



**Broadcasting Authority of Ireland**

**Report on the Effect**  
**Of the BAI Access Rules (2017)**



# Broadcasting Authority of Ireland

## 1. Introduction

Section 43 (c) of the Broadcasting Act 2009 (“the 2009 Act”) requires the BAI to develop rules that set out the specific steps that each television broadcaster must take to promote the understanding and enjoyment of television programmes by those who are blind or partially sighted, those who are deaf and hard of hearing and those who are hard of hearing and partially sighted.

The Access Rules (“the Rules”) set down quantitative and qualitative requirements<sup>1</sup> in respect of the provision of subtitling, Irish Sign Language and audio description which broadcasters are required to meet. The targets are set having regard to a range of principles and factors, for example, whether the broadcaster is a public service or a commercial television broadcaster. A copy of the current Rules is attached at Appendix 1.

Section 45(3) of the 2009 Act requires the BAI to review the effect of the Rules every two years and to provide the Minister for Communications, Climate Action and Environment with a report on the outcomes of this review; a report which is then laid before both Houses of the Oireachtas. This report sets out the findings of the statutory review undertaken in 2017 by the BAI.

The findings of the review are detailed under the following headings:-

- Section 2 – Methodology. This section summarises the different activities undertaken as part of the review and which have informed the findings;
- Section 3 – Review Findings. This section summarises the key findings of the review activities undertaken;
- Section 4 – Potential Policy Options. This section sets out a number of policy options emerging from the review and views of access users, their representative groups and broadcasters on these policy options;
- Section 5 – Conclusions.

A number of appendices are also attached which provide copies of the reports emerging from the review activities.

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<sup>1</sup> The BAI has published Influencing Factors and guidelines on qualitative requirements in respect of subtitling, Irish Sign Language and audio description.



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## 2. Methodology

The review entailed the following activities:-

### i. Jurisdictional Review

A review of practices and trends in other countries has been a consistent part of the process used by the BAI when developing and reviewing broadcasting codes and rules. It has allowed the BAI to benchmark its regulations against those in other EU countries but also internationally. These reviews also highlight best practice approaches to, and experiences of, regulation that the BAI can learn from or adapt in an Irish context, where appropriate. In the case of the Rules, the jurisdictional review looked at primary and secondary legislation at a national and EU level; regulatory and co-regulatory codes of practice/guidelines; voluntary/Industry codes of practice/guidelines; and other practices implemented to regulate access provision.

In addition, the review considered: the rationale and impetus for the introduction of statutory and non-statutory regulation in other jurisdictions; emergent issues pertaining to the implementation, evaluation and impact of existing regulatory practice; differentiating criteria for different types of broadcast services (PSB, Commercial, EU/Non-EU); differences between services provided for the purpose of language translation, those provided for accessibility and overlaps between both types of provision; and grants and subsidies for the provision of access services.

### ii. Stakeholder Research

Broadcasters and the users of accessible services are the key stakeholders for the review and were centrally involved in the development of the Rules and in subsequent reviews.<sup>2</sup> This aspect of the review of the effect of the Rules involved the following activities:-

- A review of approved minutes of the meetings of the User Consultative Panels facilitated since their establishment in 2013.
- Key informant interviews with broadcasters and access representative groups which explored their perspectives in respect of access service provision and potential revisions to the Rules.

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<sup>2</sup> In addition, in recent years the BAI has instigated two User Consultative Panels consisting of those who are blind or partially sighted and those who are deaf or hard of hearing.



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- Meetings with access users, their representative organisations and broadcasters to consider and test draft policy options or suggested changes which may be considered in the context of the ongoing development of the Rules.

The practical management of the commitments contained in the Rules, such as the interaction between programme production processes and workflow linked to the creation and inclusion of access services on programmes, has been a consistent issue since the Rules were introduced. This element of the research therefore also looked at the role of human resource factors associated with the provision of the various access services.

The costs of providing access services remains a constant issue for broadcasters and this was examined with broadcasters and service providers. In that context, the stakeholder research also entailed:-

- A focussed round of desk-based research undertaken initially so as to inform the stakeholder interviews.
- Interviews with representatives of the television broadcasters (RTÉ, TV3, TG4, eir, Oireachtas TV, Dublin Community Television and Cork Community Television) and providers of training in the production of accessible content. These interviews concentrated on identifying, where possible, the following information: the level of required equipment, technology and human resources available to the broadcasters and the cost of these various resources; the factors which influence whether access services are provided 'in house' or are purchased from an external provider; and the levers and barriers to providing high quality access service provision.
- Interviews with current providers of access services to Irish broadcasters. These interviews concentrated on identifying, where possible, the following information: the level (and cost) of access provision; views on the current capacity of providers of access services; and views on the gaps in the indigenous skills base that may or may not limit the development of access service provision.

### iii. Technical Review

This aspect of the review of the effect of the Rules was undertaken in a context where the last ten years has seen significant changes to the amount of home produced and live content available on Irish Television. Advances in technology and the switch-over to Digital TV in 2012 have provided new methods by which broadcasters can provide accessible programming to the Irish viewing audience.



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In addition, technical challenges for broadcasters in the transmission of accessible programmes and for users in terms of receiving access services via their televisions and set-top boxes have also been a consistent theme since the introduction of the Rules. The technical review looked at the most recent technical developments in an Irish context and drew on learning and research in other jurisdictions and any developments at an EU legislative level.

## **iv. Review of Compliance**

Since the introduction of the Rules in 2005, compliance by broadcasters has been assessed on an annual basis. This has been undertaken via monitoring of randomly selected broadcast content for compliance with the quality guidelines established by the BAI<sup>3</sup> as well as the provision by broadcasters on a twice-yearly basis of reports detailing accessible content on their services. Feedback from the User Consultative Panels has also informed the compliance activities. This element of the review examined recent trends in compliance and outcomes of enforcement actions by the BAI.

## **3. Review Findings**

This section sets out the top-line findings of the review in respect of the research and engagement undertaken as part of the Review.

### **3.1 Jurisdictional Review**

The detailed research provides a comprehensive outline of practices in other jurisdictions including: an examination of how regulations take different approaches to the treatment of different types of broadcasters, the developments in the regulation of online and on-demand services, the regulation of access services on minority and foreign language services, and types of funding and support that are available to facilitate the provision of access services.

An overall bench-marking of the BAI's Rules against the regulatory regimes in the countries examined has served to highlight where the Rules are in line with other regulatory approaches and also to indicate new trends or approaches that could be considered as useful or necessary in the review process.

