

Your response

Question	Your response
<p>Question 1: Do you agree with our suggested approach to assessing exemptions for affordability, i.e. using overall turnover?</p>	<p>Yes. We welcome the clarity and certainty that this provides and agree that a reliance on profit as a measure would have created some perverse outcomes in which the biggest and most popular services would not have been covered by the regulation. We also note that the other measures set out in the consultation – such as audience size and the 1% cost cap means that large organisations with small VOD services will be protected from a disproportionate cost.</p>
<p>Question 2: Do you agree with our suggestion that ‘small companies’ should be exempted from the requirements?</p>	<p>We share Ofcom’s view that the standards set out in the regulation should be considered a baseline. We are therefore pleased that Ofcom set out its stated ambition in section 2.9 to ‘strongly encourage on-demand providers to increase their provision of access services whenever and wherever it is proportionate to do so’. We believe that there is a business case as well as a principle of equality for small companies to provide access services and we will continue to make that case to them. However, we reluctantly accept the exemption for small companies as a means of ensuring that the regulations are proportionate.</p>
<p>Question 3: Do you agree that a threshold level of 1% for the remaining ODPS providers is proportionate?</p>	<p>We understand that this limit applies for linear providers and therefore it makes sense to transfer this provision over to the on-demand code. We also believe that, when combined with the audience threshold, requiring up to 1% of turnover to be spent on access service is in no way disproportionate given that one in six of the UK population is living with a hearing loss.</p> <p>However, we do not believe that providers who cannot meet their regulatory obligations on 1% of relevant turnover should be ‘exempt’ as</p>

	<p>implied in the consultation document. Instead we strongly believe that they should be subject to lower tariffs – the principle of which is set out in 5.2. However, rather than the current cliff-edge provisions taking requirements down to either 66% or 33% of the full targets, we would like to see relevant providers obliged to get as close as possible to their regulatory targets on 1% of turnover – which will create incentives for access services to be provided in a cost effective way. This means that no provider would be ‘exempt’ even if they could not reach 33% of their target within the 1% threshold.</p> <p>If companies have an exemption from any obligations based on the 1% rule then that could create unintended consequences and disincentives for providers who would otherwise look to provide the services in the most cost effective way possible. The lack of clarity about the costs of providing access services, noted throughout the consultation document, means that an exemption based on the 1% rule might also make it difficult for the regulator to enforce this rule in the interests of consumers if providers become exempt.</p> <p>We therefore urge Ofcom to be clear in its recommendations to Government that companies that cannot meet their obligations on 1% of turnover are subject to lower tariffs and not exempt from the regulations.</p>
<p>Question 4: If you are an ODPS provider, can you provide any information on the costs of providing access services, including in relation to the various platforms by which services are delivered?</p>	<p>NA</p>
<p>Question 5: If you are an ODPS provider, can you provide any information on the proportion of your ODPS catalogue which is replaced over a given month/ year (rather than archived)?</p>	<p>NA</p>
<p>Question 6: If you are an ODPS provider and have a broadcast television service,</p>	<p>NA</p>

<p>can you provide any information on the proportion of your ODPS catalogue which is repurposed from broadcast television over a given month/ year?</p>	
<p>Question 7: If you are an ODPS provider with more than one ODPS, can you provide any information on the hours of unique content provided across all your ODPS over a given year?</p>	<p>NA</p>
<p>Question 8: If you are an ODPS provider, can you provide any information on how much advertising/ subscription revenue you would expect to gain from providing access services on your content?</p>	<p>NA</p>
<p>Question 9: If you have provided answers for any of Question 4-8 above, would you be happy for Ofcom to share this information with Government on a confidential basis, for the purpose of their impact assessment to inform the drafting of regulations?</p>	<p>NA</p>
<p>Question 10: Do you agree with our suggested approach to making exemptions on the basis of audience size?</p>	<p>We believe that this is a fair and proportionate model and accept the case made in the consultation document that audience size is the best equivalent measure to audience share as set out in the linear code – which we believe works well in the interests of both providers and consumers.</p> <p>We welcome the fact that Ofcom has made the threshold based on ODPS providers’ audience share on any platform and not further reduced the benefit to consumers by limiting the benefits on the basis of audience size for any possible device.</p>
<p>Question 11: Do you agree with our suggested threshold for assessing audience size?</p>	<p>Whilst we accept the need to create an objective exemption based on audience size we</p>

