How should On-demand Programme Services be made accessible? Response from Viacom International Media Networks, March 2018

VIMN welcomes the opportunity to respond to Ofcom's consultation on how to make ODPSs accessible. We first offer an overview of our approach to access services as a whole, and outline our preferred approach to future regulation. Following this we provide answers to specific questions from the consultation paper.

Given that all VIMN's licensed OPDS services are connected to a linear broadcast channels (TLCS), most of which already provide significant levels of access services, this response focuses primarily on the best regulatory solution for this particular type of ODPS. Stand-alone ODPSs which are unconnected with any linear channel should also have a responsibility to provide access services to their customers, commensurate with their size, audience, revenues and associated technology.

Channel 5 and all other VIMN digital channels meet, and in many instances exceed, the current access service provision requirements for linear channels under their TLCS licences. Apart from Channel 5 which is required to offer 5% of its programmes with sign language, all other VIMN channels instead make a contribution to the British Sign Language Broadcasting Trust (BSLBT).

VIMN already provides a substantial amount of subtitling on its ODPSs. It is important to note that while VIMN is able to offer subtitling and AD files to all the main ODPS platforms, these platforms are not always willing or able to provide a service to their customers. There is nothing more that VIMN itself can do to facilitate the acceptance or files, given that the responsibility lies with the platforms themselves to make the necessary technological adjustments. In considering how ODPSs should be made more accessible therefore, Ofcom might also consider whether any additional requirements need to be placed on platforms.

Future regulation of access services on ODPSs connected to linear TLCSs

VIMN does not believe that percentage quotas are the easiest or most proportionate method of regulating the provision of access services on ODPSs which are connected to a linear channel – for example catch-up and other related services. This is because ODPS catalogues vary constantly in size and inventory, and potentially contain much larger amounts of content than their affiliated linear channels which are, by definition, limited in the number of programmes they offer.

Instead, VIMN believes that regulations should apply the 'everything everywhere' principle to ODPS access services provision, meaning that where subtitling and AD are provided for programmes on a linear channel then, subject to appropriate rights clearance, technical feasibility and commercial viability, these access services should be made available with the same programme in an ODPS.

This approach could take inspiration from the US where FCC rules provide that the appearance of programming on TV with subtitling is the trigger for the requirement to provide subtitling online. All television programming must be subtitled, and where that programming simultaneously or subsequently appears on the internet (authenticated apps, Hulu, Netflix, websites) the programmer must provide the captioned version to the distributor and the distributor must pass it to the viewer.

In following this approach, and assuming a situation where all platforms are able to accept the supplied subtitling and AD files, Ofcom would ensure a similar quantity of access service provision across ODPS licensees related to a linear service. It would for these services also address many of the questions posed in the consultation paper, given that access services would only be provided by ODPSs to the extent that they are required to do so under the associated linear channel TLCS regime. It would also reflect the current approach to access service provision on PSB channels, where for reasons of public policy some are required to meet higher levels than non-PSB channels.

Signing is currently provided on Channel 5 given its PSB status. While it would in principle be possible to offer this service to platforms should they have the necessary technical facilities to offer it to customers, there are likely to be cost and other operational issues in terms of having multiple versions of a programme available concurrently.

TLCS licensees already contribute a very significant amount of money towards the creation of programming with sign language through the BSLBT. This is already made available in an on-demand environment on BSLTB's own site.

Answers to consultation questions

Q1: Do you agree with our assessment of the key issues involved to inform regulations in this area?
Q2: Are there other 'access services' which you believe should be specified in any regulations?
Q3: Do you have views on the relative importance of sign-presented programming and sign-interpreted programming?

We agree the key issues have been identified. There are no other access services which should be specified in the regulation.

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?

ODPSs should provide adequate information and other features to ensure that users are able to locate and use access services easily. These features are commonly within the control of the ODPS platform operator, rather than the OPDS provider itself. My5 web and mobile offers the option to always have subtitles and AD switched on where available, and My5 on TV platforms such as YouView and Samsung TV have the same facility for subtitles.

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)?

For ODPSs connected with linear channels which already carry access services, or contribute to the BSLBT, application of the 'everything everywhere' principle (subject to appropriate rights clearance, technical feasibility and commercial viability) will ensure an equivalent level of provision, and therefore reflect the calculations already made in relation to tests of benefit, cost and practicability.

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

Some PSBs are already required to meet more stringent targets for access services on their linear channels. In requiring PSBs to meet the 'everything everywhere' principle, these higher targets would be reflected in the level of provision on related ODPS services. Other major providers should be held to similarly challenging standards.

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?

As already stated, regulations should seek to ensure that programmes provided with access services on linear channels are always provided with the same access services on related ODPS services, subject to appropriate rights clearance, technical feasibility and commercial viability.

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?

The audience size of a stand-alone ODPS should be one of the factors which determines the application of access service obligations.

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

There is no need to prioritise access services on stand-alone ODPSs on any particular platform at the outset. The process for determining the application of obligations – audience, revenue, size, technical difficulty – should be applied on a case by case basis. As noted above however, Ofcom might wish to explore the option of placing requirements on major platforms to enable ODPSs to provide access services, in a way that is reasonable to accommodate technically and commercially.

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

No.

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?

Any excluded genres for TLCS access services should be applied to equally to ODPSs.

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?

Similar principles should be applied to stand-alone ODPSs as under the TLCS regime. The benefit of any new requirements must be shown to outweigh the costs, and Ofcom must ensure that ODPSs do not face disproportionate and unreasonable costs as a result of any new requirements.

Q13 Do you have any views or information on appropriate and available means of quantifying: ODPS-specific revenue; and costs associated with ODPS access services?

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

No.

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?

This should be an option, if the costs of delivering the service are unreasonable and outweigh the benefit. As noted above, the platforms themselves may need to make changes to their technology to allow ODPSs to offer access services to their customers, but only if the cost of doing so is reasonable and proportionate.

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?

Percentages could be difficult to meet and administer because ODPS inventories change constantly in size and make-up, and often contain many more programmes than linear channels. Any requirement much be proportionate and reasonable, and financially viable. We would urge Ofcom to explore quantitative requirements for major stand-alone ODPSs which are commensurate to the quantities of access services provided for on broadcasters' ODPSs.

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

Yes. In circumstances where stand-alone ODPS providers are required to meet new access service requirements, then these should be phased in over a reasonable period of time which allows adjustments to be made and additional costs to be incorporated. The same 10-year period which applies to TLCS services, with interim targets, would be fair and proportionate.

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

There is no need to prioritise particular types of ODPS at the outset. The process for determining the application of obligations – audience, revenue, size, technical difficulty – should be sufficient on a case by case basis.

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

Yes. The BSLBT is an example of how TLCSs have made an exception to the overall system, and the same flexibility should be applied to ODPSs.

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

No.