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<sup>3</sup> These guidelines form part of the Rules and the Rules oblige broadcasters to comply with the guidelines.



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The key findings in this regard are set out under the following headings:

## Methodologies for implementing access rules

- Gradualist approach
- Different obligations for different types of broadcasters
- Market power and audience share
- Distinctions regarding types of access services
- Generalist and niche channels, different types of content and time blocks
- New channels and services
- Channels that target other countries
  
- “Findability” and the requirements to inform viewers of accessibility functions
- Requirements to have a dialogue with users of accessible broadcasting services
- Reporting requirements
- Costs and supporting and encouraging the availability of accessible content

## Other relevant areas regulated in other jurisdictions

- The role of distributors in making accessible content available
- Online content of broadcasters and on-demand services

### **i. Methodologies for implementing access rules**

#### Gradualist approach

In the BAI's Rules, specific targets have been identified for each broadcast service and broadcasters shall comply with the targets and timeframes applying to their service(s). All targets are based on a five-year timeframe. This is the approach taken in a significant majority of those jurisdictions where concrete obligations are implemented. The most common approach for introducing access rules on channels has been the progressive approach of gradually increasing quotas on an annual basis. This approach is intended to gradually allow existent channels to reach a critical mass of accessible programming, while also providing a framework for newly established channels to gradually reach such a critical mass.



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## Different obligations for different types of broadcasters

The BAI's Rules differentiate between different types of broadcasters, in particular, between public and private broadcasters. This reflects approaches taken in different jurisdictions where distinctions are made between public and private broadcasters, between free-to-air and pay broadcasters, between generalist and niche programming broadcasters, between broadcasters with large audience shares and those with lower audience shares, and broadcasters that target jurisdictions other than where they are established.

## Market power and audience share

The BAI does not have direct regard to audience shares, however, the market strength of the broadcasters is an implicit consideration in terms of their financial capacity to meet targets. The review found that where market power and audience share is a factor used to set targets in other jurisdictions, the higher the market share, the greater the obligations, appears to be the general approach. A particular market share often serves as a cut-off point, or a point below which obligations are reduced: for example, 1% in the UK, 2.5% in France, 1% in Sweden.

## Distinctions regarding types of access services

The main distinction in Ireland concerns the fact that only public broadcasters have obligations regarding audio description and sign language. This contrasts with several countries where all the regulated channels have obligations regarding all three types of accessibility (the UK, Sweden); or where they all have obligations regarding subtitling and audio description (France, the USA). On the other hand, the Australian system only places obligations on broadcasters with regard to subtitling (captioning).

## Generalist and niche channels, different types of content and time blocks

The BAI's Rules do not prioritise any programme genres/types or time-blocks<sup>4</sup> which must provide accessible provision. However, broadcasters are required to consult periodically and not less than once annually, with user groups, as to their viewing preferences.

The review indicates that there may be certain niche channels that have less obligations (or are exempted) and other niche channels that may have particular obligations. Examples include news channels, music channels, children's channels and sports channels. In many cases this is due to the difficulty of subtitling live programming (news, sports, etc.), while for young children's programmes the necessity to use subtitling may be removed due to the inability of the age group to read text.

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<sup>4</sup> The rules do include the day-parts during which access provision should be provided. However, the intention is to ensure that obligations are met when audiences are more likely to be watching (7am-1am) rather than prioritising time blocks with the highest audience.



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Regarding the time blocks of the broadcast of accessible programmes, obligations during prime time viewing are evident. Exceptions are made in the case of signing, which is currently only provided in open format, and it is therefore deemed acceptable to be shown outside peak viewing hours and recorded by viewers with hearing impairments.

### New channels and services

The BAI's Rules extend the applicability of the Rules to new services licensed by the BAI under the Broadcasting Act 2009, from time-to-time, on a case-by-case basis having regard to the BAI's Access Principles and Influencing Factors (attached at Appendix 2). The review concluded that the case-by case approach of the BAI appears to be a rational approach in assessing the situation of new channels given that this approach is taken in other jurisdictions.

### Channels that target other countries

The placing of specific obligations on channels that target other countries but are established in the national jurisdiction appears to occur only in the UK. In an Irish context, the BAI assesses whether any broadcaster should have access requirements, including those targeting other countries but the approach to setting targets is the same as the one applying to Irish broadcasters and the Access Principles and Influencing Factors are utilised.

### "Findability" and the requirements to inform viewers of accessibility functions

The BAI's Rules state that broadcasters are required to indicate through the use of a standard symbol those programmes for which access provision (subtitling, sign language or audio description) is available. Insofar as possible, broadcasters should ensure that any programme listings also indicate those programmes for which access provision is available. Broadcasters shall promote regularly the existence and usage of the form(s) of access provision available on their services.

The review examined this issue and found that broadcasters are often required to promote access services by indicating through the use of a symbol or standard acronyms those programmes for which access provision is available. Obligations in respect of listings on electronic programme guide (EPG) is also found in some jurisdictions. In several countries, there is no requirement to inform audiences that a programme has accessible content. However, in practice the broadcasters are adding this information to programme descriptions, TV programme guides (Estonia, Finland), and during the accessible programmes (Finland).

The review found that the BAI's Rules appear to be in line with the practice in other countries in this regard but suggest that it might be useful to explicitly mention promotion on the website of the operators, and promotion on EPGs of distribution platforms in the Rules.





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### Requirements to have a dialogue with users of accessible broadcasting services

In Ireland, the BAI meets with users of access services on a quarterly basis to discuss the quantity, quality and reliability of access provision. Any issues raised are fed back to the broadcasters. Such requirements may exist with regard to the media service providers, to the regulator, or to both. As noted, broadcasters are also required to consult periodically and not less than once annually, with user groups, as to their viewing preferences.

The BAI approach to consultation appears quite similar to that in other countries, although in some jurisdictions, broadcasters must appoint an internal contact person for issues related to the accessibility of programmes.

### Reporting requirements

In Ireland, all broadcasters are requested, twice per year, to submit details of the quantity of access services that they have provided for the previous 6-month period. The BAI monitors a selection of the output of each broadcaster and assesses this for the quantity, quality and reliability of the access provision. The BAI meets with the broadcaster annually to discuss their performance for the previous year, the results of BAI monitoring, their plans for the coming year and any issues raised by users. Similar reporting obligations exist in other countries but there are variations in approaches ranging from reports being provided every quarter to annually.