	<p>do not believe that the evidence currently exists to indicate how this might support consumers. There are two reasons for this.</p> <p>Firstly, as Ofcom noted in the consultation document there does appear to be a high degree of uncertainty over how the 200,000 threshold would apply across the ODPS market. Whereas Ofcom were able to provide clarity on the proportion of the market and the content which would be covered by the 1% revenue exemption there appears to only be anecdotal evidence on the impact of this proposal.</p> <p>Secondly, the on-demand market evolves and develops very quickly. If the market consolidates, the 200,000 threshold would offer further benefits to consumers and no extra costs to ODPS providers. However if the market fragments and new platforms emerge then the proposed threshold could very quickly reduce the benefits to consumers. We would therefore question whether the threshold needs to be placed into the secondary legislation – thereby binding Ofcom into a model that could quickly become outdated to the needs of consumers.</p> <p>We believe that mandating the exact figure for audience within secondary legislation could bind Ofcom into a measure which does not meet the needs of consumers in either the short or long-term. Instead we would like to see the secondary legislation establish a principle of exemption based on audience share, with the exact numbers set and reviewed by Ofcom as part of its Code to meet the ongoing needs of consumers.</p>
<p>Question 12: If you are an ODPS provider, do you have information on unique visitors to your service, including by the platforms through which your service is delivered? Would you be prepared to share estimated audience metrics with Ofcom on a confidential basis, for use in our impact analysis? (Please provide if so)</p>	<p>NA</p>

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

Action on Hearing Loss has been engaged in our Subtitle It! campaign for over six years and throughout this period our members and supporters have been bemused and angered by providers sighting 'technical exemptions' as an unexplained reason for not providing access services. We appreciate ODPS providers are often not in control of the platforms they operate, however it is now seven years since the Department of Digital Culture Media and Sport (DDMCS) put the industry on notice that they needed to improve the provision of access services (DDMCS, [Connectivity, Content and Consumers: Britain's digital platform for growth](#), p. 22). In this time many platforms have launched new hardware and had plenty of opportunity to build the ability to provide access services into their services.

One of our hopes for the regulation was that it would motivate the parties to resolve the impasse cause by neither party wanting to adapt the other technical standards. If this happened a number of services that currently offer no access services could, in theory, have seen large increases in accessible content.

We note that the proposal for 'reasonable endeavours' would give Ofcom a substantial amount of leeway over how to interpret and enforce the regulations. We would want the powers held by Ofcom to be a meaningful deterrent to companies using technical difficulties as an excuse to fail to offer subtitles.

We would therefore urge Ofcom to set a higher regulatory threshold on this point and require services to demonstrate 'best endeavour' rather than the current suggestion of 'reasonable endeavour'.

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?

We agree with the position set out in the consultation; that there is no clear case for exemptions beyond the provision of audio description on news programming and music tracks. We also note that under the regulations broadcasters would only be required to provide access services on a maximum of 80% of their content – which means the majority of broadcasters will already have plenty of scope

