Accessibility of on demand programme services

About this document

This document consults on Ofcom's proposals to alter the way it collects and publishes data on how accessible On Demand Programme Services ("ODPS") are for people with hearing and/or sight impairments; sets out Ofcom's plans more generally for meeting its duty to encourage providers of ODPS to ensure their services are progressively made more accessible to people with hearing and/or sight impairments; and sets out Ofcom's plans for meeting its duty to ensure that providers of ODPS promote programmes of European origin, known as 'European works'.

Contents

Section 1

Executive Summary

1.1   Ofcom strongly believes that consumers with hearing and/or visual impairments should have access to television – whether broadcast or "on demand". Television can be vital to participation and inclusion in social and cultural life, but for many with hearing and/or visual impairments, that inclusion relies on programmes carrying subtitles, audio description, or signing (known as "access services").

1.2   Ofcom has a statutory duty to encourage providers of on demand programme services ("ODPS") to ensure that their services are progressively made more accessible to people with impairments of their sight and/or hearing.

1.3   There has been progress in the accessibility of ODPS[1], but there are still significant gaps compared with broadcast television. We recognise that this is a source of consumer confusion and frustration: programmes can be subtitled when broadcast, for example, but then appear without subtitles on related catch-up services.

1.4   One of the key ways we encourage further progress in this area is to collect data on which ODPS – and what proportion of programmes on such services – carry subtitles, signing and audio description. This is important because it allows Ofcom (as well as the industry and consumers) to measure progress in making these services accessible. Publishing this data helps consumers to make informed decisions about which ODPS they watch and the platforms (e.g. website, app or set top box) they use to do so.

1.5   In this document we are consulting on proposals to change the way we collect and publish data on the accessibility of ODPS. We want to bring this process in line with how we collect and publish data on the accessibility of broadcast television. We also want to ensure that the data collected is detailed enough to be meaningful to consumers. Under the proposals set out in this document, all providers of ODPS would be obliged to submit this data to Ofcom, with the exclusion of those who provide 'adult' programming.

1.6   The aims of our proposals include:

- empowering those who require access services to make informed choices about their on demand services;

- gaining more frequent and up-to-date insights into how ODPS accessibility is progressing, enabling us to take more timely action to improve access services for consumers in response;

- enabling Ofcom, industry stakeholders and consumers to compare broadcast and ODPS accessibility; and

- ensuring that providers see broadcast and ODPS accessibility as equally important.

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[1] http://stakeholders.ofcom.org.uk/binaries/broadcast/on-demand/access-european/AS_survey_report_2015.pdf

1.7 This document also sets out, for information, other ways in which Ofcom plans to encourage greater accessibility of ODPS. These include:

- continuing to work with consumer groups to identify what matters most to consumers in this area; and

- continuing to work with industry, including through the 'Television On Demand Industry Forum' (TODIF), to identify obstacles to making ODPS more accessible.

1.8 We also set out for information how we plan to fulfil our statutory duty to ensure ODPS providers promote programmes of European origin, known as 'European works'. These plans include the publication of guidance for ODPS providers on the definition of 'European works' and the collection of data about production of, and access to, European works on ODPS.

Section 2

Background

What are our regulatory duties on accessibility?

2.1   Ofcom regulates on-demand programme services ("ODPS") under the Communications Act 2003 (as amended) ("the Act"). ODPS regulated by Ofcom include a wide range of services, such as public service broadcasters' catch-up services, film services, local TV archives and "adult" websites.

2.2   Ofcom has a duty under section 368C(2) of the Act to encourage providers of ODPS to ensure that their services are progressively made more accessible to people with disabilities affecting their sight, hearing, or both. ODPS providers can achieve this in particular through subtitling, signing, and audio-description (known as "access services").

2.3   Broadcast television services are required by law to make a certain proportion of their programming accessible[2], however there is not currently an equivalent statutory requirement for ODPS. However, Ofcom strongly believes that consumers with hearing and/or visual impairments should have access to television, whether it is broadcast or on demand. Therefore, in addition to our work to meet our statutory duties for accessibility on broadcast television, we work in a number of ways to encourage more widespread availability of access services on ODPS, In Section 4 of this document, we outline for information our ongoing work to encourage ODPS accessibility.

What is the current position?

2.4   As catch-up and on demand services become increasingly popular[3], Ofcom's duty to encourage greater accessibility takes on increasing importance.