### Costs and supporting and encouraging the availability of accessible content

The review found that, in comparison to many jurisdictions, Ireland has no specific system for applying a complete or temporary exemption that allow a media service provider to be completely exempt, to be exempt for a time period, or to have reduced obligations, in particular where the provision of such services is causing an undue financial burden. In addition, in some jurisdictions, particular types of content (as mentioned above) may be exempt or have less obligations. However, as noted above, the BAI makes decisions on obligations based on a range of issues including the channel and its nature, programming, capacity and financing etc.).

The review has found that Irish production funds, specifically those managed by the BAI, are contributing to a new trend in maximising the amount of content that is produced with access tools built in. Obliging content producers to include captioning and audio description in the production of content supported by any public funds is also happening in a number of other jurisdictions. An emphasis on making accessibility a consideration early in the creative process—not only in post-production—is considered as being helpful in creating a cultural shift that will result in accessibility becoming just another consideration in the regular course of doing business.



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The review noted that availability of funds (public or otherwise) to develop accessibility in content or aid in the distribution of accessible content or the inclusion of accessibility as a normal eligible cost in a broader range of Irish funding schemes would be beneficial. The review found that such schemes are in place in other jurisdictions.

Finally, the review found an innovative approach to alleviating the burden on smaller operators is the UK system of co-operation via the British Sign Language Broadcasting Trust. This allows broadcasters to contribute to specific projects for the production of accessible content (with sign interpretation) in lieu of certain quota requirements.

## ii. Other relevant areas regulated in other jurisdictions

### The role of distributors in making accessible content available

The review examined the distribution and delivery of accessible content. It found that in North America, distribution companies tend to have obligations with regard to accessibility. The BAI is not empowered by legislation to place any obligations on distribution platforms to deliver and distribute accessible content. However, many European countries have included this in relevant “must-carry” rules. The review suggests that it may be useful if accessible content was considered as public interest content in all “must-carry” regimes.

### Online content of broadcasters and on-demand services

The BAI does not regulate on-demand services, although this may change following the introduction of revisions to the European Directive governing audiovisual media (AVMSD). Notwithstanding this, the review examined issues emerging with regard to the online content of broadcasters in the review. In North America, they are obliged to carry captioning (subtitling) from linear to non-linear services. The possibility for broadcasters to include online accessible programming as part of the overall quotas (as is the case in some jurisdictions) may encourage the provision of accessible content online and enhance co-operation regarding formats and standards.

## 3.2 Stakeholder Engagement

Findings which emerged from the stakeholder research together with research conducted on the role of human resource factors and costs associated with the provision of the various access services can be considered across the following categories:-

- Targets set for access service provision and quantities of service provided;
- Quality of access services provided;



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- Enforcement of the Access Rules by the BAI;
- Quality of engagement in respect of the Access Rules between the BAI, broadcasters and access service users.

The key findings are as follows:-

**i. Targets set for access service provision and quantities of service provided.**

*User perspective*

'Slow' and 'frustratingly slow' were the terms commonly used by access service users to describe progress in respect of improvements in the quantities of access services provided by the Irish broadcasters. While the increase in levels of access services provided were recognised by users, these improvements in quantity have not, according to access service users, been mirrored by comparable improvements in the quality of those same services. Access users consistently reinforced the intrinsic link between quality and quantity of provision. The users set out their view that, without enhanced quality, any improvements in the quantity of provision will be largely immaterial for many access service users.

Current estimates on the levels of access services, and in particular subtitling, provided by the Irish broadcasters and recognised by the BAI in respects of the targets set under the Access Rules are thought, by many access service users, to be inaccurate, overestimated and in some cases significantly so. These users were also of the view that where poor or inferior quality access service provision is identified it should not, according to access service users, be recognised by the BAI in the context of the broadcaster's attainment of targets set under the Rules.

The increased availability of accessible content on broadcasters' non-linear services was commended by access service users. Additional levers could, according to service users, be usefully applied by the BAI to facilitate further increases in this area.

Access users proposed that targets for all access services, and in particular those for audio description, Irish Sign Language and any newly licensed broadcast services, should continue to be raised on an incremental basis. The need to prioritise increased levels of audio description for home produced programming was, in particular, emphasised. A strong call was also put forward by access service users for the Rules and associated targets to be based around a single figure target rather than a target range for each broadcast service.



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## Broadcaster perspective

Broadcasters suggested that the Rules, as they are currently constituted, do not fully account for the unique nature of each broadcast service and influencing factors such as available budget, share of viewing audience, language of access and programming schedule.

In emphasising their strong commitment to the provision of access services many of the broadcasters claimed additional access service provision will be challenging to attain across the coming years.

This view was particularly notable in respect of subtitling as the broadcasters argue that they have reached or will soon reach a 'ceiling' of provision. A combination of barriers including costs - both listed and 'absorbed' - the increasingly limited available playout time for access service compatible content and capacity constraints on the part of indigenous access service providers were cited in this context.

The facilitated exchange of practice and experience between sectoral members was recommended by many of the stakeholders consulted as a key means to build capacity and support further commitment to the provision of increased levels of high quality television access services.

## **ii. Quality of access services provided.**

### User perspective

Access users proposed that the Rules, as they are currently designed, focus primarily on the quantity of access services provided but have, in their opinion, few if any levers to promote what are believed to be necessary quality improvements.

Much of the access services provided by the Irish broadcasters are described, by users as being of an appropriate or acceptable standard. However, inconsistency in the quality of the provision was cited as the most significant concern on the part of access service users consulted. Poor performance was considered to be particularly notable in the case of subtitling for live programming.

Style, format and presentation related issues were highlighted frequently by access service users. The development of new standards and guidelines for access services and in particular to support audio description provision in an Irish context was proposed by service users.

These users also questioned the BAI's suitability to monitor the quality of access services provided by the broadcasters given what was understood to be an absence of direct user involvement in the monitoring process.



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## Broadcaster perspective

Broadcasters held the view that the quality of access service provision, including that of subtitling, is of a consistently high standard. The view that access service users “just want more quantity” was cited frequently.

The impact of the supply chain, and in particular the role of the platform provider, on the user experience was referenced by access service users and broadcasters alike. The absence of a ‘must carry rule’ for platform providers was emphasised frequently by all stakeholders in this context.

### **iii. Enforcement of the Access Rules by the BAI.**

The BAI’s approach to enforcement was, for many access service users, perceived to be overly lenient while a number of broadcasters suggested that the BAI’s approach in this area can be overly onerous with smaller broadcasters in particular highlighting the challenge they can face in meeting the reporting requirements associated with the Rules.

