



SKY RESPONSE TO OFCOM'S CONSULTATION: HOW SHOULD ON-DEMAND PROGRAMME SERVICES BE MADE AVAILABLE?

INTRODUCTION

- 1.1 Sky is fully supportive of Ofcom's statement¹ that consumers with hearing and/or visual impairments should have access to television, whether it is broadcast or on-demand.
- 1.2 Sky currently provides subtitles on VOD content made available via the following outlets:
- (a) Sky On Demand outlet (on Sky connected set top boxes);
 - (b) Sky Store; and
 - (c) Now TV² (movies content only)
- 1.3 Development work is still ongoing to roll out subtitles for VOD content (including entertainment content) across all devices for Now TV, and Sky is also committed to introducing access services on its other VOD outlets, including Sky Go.
- 1.4 Sky agrees broadly with the response submitted to Ofcom by the Television on Demand Industry Forum (TODIF). Sky has therefore only responded to the consultation questions to the extent that Sky's view differs or supplements the TODIF response.
- 1.5 In particular, Sky submits that any future regulation should:
- (a) seek to take a flexible approach, given the number and range of technologies via which ODPS are made available;
 - (b) ensure that ODPS providers retain the flexibility to focus their efforts on providing access services in respect of content that they consider to be most valued by end users; and
 - (c) only apply to an ODPS in respect of platforms/devices on which such ODPS has a significant number of end users;

Q2 ARE THERE OTHER 'ACCESS SERVICES' WHICH YOU BELIEVE SHOULD BE SPECIFIED IN ANY REGULATIONS?

- 1.6 Sky considers that any regulation should be sufficiently flexible to allow Ofcom to take into account any alternative ways in which access services are provided by an ODPS provider, for example via a companion app.

¹ Paragraph 2.5 of Ofcom's consultation document.

² Sky is yet to launch access services on the Now TV website and on iOS and Android apps.

Q4 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?

- 1.7 It would not be appropriate for any regulation to require such usability features, in particular given that the ODPS provider may not have control over the user interface. For example, on the Sky DSat platform Sky provides the user interface via which Sky's own ODPS and third party ODPS are made available.
- 1.8 Sky is not convinced that there is evidence to demonstrate regulation is required to guarantee these features or to set prescriptive guidelines. Ofcom, however, should continue to play an important role convening service providers to share best practice and to encourage innovation in accessible provision.
- 1.9 Sky considers that ODPS providers should nonetheless be encouraged to provide the relevant metadata to platforms, and this could perhaps be achieved via non-binding guidance from Ofcom.
- 1.10 On the Sky DSat platform, Sky offers the same programme information for VOD content as it does for linear content. Sky presents clear signage indicating whether a piece of content contains subtitles [S], audio description [AD or sign language [BSL]]. Third party broadcasters are already familiar with these requirements in respect of their linear content and Sky therefore expects them to be carried across to ODPS as more access services become available.

Q5 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)?

- 1.11 In addition to the points raised by TODIF in response to this question, Sky submits that any regulation should ensure that ODPS providers retain the flexibility to prioritise the programmes they consider to be most valued by customers. For example, in relation to its linear channels Sky prioritises primetime, exclusive and high profile content for access services. The same approach would be valid for VOD.

Q6 SHOULD THE REGULATIONS IMPOSE MORE STRINGENT REQUIREMENTS ON PUBLIC SERVICES BROADCASTERS' ODPS THAN ON ODPS PROVIDED BY OTHERS?

- 1.12 Sky does not have any views in response to this question.

Q8 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?

- 1.13 Generally, it is sensible for ODPS providers to prioritise development efforts where they know they will have the greatest impact on their audiences. However, an ODPS may have a large audience on one platform, but a much smaller user base on another. Any future regulation should take these variances into account i.e. the fact that an ODPS has a larger user base on one platform should not result in access service obligations applying to that

ODPS across all other platforms, particularly where they may have a small number of viewers.

Q9 SHOULD THE REGULATIONS IMPOSE DIFFERENT ACCESSIBILITY REQUIREMENTS ON ODPS MADE AVAILABLE VIA CERTAIN PLATFORMS, AND IF SO WHICH?