2.5   There has been progress in the accessibility of ODPS[4], but there are still significant gaps compared with broadcast television. We recognise that this is a source of consumer confusion and frustration: programmes can be subtitled when broadcast, for example, but then appear without subtitles on related catch-up services.

2.6   The Government has been considering the issue of accessibility of ODPS in recent years. In July 2013 the Department for Culture, Media and Sport ("DCMS") published a policy paper called 'Connectivity, Content and Consumers' in which it emphasised the importance the Government places on high quality and widely available access services in the UK. DCMS said that it would consider further legislation (in addition to section 368C(2) of the Act) if progress in making ODPS more accessible to those with hearing and/or visual impairments was not made in three years.

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[2] Sections 303 to 308 of the Act.

[3] http://stakeholders.ofcom.org.uk/market-data-research/other/research-publications/adults/media-lit-2016/
http://stakeholders.ofcom.org.uk/binaries/research/cmr/cmr15/CMR_UK_2015.pdf
http://stakeholders.ofcom.org.uk/binaries/research/oxford-media-conference-ofcom-factsheets/Ofcom_Factsheet_7_Video-on-Demand.pdf

[4] http://stakeholders.ofcom.org.uk/binaries/broadcast/on-demand/access-european/AS_survey_report_2015.pdf

2.7   In April 2016, DCMS wrote to several ODPS providers and consumer groups saying that its view was that progress was being made and that legislating to put in place targets might have a negative impact at this stage. However, it once again emphasised the importance of access services and the need for providers to work with Ofcom to make further progress, and to provide DCMS with further updates in Spring 2017.

2.8   One of the key tools Ofcom has at its disposal is the regular collection and publication of data on the accessibility of ODPS. Through this data, we can provide information for consumers on accessible services, while also monitoring and assessing progress, and engaging with service providers who need to improve in this area.

2.9   Prior to 2016, Ofcom's co-regulator in this area was the Authority for Television On Demand ("ATVOD"). ATVOD required all providers of ODPS to report on an annual basis on their provision of access services, and published this data annually. Since becoming the sole regulator of ODPS in 2016, Ofcom has been reviewing its approach to ODPS accessibility data collection and reporting. Its proposals in this area follow in Section 3 of this document.

Section 3

Consultation proposals

What is our current approach?

3.1   In 2016, Ofcom's collection of data on accessibility of ODPS continues the approach taken by ATVOD. This means that by the end of September 2016 we will have collected data from ODPS providers on the extent to which their on demand services carry programmes with subtitles, signing, and/or audio description. We will publish this data in a report before the end of the year. This data will relate to the year from 1 April 2015 to 31 March 2016, in order to provide continuity with the data previously collected by ATVOD.

3.2   ATVOD collected this data from all regulated ODPS providers, and in 2016 Ofcom will do the same, with the exclusion of those who provide 'adult' programming on their ODPS. We are excluding these due to the limited consumer benefits we consider are likely to arise from access services on such ODPS (see 3.22 to 3.25 below for discussion of this as our preferred approach in future).

3.3   In 2016 we will continue to collect data by service provider for each notified ODPS. Please note that a single notified ODPS can include all on demand content made available by that provider, which can be via a number of services with separate identities (see 3.19 below for further discussion). Accessibility data must be given for each platform on which that ODPS appears. By 'platform' we mean the platform/outlet through which the service is viewed (for example, website, mobile app, connected TV app, or set top box service such as Sky Q or Virgin TiVo).

3.4   Accessibility can vary across different platforms – for example, an ODPS may have subtitles on programmes when they are viewed via its website, but those subtitles may not appear if the same service/content is viewed via a connected TV app. Breaking down data by platform will help consumers who require access services to make informed choices about which services to watch, as well as highlighting those platforms on which services offer only poor levels of accessibility (whether for technical or other reasons).

What changes are we proposing?

3.5   We propose changes to:

a) the way Ofcom collects data on the provision of access services on ODPS;

b) the type of data we collect; and

c) the way we publish the data.

We consider these changes will make a particularly important contribution to our section 368C(2) duty to encourage accessibility. All proposed changes would take effect from 2017.

3.6   We have considered alternative approaches to the collection and publication of data on ODPS accessibility, which are discussed in the Impact Assessment in Annex 5.

Proposed changes to the way we collect data

Frequency of data collection

3.7   Ofcom proposes that ODPS providers are required to submit access service data on a twice-yearly basis in line with the current requirement on television broadcasters.