The absence of what they considered to be further ‘harder hitting’ follow up in the case of broadcasters who have consistently failed to deliver access services to an appropriate standard was a particular point of frustration for many access service users.

A call for stronger enforcement and more transparent process of escalation to be applied in cases of ongoing performance issues was voiced by many of the access service users consulted. An annual or bi-annual publication of performance was also recommended by a significant number of service users.

### **iv. Quality of engagement in respect of the Access Rules between the BAI, broadcasters and access service users.**

Broadcasters, in the main, were credited with having improved, in recent years, their approach to engagement with access service users. However the current engagement approaches hosted by some of the broadcasters do not always feel appropriately ‘balanced’ according to some access service users. The absence of a designated Access Rules liaison and email contact points for several of the broadcasters was also highlighted.

The challenge experienced by certain broadcasters in accessing access service user involvement on a consistent basis surfaced as did the variation in access service user feedback, which can make it difficult for broadcasters to make user informed decisions.



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In particular, the broadcasters were of the view that absence of consistent positions on the part of the access service user viewing base appeared to provide a point of challenge for the broadcasters, for example in respect of peak time, viewing preferences etc.

### 3.3 Technical Review

The Technical Review supports the view that broadcasters (with providers) are working to improve the quality and reliability of subtitles. The main areas of work appear to be in the reduction of delay for live subtitles and the improvement in the conversion of subtitles from linear television to online players.

The BAI's monitoring indicates that the quality and reliability of audio described programmes is good at present and there appears to be little development work in this area. Irish Sign Language is only available in open format (viewable to all audiences when broadcast) and there does not appear to be any move towards the development of the closed format. There has been work done to separate the video from the signer on screen, hence making both more visible to the viewer.

The European Union is currently developing the Accessibility Act which, *inter alia*, sets out accessibility standard requirements for audio-visual media related consumer equipment with advanced computing capability. The latter includes EPGs, set top boxes and smart TVs as well as material and information made available on websites and players. Such standards should ensure the proper carriage and carry through of reliable and high quality accessible services in future.

The review has also found that broadcasters are focussing a lot of their efforts on the development of online players and the provision of accessible content as they feel that this will be of the most benefit to viewers. Although this is a welcome development, the BAI does not have any regulatory remit in this area currently.

### 3.4 Compliance Review

The Compliance Review has found that the quantity and range of access service provision on television services has increased annually and significantly in line with the Rules since their introduction. RTÉ 1, for example, provides up to 94% subtitling during peak time periods of viewing. The quality and reliability of access service provision has also improved over this time. In circumstances where apparent non-compliance has been identified, the broadcasters have advised of a wide range of contributory factors including technical (supply-chain) issues, budgetary cuts, resource capacity (financial and human), scheduling changes due to the broadcast of special events and reductions in the level of acquired subtitled content.



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Funding and other challenges notwithstanding, broadcasters state their ongoing commitment to improving the range, quality and reliability of their access service provision and engagement with users of the services.

From the BAI's extensive and ongoing consultations with user groups, it is evident that quality and reliability of access service provision is as, if not more, important than the achievement of the targets (a quantitative measure only). The feedback provided by users of the services, however, also indicates that quality and reliability is often linked to the choice of end user equipment (set top boxes, platforms such as cable and satellite, and integrated digital televisions). The variations in the quality of the access service provision and reception difficulties depending on the choice of set top boxes has also been a consistent theme in BAI consultations, broadcaster and user panel meetings.

This means that even though broadcasters may be compliant with the Access Rules, the service may not, when delivered to the user, be accessible. It is hoped that some of these issues will be addressed by the proposed EU Accessibility Act.

## 4. Potential Policy Options – 2018 Access Rules Review

Having completed the primary research activities, the BAI Executive reviewed the findings of the jurisdictional review, the stakeholder engagements, the compliance and technical reviews with a view to identifying possible policy options that could inform any future consultation on revisions to the Access Rules. Potential policy options were identified across four areas relevant to the Access Rules:

- Targets for access service provision;
- Quality of access service provision;
- Enforcement of the Access Rules;
- Engagement between the BAI, broadcasters and access service users.

These potential policy options were then presented to access service users, their representatives and broadcasters at three meetings. The objective of these meetings was to test out these various policy options with these key stakeholders.

It must be noted that these options were presented as options for future policy-making and not proposals, all of which would be the subject of public and targeted consultation in the context of any 2018 revision to the Rules.<sup>5</sup>

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<sup>5</sup> The options presented did not relate to specific targets for access provision on broadcast services. Views in this regard are firm on both sides of the discussion with access groups favouring 100% access service provision and broadcasters requesting lower targets or, at a minimum, no increases from those in place for 2017.



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These policy options were as follows:-

i. **Targets for access service provision**

Move from target range to a single figure target e.g. from 24-29% requirement to 29%.
Targets for both Irish Sign Language and audio description to be considered for all broadcasters, rather than just RTÉ, subject to consideration of the relevant influencing factors.
Group wide – rather than individual broadcast service – approach to setting of targets where appropriate i.e. consideration of RTÉ, Virgin channels as a whole rather than individually.
Requirement for newly licensed services to provide access provision from the outset - subject to consideration of the influencing factors.
Opportunity for broadcasters to off-set a portion of the target, up to and including a threshold level, against the provision of access services as part of the broadcasters online or on-demand service.
Application of a 'carry forward' requirement for broadcasters who may fall short in their required provision of access services in a given calendar year.
Audience share to be considered as an explicit measure within the influencing factors when setting targets. Separate peak and off peak targets to be considered to reflect viewing audiences with additional weighting or recognition afforded to prime time provision (6pm-11.30pm).
Introduction of a cost cap for broadcasters whereby expenditure on access services would be set at a ceiling equivalent to a maximum of c. 1% of total broadcaster costs.
Introduction of exemptions to the Access Rules for particular service types, for example those with a heavy concentration of live events.
Targets which facilitate or encourage broadcasters in the development of online archives of accessible content.





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Facility for broadcasters and/or programme makers to off-set the selection of one access service against another.
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Mandatory access service provision for recognised national emergencies.
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The views provided by access users and broadcasters in respect of the above policy options can be summarised as follows<sup>6</sup>:-

### Targets for Access Service Provision

There was no stakeholder agreement in respect of the following policy options pertaining to targets: Extending ISL and AD to other broadcasters, using audience share to set targets, linking a cost cap to required targets, exemptions for certain services and offsetting targets for one type of access services against another. The other options either received support, were not objected to, or were supported conditionally (subject to more detail or specific proposals).

