

RNIB's response to Ofcom's further consultation to inform requirements to make On Demand Programme Services more accessible to those with sight and/or hearing difficulties

About us

RNIB is the largest organisation of blind and partially sighted people in the UK and welcomes this opportunity to respond to the consultation.

With blind and partially sighted people at the heart of everything we do, our community of over 33,000 people brings together anyone affected by sight loss. More than three quarters of our Board of Trustees are blind or partially sighted. We support, empower and involve thousands of people affected by sight loss to improve lives and challenge inequalities. We engage with a wide range of politicians, organisations and professionals to achieve full inclusion through improvements to services, incomes, rights and opportunities.

We campaign for the rights of blind and partially sighted people in each of the UK's countries. Our priorities are to:

1. Be there for people losing their sight.
2. Support independent living for blind and partially sighted people.
3. Create a society that is inclusive of blind and partially sighted people's interests and needs.
4. Stop people losing their sight unnecessarily.

RNIB welcomes the opportunity to respond to this consultation.

The importance of ODPS (On Demand Programme Services) to blind and partially sighted people

Blind and partially sighted people want the same access to media services as anyone else and ODPS have become a significant part of the life of people in the UK.

Before lockdown 15 million households (53%) in the UK had a subscription to at least one subscription based ODPS and many of these were subscribed to multiple services [i]. Viewing of these services has more than doubled during lockdown however with people in the UK watching an average of 71 minutes a day in April 2020, up from 34 minutes the previous year [ii].

Broadcast services are being structured around an assumption that users have access to catchup services with some content being delivered either primarily or purely online. This means catchup services are no longer an additional extra in terms of broadcasting but an integral part of the service.

The need for app and platform accessibility

The provision of access services on ODPS is an important accessibility measure but is only a partial solution. The apps and platforms also need to be accessible.

Apps are written or commissioned by content owners and constitute an integral part of the service so do not violate the EU prohibition on creating barriers to cross border trade. They are, however, covered by the European Accessibility Act as services which must be made accessible.

Some ODPS providers manage their own platforms meaning the devices used to playback ODPS content are under the control of the ODPS provider. RNIB notes that the European Accessibility Act requires the accessibility of “consumer terminal equipment with interactive computing capability” (for instance Smart TVs) and the Communications Act still gives Ofcom a Duty to “take such steps ... as appear to them calculated to encourage others to secure...that domestic electronic communications apparatus is developed which is capable of being used with ease, and without modification, by the widest possible range of individuals (including those with disabilities)”. Ofcom have a duty therefore to recommend consumer equipment used to playback ODPS should have to be accessible in line with the European Accessibility Act.

The regulation when written should include a requirement for ODPS apps and platforms run by ODPS providers to be accessible for blind and partially sighted people.

Consultation Responses

Question 1: Do you agree with our suggested approach to assessing exemptions for affordability, i.e. using overall turnover?

RNIB agrees.

Question 2: Do you agree with our suggestion that ‘small companies’ should be exempted from the requirements?

RNIB agrees.

We understand that small companies must meet two of the three criteria on their size and that if they fail to qualify for two years then they lose the ability to claim small company status in the future. We agree with Ofcom’s assessment that small companies are likely to be exempt from providing AD by other criteria set by Ofcom.

Question 3: Do you agree that a threshold level of 1% for the remaining ODPS providers is proportionate?

RNIB agrees.

Question 10: Do you agree with our suggested approach to making exemptions on the basis of audience size?

RNIB agrees.

Question 11: Do you agree with our suggested threshold for assessing audience size?

RNIB agrees.

Question 13: Do you agree with our suggested approach to assessing exemptions on the grounds of technical difficulty?

RNIB agrees but we have concerns.

RNIB recognises that Ofcom feels it will not be able to compel third-party platforms to make provision for access services but this means that in some cases ODPS providers are dependent for accessibility on organisations not covered by this legislation.

RNIB notes that some of the third party platforms mentioned in the consultation document belong to ODPS providers (“e.g. Sky on-demand,

Amazon Prime Video”). However, the regulation as suggested does not appear to place a direct duty on the platform owner.

Where ODPS provider A is reliant on a platform owned by ODPS provider B then both A and B should have to use reasonable endeavours to secure that A’s access services are available on B’s platform.

RNIB would like to remind platform providers not governed by Ofcom that if they are a service they are obliged by the Equality Act 2010 to make reasonable adjustments and that under the European Accessibility Act they are obliged to make their services accessible and to “...make available to persons with disabilities the accessibility components provided by the audiovisual media service provider...” which would include audio description.

Question 14: If Ofcom is given discretion in this area, do you agree with our suggested approach to making exemptions for particular genres/ types of programmes?

RNIB agrees.

Any further exceptions based on lack of qualitative benefit should be based on credible evidence of a lack of benefit rather than a lack of evidence of benefit.

Question 15: If Government wants to specify which types of programming should be exempt in the regulations, do you agree with our provisional view that the exemptions should only be for audio description on news and music programmes?

RNIB broadly agrees.

One piece of feedback that came across strongly from the 2018 Audio Description Awareness Campaign was the inaccessibility of on-screen text. This includes subtitles used when news programs include foreign language interviews so news programs can no longer be assumed to be accessible.

Broadcasters need to be aware that translation subtitles are not accessible to blind and partially sighted people.

Ofcom also need to take this into account both when creating their access service guidelines but also when deciding which content should

be exempt. News which subtitles foreign languages is not automatically accessible and should not be exempt.

Question 19: Do you believe there should be an exemption for signing in cases where it allows ODPS providers to offer subtitling and AD?

RNIB agrees.

Whilst sign language is an important access service it is an expensive one. If providing all three access services would exceed the affordability threshold but providing two would not then service providers should be exempt from the sign language requirement and be required to offer audio description and subtitling.

Question 21: Do you agree with our suggested approach to setting targets across ODPS services and platforms?

RNIB agrees.

Question 22: Do you agree with our suggested approach to implementing the targets?

RNIB agrees.

Question 25: Do you agree with our assessment of the impact of our proposals on the relevant equality groups? If not, please explain why you do not agree.

RNIB agrees.

14/09/2020

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- i Ofcom's 2020 media nations report. Last checked 28/08/2020
 - ii "However, the greatest growth was in subscription video-on-demand (SVoD) services... with people in the UK watching an average of 1 hour 11 minutes a day on these services in April 2020 – 37 minutes higher than in 2019." - Ofcom's 2020 media nations report - Last checked 28/08/2020