second step is in our view important to ensuring requirements are as proportionate as possible.

7. This two-step approach will need careful discussion with industry to ensure requirements are as proportionate as possible. As Ofcom is aware, it may be difficult, if not impossible, to separate out on-demand and linear revenues. However, it is a given that for the majority of services those on-demand revenues will be miniscule compared to linear.
8. As part of this, Ofcom may need to take a case-by-case approach in some areas. As linear requirements remain based on reach, some ODPS providers who are related to broadcasters with no current access service obligations may fall under VoD requirements if measured by turnover. In this scenario, “catch-up” services which generate little revenue themselves should be exempt. The process for demonstrating this should be based on the provider demonstrating to Ofcom’s satisfaction that VoD services are not their primary form of income.
9. Similarly Ofcom should consider exemptions for on-demand services that are primarily “promotional” for their related linear services, carrying very little actual content. This might be measured by looking at the number of hours on a certain service.
10. Finally, there will inevitably be anomalies where one particular item of content attracts relatively high levels of audiences, but where it would be disproportionate to impose requirements on an entire service as a result.

Response to consultation

Question 1. Do you agree with our assessment of the key issues involved to inform regulations in this area?

- 1.1 We agree with the three areas set out in the consultation paper. We stress that Ofcom's powers extend to notified services and not to platforms. As Ofcom is aware, and points out elsewhere in the consultation, this is a particularly important issue in the on-demand landscape, where the number of on-demand platforms far exceeds that in linear television. In our members' experience, different on-demand platforms will demand that media and/or meta data supporting access services is provided in different technical formats. This will increase the costs and technical challenges for services.
- 1.2 For example, UKTV provides content to no fewer than nine on-demand platforms, each of which require different delivery methods, often involving different file formats. These are: Sky set top box; Sky Go; Sky – Now TV; Virgin Media; Virgin Media Ireland; UKTV Play DTC; YouView; BT Vision; Talk Talk. We support how TODIF has set out these challenges in its response, which argues that the provision of access services is complicated by the wide range of platforms and devices on which each individual service may appear. As TODIF states:
- “[W]hile, for example, there may be a demonstrable audience benefit for enabling access services on a particular programme on a service that is available, say, on a variety of set top boxes, via the web, and on a variety of mobile phone formats, the cost and practicality of creating a specific access services file type for each device and type of delivery may be prohibitive.”
- 1.3 This point may be addressed under Ofcom's second key issue - which services/content should be subject to requirements.

Question 2. Are there other 'access services' which you believe should be specified in any regulations?

- 2.1 No, the DEA's provisions for on-demand content cover all types of access services that are required in broadcasting. Even considering just these types, it is highly debateable whether it would be proportionate to require costlier types of access services, such as sign presented programming, for on-demand services, where revenues are not comparable to broadcasting.

Question 3. Do you have views on the relative importance of sign-presented programming and sign-interpreted programming?

- 3.1 Yes. As noted above, it is highly debateable whether it would be proportionate to require costlier types of access services, particularly sign presented programming, on on-demand services, where revenues are not comparable to broadcasting. Also, there has to our knowledge been little, if any, evidence-based research into audience's preferences in this area.

Question 4. To what extent can or should regulations require usability features including (but not necessarily limited to): provision of information; accessible catalogues; and best practice relating to the creation, selection, scheduling and presentation of accessible programming? If you do not believe that these features should be required by the regulations, should the regulations require Ofcom's resulting code to give guidance on these issues?

- 4.1 As Ofcom acknowledges in the consultation paper, this point raises the question of how much control on-demand services will have over the availability and presentation of access services on third-party platforms. Providing media and meta data that supports access services may be costly and technically challenging if, as is the case from our experience, different platforms demand different technical formats. Even then, how that meta data is used, and how access services are presented, will depend in part on the platform.

Question 5. Do you agree that audience benefit, cost, and practicability are appropriate grounds for differentiating services/content for the purposes of regulations? Are there other grounds on which you believe ODPS programmes/services should be differentiated (prioritised, excluded, or subject to different requirements)?

- 5.1 We agree that audience benefit, cost and practicability are appropriate. Our view is that on-demand services should not be required to provide access services where audience levels are particularly low or costs and/or technical challenges disproportionately high. This would mirror broadcasting.

Question 6. Should the regulations impose more stringent requirements on public services broadcasters' ODPS than on ODPS provided by others?

- 6.1 Were an ODPS to become a statutory public service – or were it to receive statutory benefits such as prominence - then yes, it should be subject to more stringent requirements.

Question 7. 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?

- 7.1 Catch-up services do not incur any significantly lower costs when providing access services compared to pure OTT services. As Ofcom notes, even if access services have already been provided for the linear broadcast of content that is subsequently made available via catch-up, there are additional costs and technical challenges to provide access services for the on-demand version. Indeed, there may have to be multiple different versions for different on-demand platforms. Furthermore, some pure OTT services are amongst the most popular and biggest on-demand services in the market. It therefore would be grossly disproportionate to require higher levels of access services for catch-up services compared to OTT services.

Question 8. Do you consider that ODPS programmes/services should be excluded from the full requirements on the grounds of audience size? If so, should there be different requirements for excluded programmes/services?

- 8.1 Yes. The same principle of proportionality should apply to on-demand as to linear broadcasting. Indeed, given the significantly lower levels of audiences (and of course revenues) for many services in the on-demand sector generally compared to linear broadcasting, proportionality is all the more relevant.
- 8.2 In our view, Ofcom should approach this issue not just from the point of view of the overall audience for an on-demand service, but in addition the audience levels for each platform on which that service is available. This is important as a provider is likely to incur additional costs for each platform for which it provides access services. It may be proportionate to exclude some services entirely (on the grounds of their overall audience); for others, it may be proportionate to limit requirements only to the platforms where they have the biggest audiences.