### ii. Quality of access service provision

Introduction of measures to support greater focus by the BAI in respect of its approach to monitoring for quality. Such measures could include the introduction of a new approach to the sampling of broadcaster content as part of the BAI's monitoring process together with the introduction of additional quality assurance methods.
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The conduct of a review of the BAI Guidelines for the three access services types – subtitling, ISL and audio description - to be informed by a consideration of international best practice and consultation with access service users.
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Measures, either directly as part of or to be introduced in parallel to the Access Rules, to support capacity building for the indigenous sector supplying accessible services for the Irish broadcast market.
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<sup>6</sup> The OCS Consulting (Appendix 3) sets out in detail views of the stakeholders in respect of these proposals.



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The views provided by access users and broadcasters in respect of the above policy options can be summarised as follows:-

### Quality of Access Service Provision

The options under this heading either received support, were not objected to, or were supported conditionally (subject to more detail or specific proposals).

#### **iii. Enforcement of the Access Rules**

The introduction of measures to increase transparency in respect of the BAI process for monitoring compliance. Potential proposals in this area included the publication of the BAI's Compliance Processes and the release of an annual BAI Statement on broadcaster performance.

The views provided by access users and broadcasters in respect of the above policy options can be summarised as follows:-

### Enforcement of Access Rules

The options under this heading either received support, were not objected to, or were supported conditionally (subject to more detail or specific proposals). Broadcasters noted that care should be taken to ensure that the publication of any statement on broadcast performance would not endanger what they describe as the positive dynamic emerging between broadcasters and access service users.

#### **iv. Engagement between the BAI, broadcasters and access service users.**

Obligation on broadcasters to designate an Access Rules Liaison Officer.
Ongoing facilitation of the BAI User Consultative Panel (UCP).
Ongoing requirement for broadcasters to support regular engagement with access service users.
Facilitation, in parallel to the standing schedule of UCP convenings and broadcaster meetings with the BAI, of an annual or biennial joint forum to involve the BAI, broadcasters, access users and, potentially, programme makers in a knowledge sharing exchange.



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The views provided by access users and broadcasters in respect of the above policy options can be summarised as follows:-

## Engagement between the BAI broadcasters and Access Users

The options under this heading either received support, were not objected to, or were supported conditionally (subject to more detail or specific proposals).

## 5. Conclusions

A wide range of valuable findings have emerged from the review. In terms of the effectiveness of the current Rules, the following may be noted:-

- The quantity and range of access service provision on television services continues to increase annually. As noted above, RTÉ 1, for example, provides up to 94% subtitling during peak time periods of viewing. The quality and reliability of access service provision has also improved over this time, although real challenges remain in this area. A number of factors come into play in this regard, some of which are outside the broadcaster's control.
- The level of engagement between broadcasters and access users and their representatives has improved since the last review and this is a welcome trend.
- Targets for audio description and Irish Sign Language, while modest, are being attained by RTÉ to a good standard.
- Broadcasters continue to be engaged meaningfully in their approach to their requirements to provide access services with investment ongoing and also via the inclusion of accessible provisions on their online players (which is not a requirement of the BAI's Rules).
- The Rules are, for the most part, in line with best practice at a European and International level. New approaches are evident from our review of practices in other jurisdictions and these approaches have informed the policy options set out above.
- Compliance levels with the Rules overall is good and where issues have arisen, broadcasters have been responsive and addressed these issues. However, compliance with quality requirements remains an issue for some but not all broadcasters.
- The technical landscape has changed significantly since the 2009 review. This has opened up new opportunities in respect of online provision of access services and has



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also reduced costs. It has also created challenges as outlined in this report. Solutions to the provision of 'closed' Irish Sign Language have been developed but these are not market ready at this time.

In terms of those areas where further action is merited, the following can be noted:-

- The issue of the **quality of access provision** requires further intervention on the part of the BAI. The review and our own engagements with broadcasters (as well as the experience of broadcasters at a European level) clearly indicates that this is a complex issue impacted by a number of factors. It is also evident that broadcasters have engaged with this challenge and there is nothing to indicate that problems with quality arise principally from poor standards in respect of the application of the quality requirements. Issues arising from the variety of standards applying to set top boxes and also issues in terms of the 'carry-through' of access provision by platform providers remain. While quality issues are evident from the BAI's monitoring, our own results do not suggest that quality issues are as significant as reported by users. However, it must be noted that this is based on a small monitoring sample. The EU Accessibility Act may deal with some of these issues. Proposals around a BAI organised forum of access stakeholders may also provide the opportunity to discuss ways to address 'carry-through'. A review of 'must-carry' requirements should also be examined to see whether there is a regulatory or legislative solution to the issue of 'carry-through'. More generally, the policy options discussed with stakeholders also indicate other measures which may be applied with a view to improving quality.
- The **targets and the approach to target setting** have also emerged as issues requiring further attention. There are very divergent views evident from the engagement with stakeholders with broadcasters indicating that they are not in a position to increase provision above current levels and users advocating a move towards 100% provision. At the same time, users have also questioned the value of live subtitling and whether broadcaster resources allocated to access provision may be better spent elsewhere. The review findings indicate that further refinements to the mechanisms for setting targets may be warranted, for example, giving consideration to peak time provision.

The review also indicates that a focus on provision of ISL and audio description may be warranted in the context of the coming years. Compared to other jurisdictions examined as part of this review, Ireland has lower level audio description and sign language requirements. It is also evident that in certain cases these jurisdictions apply requirements beyond the public service broadcaster and given the emergence of the Virgin Media group of television channels, the extension of ISL and audio description on some of their services must be given consideration.



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- The manner and extent of **engagement between the BAI, broadcasters and users** has also been highlighted by the review as deserving attention. It is clear that in the case of users, there is a disconnect, in certain respects, between the regulatory framework and users awareness of this framework. This was evident in terms of user comments about the Compliance and Enforcement Policy, the existence of guidelines pertaining to the quality of access provision and obligations regarding ISL and audio description on Sound and Vision III funded programming.

The policy options include a number of measures to address these matters, including greater transparency around the BAI's compliance activities and actions as well as the development of a stakeholder forum.

