

How should On-demand Programme Services be made accessible?

Response to Ofcom by the Television On-Demand Industry Forum (TODIF)

Introduction

The Television On-Demand Industry Forum (TODIF) represents the 122 On-Demand Programme Services (ODPS)¹ notified with Ofcom, the telecoms and broadcasting regulator. These services range considerably in size and form, from the catch-up services associated with major linear channels, such as Sky Go, All 4, or BBC iPlayer on the one hand, to web-based offerings such as BFI Player and Vevo on the other. It also encompasses Over the Top (OTT) services such as Amazon².

The object of TODIF is to represent sector thinking to Ofcom, the DCMS and other policy makers, and to engage with a wider set of stakeholders.

In responding to this Ofcom consultation on access services the authors are aware that given the variety of service types represented by TODIF, it may not always be possible to represent a common view on the best way forward in each instance. To the extent that there is a divergence of views, this will be reflected at each relevant point.

Consultation Responses

Q1 Do you agree with our assessment of the key issues involved to inform regulations in this area?

TODIF agrees that while the experience of access services in a broadcast environment lends itself to a relatively straightforward initial expectation of what access services should look and sound like in an on-demand environment, we would urge Ofcom not to take an overly rigid quantitative approach to its implementation on on-demand services.

While it is important to consider what features should be present, on which services, when, TODIF urges Ofcom to also take account of the wide variety of platforms, devices, operating systems, and file types, that on-demand services are available on, and to frame their recommendations so that audience benefit can be meaningfully achieved, and measured, in a proportionate manner on the most widely available outlets.

Q2 Are there other 'access services' which you believe should be specified in any regulations?

While technological developments in the areas of sensory enhancement and companion devices may soon enable on-demand services to provide viewers who have a sight or hearing impairment

¹ Broadly speaking an ODPS is an on-demand or catch-up service, providing TV-like content, available via a set-top box, website, smart TV, OTT plug in device, which allows viewers to watch content at a time of their choosing, is likely to compete with television, and is accessible in such a way as users might expect a degree of regulatory protection.

² A full list of members can be found at:

https://www.ofcom.org.uk/__data/assets/pdf_file/0021/67710/list_of_regulated_video_on_demand_services.pdf

with a variety of alternative ways in which to experience access services, TODIF thinks that any code and/or guidance that results from this consultation should limit itself, initially, to the requirements specified in the Digital Economy Act 2017 (DEA), namely subtitling, audio-description and signing.

When assessing a particular on-demand service provider's overall commitment to access services however, Ofcom may also want to take a discretionary account of any additional alternative ways in which access services are provided by a service provider.

Q3 Do you have views on the relative importance of sign-presented programming and sign-interpreted programming?

In its linear broadcasting rules on access services³ Ofcom recognizes that sign-presented and sign interpreted programming requires more investment and resources on the part of the service provider, by firstly setting a higher audience share percentage trigger threshold (1% of average audience share, as opposed to 0.05% average audience share for subtitling or audio-description), and secondly by allowing broadcasters to make alternative financial contributions to organizations that specialize in signed content.

TODIF asks Ofcom to take a similarly structured approach with sign-presented and sign-interpreted programming on on-demand services.

In the case of stand-alone web-based or OTT on demand services, a service should not be required to provide sign-presented and sign-interpreted programming, or to make alternative financial arrangement, if to do so would place an unreasonable burden upon the service provider.

In the case of on-demand or catch-up services aligned to a traditional broadcast service, sign-presented and sign-interpreted programming should not be required in an on-demand environment if its requirement has yet to be triggered in the broadcast sphere for the same programming content by Ofcom's *Code on Television Access Services*⁴.

As detailed in our later responses the requirement to provide sign-presented and sign-interpreted programming, as well as subtitling and audio-description, should also be subject to other excluding factors, such as audience benefit and technical difficulty.

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?