	<p>to leave content without access services if it is appropriate to do so.</p>
<p>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?</p>	<p>Yes.</p>
<p>Question 16: Do you have any views on our proposed approach to determining applicable signing requirements?</p>	<p>In the consultation document Ofcom is right to note that there is no clear, unified preference from the Deaf community which indicates the type of content which would best serve BSL users; there is a case for a mixture of sign-interpreted content to provide mainstream content as well as sign-presented programming which reflects the specific needs of the Deaf community.</p> <p>We therefore agree that the proposal that provides flexibility for providers to offer a combination of sign-presented, sign-interpreted or a financial contribution to an approved provider of sign-presented programming on-demand makes sense. We would urge Ofcom to continue to engage with the Deaf community on their preferences for BSL content so that their enforcement of best practice guidelines for providing signing on ODPS is rooted in the evolving needs of BSL users.</p>
<p>Question 17: Do you prefer Option A or Option B for determining the levels of each signing requirement?</p>	<p>We understand the potential benefits to Option A in allowing collaboration and the likely increase in funding to the BSLBT. We therefore do not have any strong evidence with which to disagree to Ofcom’s proposal for Option A.</p>

<p>Question 18: What alternative signing arrangements do you think should be in place for ODPS? Should this be an extension of the current arrangement with BSLBT?</p>	<p>We have not collated any evidence from the BSL community to suggest that an extension of the current arrangement with the BSLBT would not be an appropriate solution.</p>
<p>Question 19: Do you believe there should be an exemption for signing in cases where it allows ODPS providers to offer subtitling and AD?</p>	<p>As noted in our answer to question 3 above, we do not believe that providers should be exempt from any obligations under the code in the event that they cannot meet their obligations through the 1% limit, but instead be subject to lower obligations. Implementing this compromise would mitigate the explicit trade-off between the provision of subtitles and the provision of signing.</p> <p>We also note, as Ofcom has in paragraph 4.3, that ‘for native BSL users, subtitling is not a direct substitute for BSL interpretation’. Indeed for many BSL users the provision of subtitles does not offer any increase in accessibility. Given that the BSL community is already marginalised in society and lacking access to current affairs information and culture, we would urge Ofcom not to trade their needs off against those of other people with sensory loss.</p>
<p>Question 20: Do you have any information on the relative costs of providing sign-interpreted or sign-presented programming? If so, please indicate whether you would be happy for Ofcom to share this information with Government on a confidential basis, for the purpose of their impact assessment to inform the drafting of regulations.</p>	<p>NA</p>
<p>Question 21: Do you agree with our suggested approach to setting targets across ODPS services and platforms?</p>	<p>We understand the benefits to the Prescriptive Approach. This offers consumers certainty that they will be provided access service. As noted, this is particularly important given the low level of switching that occurs and the fact that many consumers are contracted to a paid service for substantive periods of time. We also agree that</p>

	<p>accessibility should become built in across all platforms, but that the Flexible Approach could lead to some services offering little or no accessible content. We therefore agree with Ofcom’s proposal.</p> <p>We note however the relation between this question and question 13. The Prescriptive Approach offers consumers less benefit if a large number of platforms become exempt.</p> <p>One issue that is often raised to us is the lack of user-friendly information on the volume of accessible content on different platforms. Regardless of which option is pursued we would like to see Ofcom pursue the need for consumers to be given better information on the level of access services provided by different services and platforms. It is especially important that consumers are given meaningful information pre-purchase on paid TV services.</p>
<p>Question 22: Do you agree with our suggested approach to implementing the targets?</p>	<p>Yes. We welcome the suggestion that Ofcom could propose advisory targets, especially for the first year of the regulations. Although we appreciate they might not be binding, it would be helpful to create expectations that access services will be increased proportionately during the first year and create a reputational risk for companies that seek to delay meeting the targets until the second and fourth years.</p>
<p>Question 23: If you are an ODPS provider, would you be able to provide Ofcom with the information outlined in 5.18 to 5.21 on a regular basis (e.g. every two years)?</p>	<p>NA</p>
<p>Question 24: Do you have any comments on the cost assumptions included in Annex 2?</p>	<p>No.</p>

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.

Yes. We welcome the impact that these measures will have on people with sensory loss and are pleased that Ofcom have set out the benefits it will have for inclusion in wider society. TV remains a focal point of our culture and something that brings people together and provokes discussion and debate and this is something that disabled people should no longer be excluded from.