Not dissimilar issues arise in the case of broadcasters. A common view emerging from these stakeholders was that the BAI did not have regard to the uniqueness of each broadcaster when setting targets despite the existence of a set of Influencing Factors which allow the BAI to tailor the targets having had regard to the particular broadcasters. Separately, broadcasters have asked the BAI to support a broader engagement with the sector as a whole and for mechanisms to be put in place to support broadcasters. Again, a number of the policy options set out above may provide a solution to these concerns.

The findings have highlighted the effectiveness of the Rules to date and have also sign-posted aspects of the Rules and their implementation that need to be addressed, either via revisions to the current Rules or via supporting actions to be undertaken by the BAI, broadcasters, access user groups and other stakeholders. In this regard, a public consultation on revised Rules will be undertaken in 2018 with a view to implementing new requirements from the beginning of 2019. This revision will also have regard to relevant provisions of any new legislation introduced including, the Irish Sign Language Bill, the Disability (Miscellaneous Provisions) Bill 2016, the revised Audiovisual Media Services Directive and the EU Accessibility Act.



**Broadcasting Authority of Ireland**

**Appendix 1  
BAI Access Rules**

# **Access Rules**

## **1. Introduction**

The Broadcasting Act 2009 makes a number of provisions in respect of rules to be made by the Broadcasting Authority of Ireland (BAI) to promote the understanding and enjoyment of programmes by persons who are deaf or have a hearing impairment, persons who are blind or partially sighted and persons who have a hearing impairment and are partially sighted. The relevant provisions of the Act are Sections 43(1)(c), 43(2), 43(3) and 43(6).<sup>1</sup>

In accordance with these provisions of the Broadcasting Act 2009, the BAI hereby sets out the following rules.

## **2. Definitions**

A number of terms are used throughout the Rules. These terms are set out and defined below.

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<sup>1</sup> The provisions are detailed in the Appendices.

## **Subtitling**

Subtitling is on-screen text that represents what is being said on the television screen. Subtitling can be open or closed. Open subtitling is subtitling that remains on the screen at all times. Closed subtitling can be added to the picture or taken away as viewers wish, using, for example page 888 or 887 on Teletext. Subtitling is formatted so as to assist interpretation and understanding of the text and link it more accurately to the on-screen action.

## **Captioning**

Captioning refers to on-screen text that represents what is being said on the television screen. However, while similar to subtitling, it is not as sophisticated and entails a more basic representation of what is being said on screen, sometimes having only one colour, verbatim and can have the text only in upper case.



## **Irish Sign Language**

Irish Sign Language is the indigenous language of the Deaf community in Ireland. It is a visual, spatial language with its own syntax and complex grammatical structure. Signing must be presented on a television screen through the use of a signer as part of the programme content, or the use of a signer (either a real person or a virtual person generated by computer) acting as an interpreter in a box superimposed in the corner of the screen.

## **Audio Description**

Audio description is a commentary that gives a viewer with a visual impairment a verbal description of what is happening on the television screen at any given moment, as an aid to the understanding and enjoyment of the programme. The technique uses a second sound track that gives a description of the scene and the on-screen action.

### **3. Jurisdiction**

Broadcasters within the jurisdiction of Ireland must comply with the provisions of the Access Rules. The Rules shall not apply to other services commonly received in this State but licensed in the United Kingdom or in other jurisdictions.

The BAI reserves the right to extend the Rules and their applicability to new services licensed by the BAI under the Broadcasting Act 2009, from time-to-time. The BAI will make this assessment on a case-by-case basis.

#### **4. Complaints**

Any viewer or listener can refer a complaint directly to the relevant broadcaster, in the first instance, if they are dissatisfied with the manner in which a broadcaster is complying with the Rules. Further information is available on [www.bai.ie](http://www.bai.ie).

#### **5. Compliance**

In evaluating and measuring performance, the BAI will take into account, inter alia:

- The BAI Compliance and Enforcement Policy;
- The BAI Procedures Applying to the Assessment of Compliance with the Access Rules.

## **6. Subtitling Rules**

1. Specific targets have been identified for each broadcast service and broadcasters shall comply with the targets and timeframes applying to their service(s). All targets are based on a five-year timeframe.

Targets are specified as a range of percentages. Current timeframes and targets are detailed at Appendix 1.

2. In the case of RTÉ One and RTÉ Two, of the annual percentage increase in subtitling, a reasonable proportion shall include children's programming, where applicable.
3. The rules do not, at this time, prioritise any programme genres/types or time-blocks. However, broadcasters shall consult periodically and not less than once annually, with user groups, as to their viewing preferences.
4. Broadcasters are permitted to include some captioning in the attainment of subtitling targets. However, it is the intention of the BAI that broadcasters will transition, over time, from captioning to subtitling.

5. Broadcasters shall comply with standards and guidelines set out from time to time in the BAI Subtitling Guidelines.

## **7. Irish Sign Language Rules & Audio Description**

1. Specific Irish Sign Language targets have been identified for RTÉ One, RTÉ Two, RTÉjr, RTÉ Plus One, RTÉ News Now and Oireachtas TV. Specific audio description targets have been set for RTÉ One, RTÉ Two, RTÉjr and RTÉ plus One. RTÉ shall comply with the targets and timeframes applying to these services. The targets are based on a five-year timeframe.

Targets are specified as a range of percentages.

In the case of RTÉ One and RTÉ Two television services, assessment in respect of Irish Sign Language and audio description will be based on the cumulative output of both services. The current timeframes and targets are detailed at Appendix 1.

In the case of Oireachtas TV, the Irish Sign Language provision may be set off against the targets for subtitling in 2016.

2. Of the total increase in Irish Sign Language provision provided on an annual basis for RTÉ services, a reasonable proportion of children's programming shall be included.
3. Of the total increase in audio description provision provided on an annual basis, a reasonable proportion shall comprise home-produced programming.
4. There are no Irish Sign Language or audio description requirements in respect of other broadcast services at this time. Requirements in this regard will be reviewed periodically. However, other services may choose to provide audio description and/or Irish Sign Language.
5. Community broadcasters may set off any audio description and Irish Sign Language provision against the targets for subtitling.
6. Broadcasters shall comply with standards and guidelines set out from time to time in the BAI Irish Sign Language and Audio Description Guidelines.

## **8. Length of broadcast day**

In the case of most services, subtitling and audio description targets will be assessed based on an 18-hour day from 7am-1am. In the case of Irish Sign Language, targets will be assessed based on a 24-hour day.

The only exception in this regard will apply to a channel where the length of the broadcast day is less than 18 hours. In such circumstances, the subtitling, audio description and Irish Sign Language requirements will be measured over the length of the broadcast day of the channel.