3.8   The accessibility of video on demand content is closely linked to that of broadcast television. For example, many broadcasters have catch-up services using content which has already been broadcast on television with access services.

3.9   Collecting data twice yearly will enable Ofcom to take more timely action in encouraging progress to improve access services where it is most needed.

3.10   While our proposed change is an increase on the current requirement, we do not consider it represents a substantial increase in regulatory burden as the data would need to be collected in any case for annual submission.

3.11   We also consider alignment of collection of ODPS and broadcast television data will improve efficiency and limit regulatory burden compared with having two separate processes for data collection activities for broadcast and ODPS (this will benefit particularly those ODPS who are also broadcasters). It will also encourage those providers with both broadcast and on demand services to view accessibility on each as equally important.

3.12   When Ofcom moved in January 2016 from a co-regulatory model (with ATVOD) to being the sole regulator for editorial video on demand content, one of the key aims was to align our work on ODPS with broadcast television. We believe our proposed change to access service data collection is in line with this. It is also consistent with the Audiovisual Media Services Directive 2010 (the "AVMS Directive")5, particularly in relation to the importance of a level playing field for providers of broadcast and on demand services (Recital 10), and the rights of persons with a disability and the elderly to participate in social and cultural life (Recital 46).

3.13   In practical terms, given that Ofcom became the sole regulator in January 2016 and that we are publishing our proposals part way through the calendar year 2016, the move to align the ODPS data collection calendar with that of television broadcasting will need to be phased.

3.14   The following table gives the dates for data submission and publication in 2016, alongside the proposed dates for 2017. ODPS providers' data submissions in January 2017 would need to cover the period from 1 January 2016 to 31 December 2016 (the slight overlap with the earlier data request is to allow comparison with broadcast data). The shaded dates align with those for broadcast television and we propose continuing on the same basis in subsequent years.

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5 Directive 2010/13/EU

Table 1: Data submission and publication plan

Data period	Data collection	Data published
1 April 2015 to 31 March 2016	By end Sept 2016	Oct / Nov 2016
1 Jan – 31 Dec 2016	By 31 January 2017	March / April 2017
1 Jan – 31 July 2017	By 31 August 2017	Sept / Oct 2017 (half year report)
1 Aug – 31 Dec 2017	By 31 January 2018	March / April 2018 (full report)

Requirement to submit information

3.15 Ofcom proposes to make it compulsory for ODPS providers to submit the above data. This continues the practice previously adopted by ATVOD. To do this we will use our powers under section 368O of the Act, which mean that Ofcom can impose a financial penalty for failure to respond[6]. We will require only the information we consider necessary to fulfil our statutory duties to encourage progressively more accessible ODPS.

3.16 We consider it is necessary in this case to use formal powers rather than a voluntary survey. A voluntary survey risks enabling some ODPS with a poor record of access service provision to avoid provision of data, thus skewing the resulting data. This could result in patchy information for consumers on ODPS accessibility, and significantly reduce the impetus for ODPS to progressively increase provision.

3.17 Section 368O(4) of the Act requires that those from whom information is required should have an opportunity to make representations on the grounds for imposing the requirement. We consider that this consultation provides that opportunity in relation to future years (and have specifically allowed for representations in our formal request for information in 2016).

> *Consultation question 1: Do you agree with Ofcom's proposed changes to the way we collect data, and do you have further comments?*

Proposed changes to the type of data we collect

By branded service

3.18 Ofcom proposes that ODPS providers submit data relating to each branded service they offer to consumers. By 'branded service', we mean services which are distinct from the consumers' point of view. A given service provider (e.g. Channel 5 Broadcasting) may offer a number of different branded services (e.g. 'All Day Milkshake', 'My5').

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[6] Section 368O(7) states that a failure to provide required information would be treated as a breach of section 368D, which details the duties of ODPS providers under the Act, including the duty to provide information as required under section 368O. This means sections 368I and 368K also apply, including the ability for Ofcom to impose a financial penalty for failure to respond.

3.19   We currently collect data for a given ODPS, which can comprise the total of all on demand content offered by that service provider (across numerous branded services). Data is further broken down only by platform (see 3.3 and 3.4 above). So in the example above, Channel 5 Broadcasting may provide data on the amount of accessible programmes in all its on demand content, broken down only by platform (e.g. website, YouView, and so on).