As stated above, on-demand content is currently made available via a wide variety of platforms, devices, operating systems, and file types. In some cases an Ofcom notified on-demand programme service will be in control of the whole end-to-end content delivery chain, and therefore how the programme content is catalogued and accessed by the viewer, while in other cases the Ofcom notified on-demand programme service will merely provide content to a third party platform or service that will handle the device and viewer interface.

³ https://www.ofcom.org.uk/__data/assets/pdf_file/0020/97040/Access-service-code-Jan-2017.pdf

⁴ See note 3.

To the extent that it is within its control, an Ofcom notified on-demand programme services should be willing to provide the metadata necessary to enable platforms and services to highlight and curate access service enabled content. Ofcom notified on-demand programme services should not however, be held responsible for technical or contractual restrictions placed upon them in this regard by third party services and platforms responsible for the ultimate viewer experience. Especially as the services and platforms may not themselves be ODPSs and thus not fall within the scope of any Ofcom code.

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)?

Audience benefit, cost, and practicability are established and familiar grounds for excluding certain content and channels from the obligation of access services provision in a broadcast environment, and as such could provide a useful starting point for considering which on-demand services might be obliged to provide access services, and which ones excluded.

TODIF would like to point out however that the application of these criteria in an on-demand environment is complicated by the wide range of platforms and devices on which each individual service may appear. So while, 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. In these circumstances service providers should be allowed to focus their access service efforts and resources on the devices and platform which will deliver the greatest impact.

Also on-demand service providers have indicated that the quality of viewer data varies considerably from platform to platform, and from device to device, so in some cases it may be extremely difficult to arrive at a meaningful understanding of audience benefit.

Q6 Should the regulations impose more stringent requirements on public services broadcasters' ODPS than on ODPS provided by others?

Public service broadcasters are, for the most part, already required to meet stricter access service obligations on their linear channels than other broadcasters.

In some cases it may be relatively straightforward to re-purpose programme assets, already access service enabled for linear broadcast services, for certain on-demand platforms and devices, especially in cases where the on-demand services provider controls the end-to-end delivery chain, as with certain web- or app-based vod services and set top boxes.

In view of the wide range of exchange and delivery formats currently in use, where content is being delivered to multiple third party platforms, the cost and complexity of converting existing assets is a significant factor.

In some cases, the on-demand services associated with linear public service broadcasters are not themselves part of the broadcaster's public service obligations.

Commercial broadcasters would face similar hurdles to public service providers when attempting to re-purpose linear access service assets for third party platforms.

In view of this, absolute quotas for on-demand services that map back to the obligations of associated linear services may be too blunt a metric.

There are OTT only services with sizable audiences and revenues, not currently subject to either PSB or commercial broadcasting licence obligations, which could reasonably be expected to provide an amount of access service enabled content.

Q7 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?

Access services should not be required on catch-up and on-demand services that are directly linked to broadcast TV services, if that broadcast TV service itself has yet to be required by Ofcom to provide access services.

As stated above, just because a programme asset has been access services enabled for linear broadcast does not necessarily mean it can be re-purposed with access services for a range of on-demand devices and platforms without considerable cost and complexity.

Also, in some cases linear broadcasters may have provided access services on content for which they only have a linear broadcast license, so even if they were able to re-purpose those access services for VOD delivery, they would not have the rights to provide the asset in a VOD environment.

As stated above, this approach should not preclude a requirement on sizable OTT only services, to provide access services, just because they are not associated with an existing PSB or commercial broadcasting service.

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?

TODIF members find the ability to measure audience size varies according platform, device, and commercial agreement, so arriving at a meaningful audience size measurement across all the outlets a particular service is available on may not be straightforward.

Further, a programme asset whose access services may be playable on some platforms and devices may not, due to format or file exchange limitations, be viewable with access services on other devices.