## **9. Promotion of Access Services**

Broadcasters are required to indicate through the use of a standard symbol those programmes for which access provision (subtitling, sign language or audio description) is available. Insofar as possible, broadcasters should ensure that any programme listings also indicate those programmes for which access provision is available.

Broadcasters shall promote regularly the existence and usage of the form(s) of access provision available on their services.

## **10. Review of the Access Rules**

These Rules will be reviewed in 2016 and 2018.

## Appendix 1

### Access Targets and Timeframes 2014-2018

#### Subtitling

	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>
<b>RTÉ One</b>	82 - 87%	84 - 89%	85 - 90%	86 - 91%	87 - 92%
<b>RTÉ Two</b>	60 - 66%	63 - 69%	67 - 73%	70 - 76%	73 - 79%
<b>TV3</b>	43 - 47%	45 - 49%	47 - 51%	49 - 53%	51 - 55%
<b>TG4</b>	44 - 50%	47 - 53%	51 - 57%	54 - 60%	57 - 63%
<b>3e</b>	16 - 20%	19 - 23%	22 - 26%	25 - 29%	28 - 32%
<b>Setanta Ireland</b>	8 - 10%	9 - 11%	10 - 12%	11 - 13%	12 - 14%
<b>RTÉ plus One</b>	As per RTÉ 1	84 - 89%	85 - 90%	86 - 91%	87 - 92%
<b>RTÉ News Now</b>	Original broadcast carry through	15 - 18%	18 - 21%	21 - 24%	24 - 27%
<b>RTÉ jr.</b>		36 - 40%	40 - 44%	44 - 48%	48 - 52%
<b>UTV Ireland</b>			46 - 52%	52 - 56%	56 – 60%
<b>Irish TV</b>			3%	4%	6%
<b>Oireachtas TV</b>			5 - 6%	12 - 14%	16 - 18%
<b>CCTV</b>	3%	5%	7%	9%	11%
<b>DCTV</b>	3%	5%	7%	9%	11%



## Audio Description Targets

	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>
<b>RTÉ One</b> <b>RTÉ Two</b>	1.5%	1.75%	2%	2.25%	2.5%
<b>RTÉ jr</b>		2%	3%	4%	5%
<b>RTÉ Plus One</b>		Any audio description carried on the main RTÉ 1 television service will be made available on this service			

## Irish Sign Language Targets

	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>
<b>RTÉ One</b> <b>RTÉ Two</b>	1.5%	1.75%	2%	2.25%	2.5%
<b>RTÉ jr</b>	0.5%	0.75%	1%	1.25%	1.5%
<b>RTÉ News Now</b>		Broadcasts which had Irish Sign Language when broadcast on the main channels will be made available on this service			
<b>RTÉ Plus One</b>		Broadcasts which had Irish Sign Language when broadcast on the main RTÉ 1 television service will be made available on this time shifted service			
<b>Oireachtas TV</b>			1%	2%	3%

In the case of RTÉ One and RTÉ Two, the audio description and Irish Sign Language percentages are based on the cumulative programming output of both services.

Oireachtas TV may set off any Irish Sign Language provision against the targets for subtitling in 2016.

## **Appendix 2**

### **Legislative Provisions**

#### **Section 43(1)(c) of the Broadcasting Act 2009**

provides that: -

“The Authority shall, subject to the requirements of section 41(2) and, in accordance with subsection (4), prepare, and from time to time as occasion requires, revise rules (“broadcasting rules”) with respect to-

(c) The specific steps each broadcaster is required to take to promote the understanding and enjoyment by –

- i) persons who are deaf or have a hearing impairment,
- ii) persons who are blind or partially sighted, and
- iii) persons who have a hearing impairment and are partially sighted,

of programmes transmitted on any broadcasting service provided by the broadcaster.”

## **Section 43(2) of the Broadcasting Act 2009**

provides that: -

“Without prejudice to the generality of subsection (1)(c), broadcasting rules with respect to that paragraph shall require each broadcaster of audio-visual material to take specified steps to provide access to that material by persons who are deaf or have a hearing impairment, persons who are blind or partially sighted, and persons who have a hearing impairment and are partially sighted by means of specified services such as -

- (a) sign language,
- (b) teletext services.
- (c) subtitling, and audio description, and
- (d) Have regard to whether the foregoing material is being provided –
  - (i) Daily or at other regular intervals,
  - (ii) At popular viewing times as well as at other times, and
  - (iii) For news and news-related matters as well as for other matters.”

### **Section 43(3) of the Broadcasting Act 2009**

provides that: -

“Rules under subsection (1)(c) may, in respect of any period specified in them beginning on or after the passing of this Act, require a broadcaster to ensure that a specified percentage of programmes transmitted on a broadcasting service provided by him or her in that period employs specified means by which the understanding and enjoyment by persons referred in subparagraphs (i), (ii) and (iii) of that paragraph of that percentage of programmes may be promoted.”

### **Section 43(6) of the Broadcasting Act 2009**

provides that: -

“The Authority shall every two years, or such lesser period as it may decide, review a broadcasting rule made under subsection (1)(c).”



# **Broadcasting Authority of Ireland**

## **Appendix 2 Access Principles and Influencing Factors**

## **Access Principles**

There are four access principles which set out the aims of the *Access Rules* and the BAI's approach towards setting the rules. The four principles are:

- i) *Access*  
A guiding principle for the BAI is that those citizens for whom the *Access Rules* are designed should have the fullest possible access to the broadcast media and to its capacity to educate, inform and entertain. This principle is evident in the *Access Rules* in that all indigenous broadcasters come under the jurisdiction of the rules.
- ii) *Excellence*  
This principle recognises the fact that the *Access Rules* are not only concerned with the provision of subtitling, audio description and Irish Sign Language but also with the standards and consistency which must be used and attained in their delivery, including best practice guidelines in both audio and visual presentation. To this end, the BAI has developed a set of standards and guidelines that broadcasters must attain to ensure a quality access service.
- iii) *Incremental progression*  
This principle acknowledges that the level of subtitling, audio description and Irish Sign Language will develop incrementally over a period of time. This will facilitate broadcasters to further develop their capacity and expertise to deliver this service. The use of a five-year timeframe in the *Access Rules* is based on the principle of increasing access provision in incremental stages, allowing the broadcaster to plan for the development and delivery of quality access provision. It acknowledges that there are a number of issues other than funding which need to be addressed in order to increase access provision.
- iv) *Responsiveness*  
This principle aims to ensure that the development of access provision (subtitling, Irish Sign Language and audio description) should be in response to the needs and priorities as expressed by the user groups as well as standards laid down by the BAI, in consultation with the broadcast provider.