3.20   We think consumers are more likely to be aware of on demand content in the context of a particular branded service they can access rather than by service provider, and therefore data broken down in this way will be more helpful for consumers wishing to use an accessible service, and more helpful for Ofcom in assessing the progress being made in this area.

3.21   Data for each branded service will still be required for each platform on which it appears. Again, we consider this is likely to be more helpful for consumers in making choices and for Ofcom in assessing progress.

Adult services

3.22   Ofcom proposes not to routinely require 'adult' services to provide data on accessibility. By 'adult' services in this context we mean pornographic services which fall within the BBFC's[7] definition of a 'sex work'[8], i.e. those "whose primary purpose is sexual arousal or stimulation". This includes those services principally offering specially restricted material as defined under section 368E of the Act and which are required to operate an age verification system to ensure access is prevented for under 18s.

3.23   Following engagement with consumer groups and industry stakeholders, we do not believe that there is sufficient demand for access services on these ODPS. As such, we do not believe adult services should be subject to the administrative burden (albeit a relatively small one) that data collection imposes on both the service providers and on Ofcom.

3.24   We have considered whether other services could appropriately be excluded from routine provision, such as on the basis of audience share or service size as measured by turnover, or on other grounds.

3.25   Ofcom does not currently have the necessary measurements of ODPS audience share or turnover to determine whether it would be appropriate to exclude other services at this stage, and proving eligibility for exclusion based on scale would in itself be burdensome for ODPS providers. In addition, we do not consider at this stage that there are other readily identifiable categories of service which could appropriately be excluded on the basis of the nature of the material (as is the case with 'adult' services). Therefore we do not propose at this time to exclude categories of service, other than adult services, from routine data collection. We note however that this is a developing industry where market shares and nature of output can change rapidly, meaning that from time to time we will need to re-assess whether it would be appropriate for any other services or types of services to be excluded from routine provision of the data.

Consultation question 2: Do you agree with Ofcom's proposed changes to the type of data we collect, and do you have further comments?

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[7] The British Board of Film Classification
[8] http://www.bbfc.co.uk/what-classification/18

Proposed changes to the way we publish data

Frequency of publication

3.26   We propose to publish collected data on a biannual basis, as currently occurs for broadcast television services.

3.27   Ofcom considers that this will allow consumers, representative groups, and industry stakeholders easily to compare progress in accessibility on ODPS and broadcast television services. Ofcom's engagement with consumer groups has made us aware that discrepancies between broadcast and ODPS accessibility are a key source of consumer confusion and frustration.

> ***Consultation question 3: Do you agree with Ofcom's proposed changes to the way we publish data, and do you have further comments?***

Proposed changes to the way we publish data

Frequency of publication

Section 4

Plans for encouraging accessibility

4.1   This section outlines, for information, Ofcom's other ongoing work to encourage increasingly accessible ODPS.

4.2   Ofcom works with industry, consumer groups, access service providers and other stakeholders to encourage ODPS accessibility. The delivery of access services to consumers involves collaboration between numerous different parties, notably content providers (e.g. ITV, Channel 4, Discovery) and platform[9] operators (e.g. Sky, Virgin, YouView). There is continued debate over technical issues associated with delivering access services to multiple platforms, and the relative responsibilities of content providers and platform operators in overcoming these issues.

4.3   In the light of these issues, Ofcom is supporting the Television On Demand Industry Forum[10] in its establishment of an access services policy working group. Ofcom considers that this group can provide an effective means for content providers and platform operators to share experience and technical know-how with a view to increasing accessibility.

4.4   Ofcom also meets major platform operators individually to help ensure that they are able to deliver access services to viewers.

4.5   In addition to the plans for data collection we are consulting on in this document, Ofcom is also exploring new ways to report to consumers on ODPS accessibility. We want to ensure consumers have the right information to make informed choices on which on demand service or platform to use for access services. For example, this might mean collaboration with consumer groups or others to publish information in a manner which reaches more of the relevant consumers.

4.6   Ofcom's overall approach to encouraging accessibility on ODPS aims to bring the most benefit for relevant consumers. Ofcom will therefore focus its efforts on the following services/service providers:

- ODPS providers who already have broadcast television access services obligations (for example, ODPS which are 'catch-up' services);

- high profile services; and

- significant / popular platforms.