Given the significant variance in the quality of viewing data from platform to platform and device to device, Ofcom should take a flexible approach to measuring audience benefit allowing on-demand service providers to use viewing data, where available, or other metrics such as catalogue size, or platform reach, when it is not.

Q9 Should the regulations impose different accessibility requirements on ODPS made available via certain platforms, and if so which?

The legislations bites on On-Demand Programme Service providers, not platforms or devices, which may fall out of the scope of any Ofcom code. So it should not be for Ofcom to specify which particular platforms, devices, or file types, should or should not be subject to access services requirements. However, on-demand service providers should be able to justify their approach to this issue on the basis of audience benefit, cost and practicability.

Q10 Do you have any views or information on appropriate and available means of measuring the audience impact of ODPS?

Please see our comments above on the current problems service providers have measuring audience size.

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?

While TODIF members do not think particular genres of on-demand service should be excluded outright, it has been observed that some genres such as music videos, sport, the retransmission of live events, and adult content, present their own unique issues in relation to access services. Ofcom should use its discretion to allow the providers of these services to exclude themselves in the event that providing access service is not practicable, or that the end result would be of little value to the viewer.

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?

Affordability is a valid metric for excluding certain services from the obligation of providing access services. For stand-alone on-demand services it might be possible to compare the cost of access services provision with the revenue generated by the on-demand service. However for many services isolating a specific revenue amount associated with its on-demand offering can be difficult as on-demand content is often bundled as part of a wider broadcast carriage deal.

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?

Please see our answer to Q12.

Q14 If you are an ODPS provider, do you have information on the likely costs involved in providing access services on your ODPS?

Some TODIF members have agreed to provide this information directly to Ofcom on a confidential basis.

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?

Given the wide variety of devices, operating systems, and file types, that on-demand services are available on, it stands to reason that providing access services on some will be more technically challenging than on others. In view of this, service providers should be allowed to present arguments to Ofcom that they should be exempt from providing access services in some formats or for devices on the grounds of technical difficulty.

Ofcom should weigh requests for an exemption on technical grounds against the degree of likely audience benefit a particular exchange format or platform would provide to viewers requiring access services.

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?

For the reasons given above about the difficulty of providing accurate audience size data across all platforms and devices, and the fact that some devices and platforms will be too expensive or technically challenging to provide access files for, it is difficult to see what metric a rigid quota would attach to.

TODIF asks Ofcom to approach this with degree of flexibility that accepts that, for example, if a certain amount of an on-demand service's catalogue were expected to be access service enabled, not all devices would be able to play those access services.

Q17 Do you think that there should be a phased introduction of requirements? If so, please give details.

As with the regime for access services on broadcast television channels, a phased introduction over a period years, with the provision required increasing gradually year upon year, would enable on-demand service providers to plan and properly resource the introduction of access services.

Q18 Do you think that the introduction of requirements should prioritise particular types of ODPS programmes or services?

TODIF thinks that getting a sector-wide agreement between on-demand services and platforms on exchange and delivery formats should be a priority.

Q19 Should ODPS providers be able to propose alternative arrangements, and if so what type of arrangements?

In linear broadcasting alternative arrangements take the form of financial payments to access service content providers. Given the difficulties outlined above regarding isolating vod specific revenue, this would be an unreasonable additional burden on an emerging sector.

Q20 Do you have any other comments or information you wish to share in relation to the drafting of regulations on ODPS accessibility?

Throughout this consultation the issue at hand has been the extent to which Ofcom should compel on-demand programme services to provide access services. As noted above however, the viewer

experience of access services on a vod service will, to a great extent, be determined by the technical parameters of the platform and device on which the service is being consumed. Platforms and devices are also in a position to determine what file formats access services functionality can be delivered in, even though the legislation and any Ofcom code will only bite on the on-demand provider not the platforms.

With this in mind TODIF would seek Ofcom's support in urging service and content providers, platforms, and device manufacturers to work together to identify and agree a set of acceptable delivery and exchange file formats for access services on on-demand.