- 1.14 Any regulation should allow ODPS providers the flexibility to prioritise access services on platforms where they receive the most viewers in order to maximise the availability of accessible content.

Q11 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?

- 1.15 As noted by TODIF, certain genres/types of programmes present their own unique issues in relation to access services.

- 1.16 In particular, Sky notes that certain types of content have diminished value on-demand as opposed to live. For example,

(a) Live sports fixtures, which are subtitled live, are viewed live in the overwhelming majority. Further, the work required to provide subtitles for the VOD asset significantly outweighs the benefit to end users.³

(b) Where a sporting event has live sports commentary, the audio describer is often only able to add a sentence to signal the end or the start of a programme. The VOD version of that programme on Sky would not feature such break points.

(c) VOD programmes consisting of sports and news events round-up clips are turned around very rapidly and only available and useful for a short period of time. It would not be practicable or beneficial to provide access services for such content.

- 1.17 Accordingly, Sky submits that such content should be expressly excluded from any proposed requirements.

Q12 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?

- 1.18 Sky objects to the principle that only the largest ODPS providers should be subject to the full requirements on the grounds of affordability.

- 1.19 Furthermore, if only largest providers are required to comply with the full requirements then those who cannot afford may be less inclined to voluntarily comply. The risk is that this approach gives rise to a two-speed industry which would not best serve consumers with hearing and/or visual impairments.

- 1.20 Nevertheless, smaller service providers should have targets and requirements that are more accommodating to their service and the nature of their offering. This could include lower requirements, or the ability to offset their requirements in other ways that achieve similar accessibility goals.

³ Where subtitles are created live for a particular programme, such as a football game, it is not technically possible to retrieve the subtitles file and to re-use it should the content be made available on-demand.

Q13 DO YOU HAVE ANY VIEWS OR INFORMATION ON APPROPRIATE AND AVAILABLE MEANS OF QUANTIFYING: ODPS-SPECIFIC REVENUE; VOD SPECIFIC REVENUE; AND COSTS ASSOCIATED WITH ODPS ACCESS SERVICES?

- 1.21 Sky submits that it may be difficult for ODPS providers to attribute specific revenue to a specific ODPS, particularly where these services are bundled with other services provided by the ODPS provider. Such services therefore do not generate separate, identifiable revenues.

Q14 IF YOU ARE AN ODPS PROVIDER, DO YOU HAVE INFORMATION ON THE LIKELY COSTS INVOLVED IN PROVIDING ACCESS SERVICES ON YOUR ODPS?



Q15 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?

- 1.23 As noted by TODIF, technical difficulties will vary according to different devices, operating systems and files types. However, in order to prioritise efforts sensibly, this should be assessed in relation to audience viewing. It is sensible to consider that platforms with the most hours of content viewed should be prioritised. For Sky this is the main driver for budget allocation and resources.

Q16 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?

- 1.24 Quotas on percentages of programming with access services seem to constitute the only sensible way to report consistently on the offering available to customers. However, as noted by TODIF, Ofcom should approach this with a degree of flexibility. Any quota should take into account the size and popularity of an ODPS on a per platform/device basis, and

cost. It is also essential that ODPS providers be allowed to prioritise access services for VOD content which they know is most valued by their customers.

Q18 DO YOU THINK THAT THE INTRODUCTION OF REQUIREMENTS SHOULD PRIORITISE PARTICULAR TYPES OF ODPS PROGRAMMES OR SERVICES?

1.25 It is crucial that broadcasters are given the flexibility to:

- (a) build their library of accessible VOD programmes based on their insight of customers' needs and expectations. For example, when Sky launched subtitles on on-demand, Sky started with the most popular and exclusive content and built on from there to gradually increase coverage; and
- (b) focus efforts on platforms/outlets where audience share is the largest and will benefit the most from access services.

Q19 SHOULD ODPS PROVIDERS BE ABLE TO PROPOSE ALTERNATIVE ARRANGEMENTS, AND IF SO WHAT TYPE OF ARRANGEMENTS?

1.26 Sky believes it is important to remain open to innovative ideas that might become available to enable customers to access their content with subtitles, audio description and BSL. For example, there have been trials of companion Apps synchronizing audio description track to content playing on TV. These alternatives should be considered by Ofcom as and when they develop.

Sky

April 2018