4.3   This is not an exhaustive list of areas, but in our experience, the above types of service tend to have the greatest reach. Through our focus on the above areas, consumers with hearing and/or visual impairments will benefit from increased access to the most popular content/services. Additionally, those services with existing broadcast television access services obligations already procure subtitling, audio-

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[9] By 'platforms' we mean any websites, apps, portals, smart TVs or set top box platforms on which the content is available.
[10] The Television on Demand Industry Forum (TODIF) is a forum to facilitate two-way communication between the video on demand industry and Ofcom in its role as regulator for editorial content on UK ODPSs.

description and signing for their broadcast services, so do not begin from a standing start when making previously broadcast material available on ODPS.

Section 5

Plans in relation to European works

5.1   In this section we outline, for information, Ofcom's plans in relation to the promotion of European works on ODPS. 'European works' are programmes of European origin. For more detail on what constitutes a 'European work' see Ofcom's website11.

5.2   Ofcom has a statutory duty, under section 368C(3) of the Act, to ensure that providers of ODPS promote, where practicable and by appropriate means, production of and access to European works.

5.3   In contrast to section 368C(2) on access services, there is not a specific reference to an intention that the level of provision will necessarily rise over time (as there is with the words "progressively made more accessible" in relation to access services). Ofcom considers that this can be reflected in a lighter touch approach than for access services, albeit one which promotes European works where practicable and appropriate.

5.4   Ofcom's intention is to continue to discharge this duty in broadly the same manner as its previous co-regulator, ATVOD.

5.5   We will therefore publish on our website guidance for service providers on the definition of 'European works', which derives from Article 1(n) of the AVMS Directive. We encourage ODPS providers to read and take note of this guidance in light of the Directive's objectives.

5.6   Like other member states, the United Kingdom provides information to the European Commission every four years on European works. To support this, ATVOD collected data every two years from ODPS providers and submitted a report on the data received to UK Government via Ofcom. The most recent data was collected by ATVOD in 2015 and related to the period from 1 January to 31 December 2014.

5.7   Ofcom will continue to collect data from ODPS providers every two years relating to the extent to which ODPS promote production of, and access to, European works. We will collect the following data from service providers:

- type of service (i.e. 'catch up' or 'archive' or 'mixed');

- nature of access (i.e. 'free to view' or 'conditional on user payment' or 'mixed');

- nature of funding (i.e. 'subscription' or 'pay per view' or 'advertising' or 'public grant' or 'mixed');

- geo-restriction ('yes' or 'no');

- hours of 'European works' made available; and

- percentage of total hours of programming comprising 'European works'.

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[11] http://stakeholders.ofcom.org.uk/binaries/broadcast/on-demand/access-european/European_Works_Guidance.pdf

Responding to this consultation

How to respond

A1.1   Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 25 October 2016**.

A1.2   Ofcom strongly prefers to receive responses using the online web form at http://stakeholders.ofcom.org.uk/consultations/on-demand-accessibility/howtorespond/form, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.

A1.3   For larger consultation responses - particularly those with supporting charts, tables or other data - please email VODconsultation@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.

A1.4   Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.

VOD Access Services Consultation
5th Floor
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA

A1.5   Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.

A1.6   It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 4. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Further information

A1.7   If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Cathy Taylor on 020 79813855.

Confidentiality

A1.8   We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether

all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

A1.9   If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.

A1.10   Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at http://www.ofcom.org.uk/terms-of-use/

Next steps

A1.11   Following the end of the consultation period, Ofcom intends to publish a statement by the end of 2016.

A1.12   Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/email-updates/

Ofcom's consultation processes

A1.13   Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.

A1.14   If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk . We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.

A1.15   If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Steve Gettings, Secretary to the Corporation, who is Ofcom's consultation champion:

Steve Gettings
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

Tel: 020 7981 3601

Email   steve.gettings@ofcom.org.uk

Annex 2

Ofcom's consultation principles

A2.1   Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A2.2   Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

A2.3   We will be clear about who we are consulting, why, on what questions and for how long.

A2.4   We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5   We will consult for up to 10 weeks depending on the potential impact of our proposals.

A2.6   A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A2.7   If we are not able to follow one of these principles, we will explain why.

After the consultation

A2.8   We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 3

Consultation response cover sheet

A3.1   In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.

A3.2   We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.

A3.3   The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.

A3.4   We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at http://stakeholders.ofcom.org.uk/consultations/consultation-response-coversheet/.

A3.5   Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing ☐   Name/contact details/job title ☐

Whole response ☐   Organisation ☐

Part of the response ☐   If there is no separate annex, which parts?