Question 9. Should the regulations impose different accessibility requirements on ODPS made available via certain platforms, and if so which?

- 9.1 Potentially, yes. As mentioned above, it may be proportionate to exclude some services entirely; for others, it may be proportionate to limit requirements only to the platforms where they have the biggest audiences.

Question 10. Do you have any views or information on appropriate and available means of measuring the audience impact of ODPS?

- 10.1 As Ofcom is aware, the absence of reliable sector-wide data has been hugely problematic in the past. In the absence of other reliable and consistent sources of data, Ofcom should use a model based on the overall turnover of the provider, along the lines of the regulator's ODPS fees model (although not necessarily using the same bands as for fees). Those providers under a certain threshold would be excluded entirely, across the whole range of platforms on which they are available.
- 10.2 To help ensure proportionality, there should also be a second step to determining which providers qualify for requirements based on robust audience data where available. This would exclude services that would be otherwise subject to requirements based on turnover if those services have only a small audience on certain platforms. This could mean that those providers are subject to requirements on some platforms, but not others. In this case, a provider that could supply credible audience data to Ofcom should be exempt on those platforms where its audiences are below a pre-determined threshold. Some providers may not be able to offer Ofcom robust data for audiences on each individual service. However, we feel it would be unfair to penalise all services due to this issue, providing of course this approach is used as a second step in conjunction with an industry-wide metric such as turnover. Ofcom would of course need to set out guidance on measuring audiences – whether downloads count as views, for example – but we do not see this as insurmountable. Given the additional costs and challenges associated with providing access services on each platform, this second step is in our view important to ensuring requirements are as proportionate as possible.
- 10.3 This two-step approach will need careful discussion with industry to ensure it is proportionate as possible. As Ofcom is aware, it may be difficult, if not impossible, to separate out on-demand and linear revenues. However, it is a given that for the majority of services those on-demand revenues will be miniscule compared to linear.

- 10.4 As part of this, Ofcom may need to take a case-by-case approach in some areas. As linear requirements remain based on reach, some ODPS providers who are related to broadcasters with no current access service obligations may fall under VoD requirements if measured by turnover. In this scenario, “catch-up” services which generate little revenue themselves should be exempt. The process for demonstrating this should be based on the provider demonstrating to Ofcom’s satisfaction that VoD services are not their primary form of income.
- 10.5 Similarly Ofcom should consider exemptions for on-demand services that are primarily “promotional” for their related linear services, carrying very little actual content. The process for determining this might be based on the number of hours of content provided.
- 10.6 Finally, there will inevitably be anomalies where one particular item of content attracts relatively high levels of audiences, but where it would be disproportionate to impose requirements on an entire service as a result.

Question 11. Are there particular types/genres of programming which should be excluded from requirements, or subject to reduced requirements, on the grounds of limited audience benefit?

11.1 We have no view on this.

Question 12. Do you consider that ODPS programmes/services should be excluded from the full requirements on the grounds of affordability? If so, should there be different requirements for excluded programmes/services?

12.1 Yes. Affordability is an important factor in determining proportionality. We have suggested an approach based on overall turnover. Medium-sized and smaller services should be excluded full requirements, particularly for higher cost types of access services, such as signing. Potentially, these providers might contribute to alternative arrangements, as occurs in linear, but the audience demand and costs for such content must be established first.

Question 13. Do you have any views or information on appropriate and available means of quantifying: ODPS-specific revenue; and costs associated with ODPS access services?

- 13.1 As noted, we have suggested Ofcom use as a starting point its current model for determining fees, coupled with a measure of audiences for each platform on which a service is available.

Question 14. If you are an ODPS provider, do you have information on the likely costs involved in providing access services on your ODPS?

- 14.1 COBA members will provide information on costs individually. However, we note that providers will usually incur additional costs for each platform on which they provide access services, as they will have to use different technical formats for each one. In addition, there are further costs for providing access services for catch-up content, even if access services has been provided for the same content for its linear broadcast.

Question 15. Do you consider that ODPS programmes/services should be excluded from the full requirements on the grounds of technical difficulty? If so, should there be different requirements for excluded programmes/services?

- 15.1 As noted, the increased costs and technical difficulty of providing access services on multiple platforms should be a consideration.

Question 16. 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?

- 16.1 It is important to bear in mind that the costs and technical challenges of providing access services for on-demand content are significant. Given the relatively undeveloped nature of the on-demand sector, it would be highly disproportionate to set quota levels at comparable levels to linear.

Question 17. Do you think that there should be a phased introduction of requirements? If so, please give details?

- 17.1 If Ofcom introduces requirements such as quotas, they should certainly be phased in over a number of years. This is common practice, for example with access services requirements for domestic and non domestic linear channels. We would also ask Ofcom to set out a transitional period so that providers can plan to meet the considerable challenges that are presented.

Question 18. Do you think that the introduction of requirements should prioritise particular types of ODPS programmes or services?

18.1 We have no view on this, other than that requirements should be applied in a way that is proportionate, taking into account audience size, costs and technical difficulties.

Question 19. Should ODPS providers be able to propose alternative arrangements, and if so what type of arrangements?

19.1 In principle, yes, providing a compelling case is made that doing so is proportionate and valued by audiences. Otherwise, services should simply be excluded where appropriate.

Question 20. Do you have any other comments or information you wish to share in relation to the drafting of regulations on ODPS accessibility?

20.1 No.