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here. ☐

Name   Signed (if hard copy)

Annex 4

Consultation questions

A4.1   In this document we are asking three questions on our proposed new arrangements for the collection and reporting of data on the accessibility of ODPS. The consultation questions are as follows:

> ***Consultation question 1:***
>
> ***Do you agree with Ofcom's proposed changes to the way we collect data, and do you have further comments?***

> ***Consultation question 2:***
>
> ***Do you agree with Ofcom's proposed changes to the type of data we collect, and do you have further comments?***

> ***Consultation question 3:***
>
> ***Do you agree with Ofcom's proposed changes to the way we publish data, and do you have further comments?***

Annex 5

Impact Assessment

A5.1   The analysis presented in this section represents an impact assessment, as defined in section 7 of the Communications Act 2003 ("the Act"), on which respondents to the consultation may wish to comment by the consultation closing date. We have also had due regard to our obligations under the Equality Act 2010, noting that effective encouragement of the provision of access services tends to remove some of the disadvantages suffered by individuals with disabilities affecting sight or hearing (including many older people), to meet the needs of those individuals related to their protected characteristics under the Equality Act, and to encourage participation in activities enjoyed by other members of the public.

A5.2   Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making. This is reflected in section 7 of the Act, which means that generally we have to carry out impact assessments where our proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom's activities. However, as a matter of policy Ofcom is committed to carrying out and publishing impact assessments in relation to the great majority of our policy decisions. For further information about our approach to impact assessments, see the guidelines, Better policy-making: Ofcom's approach to impact assessment, which are on our website:
http://www.ofcom.org.uk/consult/policy_making/guidelines.pdf

A5.3   Ofcom has considered alternative approaches to collection and publication of data on ODPS accessibility, including maintaining the current approach, substantially reducing data collection, or adopting enhanced data collection and publication processes as outlined in Section 3 of this document.

A5.4   It is Ofcom's view that a reduction or discontinuation of data collection (other than in the limited case of ODPS offering 'adult' content as noted above) would not be sufficient to discharge its duties in this area under the Act. The collection and publication of data on accessibility is a vital tool, giving consumers information on which on demand services are accessible to them, and encouraging progressively more accessible ODPS. It also allows Ofcom to measure progress in this area. As more consumers use ODPS, the importance of accessibility, as stated in 2.4 above, is growing, and does not support a relaxation in Ofcom's data collection in this area.

A5.5   It is Ofcom's view that the current frequency of data collection is insufficiently regular to provide a full and timely picture of progress in relation to ODPS accessibility. With the timeframes previously used, data on accessibility in April of a given year would not be made public until December of the following year – a period of 20 months. At this stage in the development of access services on ODPS (noting that DCMS has confirmed progress has been made but further work still needs to be done), we consider that this is too long to allow Ofcom, ODPS providers, and consumers to respond promptly to progress (or lack of progress) in ODPS accessibility.

A5.6   Furthermore, the current approach provides information on the combined accessibility of all an ODPS provider's services but does not provide such information broken down by 'branded service'. It is our view that this is not as helpful as it could be in assisting consumers to make informed decisions about which services to

watch, and in identifying those services which are not making sufficient progress on accessibility.

A5.7   The current approach, in requiring information from all service providers, also placed some regulatory burden on ODPS offering 'adult' content, where the consumer demand for accessibility is likely to be low.

A5.8   The proposals for enhanced data collection and publication outlined in Section 3 will deliver timely data of sufficient detail to provide Ofcom with a realistic view of progress in this area, enabling consumers to make informed choices about on demand services and allowing all stakeholders to compare progress on access service provision on ODPS with that on broadcast television.

A5.9   We recognise that there is potentially an additional burden for ODPS providers in reporting twice yearly and in further breaking down data by branded ODPS. However, we note that aside from the collection of data by 'branded service', ODPS providers will continue to collect the same data, with a change only to the frequency of reporting to Ofcom on that data. We also believe that the proposed level of detail required (by branded service) is not only more useful in relation to Ofcom's duties and consumers' choices, but also more closely reflects the services as identified and marketed by ODPS providers themselves.

A5.10 We also note that the DCMS decision not to legislate for formal targets for access services on ODPS at this stage makes it all the more important that levels of access service provision are reported in a clear and timely manner. This will help to facilitate informed consumer choices and encourage services which are not keeping up with comparators in the sector to take remedial steps.