## **Influencing Factors**

Bearing in mind the Access Principles, the influencing factors are those used by the BAI to determine the specific access targets and the specific timeframes associated with those targets, in a manner which reflect the individuality of each service under consideration.

The influencing factors are as follows:

### **a. *Differentiation between broadcast services***

The *Access Rules* differentiate between broadcasters based on a number of factors. These factors are:

- i) *The nature of the broadcast provider*  
Is the broadcasting service a public or private service? Is the broadcaster in receipt of public monies and as a result has greater public service duties? Does the broadcaster have specific aims which might impact on its ability to provide access services?
- ii) *The stage of development of the broadcast provider*  
How long has the broadcaster been in operation? How much experience does the broadcaster have of providing access services? Is there already a level of expertise within the broadcasting service in the provision of access services?
- iii) *The level of current provision*  
What level of subtitling, Irish Sign Language and audio description does the broadcaster currently provide? What is their starting point?
- iv) *Type of programming schedule*  
Does the broadcast service produce live programming? Does it acquire a lot of programming from other broadcasters? How much home produced programming does the broadcaster provide? Is programming independently produced?  
  
These questions are relevant, as the type of programming in the schedule has an influence on the cost, technical facilities, personnel and ability of the broadcaster to provide access services. In most cases, subtitles are purchased separately from programming and are not bought as part of the acquired programme.
- v) *The technical and human resource cost*  
What facilities and expertise currently exist within the broadcasting service to provide access services?
- vi) *Technical capacity:*  
Does the broadcast service have the technical capacity to provide access services? What level and type of technical facilities and expertise would be required?



***b. Funding***

The BAI has had regard to the likely financial impact of any requirement to comply with targets and timeframes set for the provision of access services. In particular, the BAI examined the type of programming across various schedules, including the number of repeat programmes as this has a bearing on the costs. The BAI also had regard to the nature of the broadcaster, whether it is a private commercial or publicly funded entity.

However, it should be noted that it is difficult to arrive at definitive costs, as in many instances the cost will depend on the scheduling decisions made by broadcasters, the type of programming and the decisions made with regard to what programming they are going to prioritise for access provision.



**Broadcasting Authority of Ireland**

**Appendix 3  
Report on Stakeholder Research**



# Broadcasting Authority of Ireland (BAI)

Stakeholder research to inform Access Rules Review

December, 2017



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### **Appendix 1: Access Targets and Timeframes 2014 - 2018**

### **Appendix 2: Legislative Provisions**

### **Appendix 3: Background to the BAI Television Access Services User Consultative Panel**

### **Appendix 4: BAI Television Access Services User Consultative Panel; Terms of Reference**

## 1. Introduction

The Broadcasting Authority of Ireland (BAI or the Authority) is the regulator of broadcasting in Ireland and in fulfilling this role develops Access Rules which set out the levels of subtitling, Irish Sign Language and audio description that broadcasters in Ireland are required to provide.

The Broadcasting Act 2009 makes a number of provisions in respect of rules to be made by the BAI to promote the understanding and enjoyment of programmes by persons who are Deaf or Hard of Hearing and persons who are blind or partially sighted. The relevant provisions of the Act are Sections 43(1)(c), 43(2), 43(3) and 43(6).<sup>1</sup>

The Access Rules apply to broadcasters within the jurisdiction of Ireland and specify individual subtitling targets for each broadcast service and broadcasters are required to comply with the targets and timeframes applying to their service(s). These subtitling targets have been specified as a range of percentages.

Specific Irish Sign Language targets have been identified for RTÉ One, RTÉ Two, RTÉjr, RTÉ Plus One, RTÉ News Now and Oireachtas TV. Specific audio description targets were also set for RTÉ One, RTÉ Two, RTÉjr and RTÉ Plus One. Under the current set of Rules there are no Irish Sign Language or audio description requirements in respect of other broadcast services.

The current Rules came into effect on the 1<sup>st</sup> March 2015. All of the targets set for each of the broadcast services were based on a five-year timeframe commencing in 2014. The timeframes and targets which apply to each of the broadcasting services as part of the current set of Access Rules are detailed at Appendix 1. Broadcasters are also required to comply with standards and guidelines set out within the BAI Subtitling, Irish Sign Language and Audio Description Guidelines.

The Rules are, in accordance with the Broadcasting Act 2009, reviewed by the BAI every two years to assess the extent to which they are fit for purpose and the degree to which they offer greater access to better quality programmes for people who are Deaf or Hard of Hearing and persons who are blind or partially sighted.

Consultation between the BAI and both access service users and broadcasters has informed the development and ongoing monitoring of the Rules since their inception. The BAI undertook significant research and consultation to inform the development of the original set of Access Rules in 2005. A User Consultative Panel was also established by the BAI in 2013 to assist and further inform the BAI with its assessment of broadcaster compliance with the Rules and to inform the BAI of the user experience of the access services provided.

As required by the Broadcasting Act 2009 the Rules were formally reviewed by the BAI in 2017. To support the review, the BAI appointed OCS Consulting, an independent research company, to undertake targeted consultation involving television access service users, together with access users' representative groups and broadcasters in order to gather views on the provisions of the Access Rules, the quantity and quality of access service provision and the current costs and role of human resource factors associated with the provision of the various access services – subtitling, Irish Sign Language and audio description by television broadcasters in the Republic of Ireland.

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<sup>1</sup> The provisions are detailed in the Appendices.

## 2. Methodology

The research process involved a number of strands of work which included;

- **Review and synthesis of the approved minutes and associated notes arising from the meetings of the BAI Television Access Services User Consultative Panel** facilitated since its establishment in 2013.

This review identified, from the perspective of the user group members, a series of key themes and ongoing challenges in the area of access service provision together with a number of user group recommendations.

- **Key informant interviews** with stakeholder representatives, supported by interview guides agreed with the BAI, were conducted to explore the perspective of access service users, access users' representative groups, broadcasters and **providers of access services**. These interviews focused on access service provision, target attainment in respect of both quantity and quality dimensions, the BAI's approach to monitoring and enforcement, engagement between broadcasters and access service users, the levers and barriers involved in access service provision, the current costs and role of human resource factors associated with the provision of the various access services and broadcaster goals for future access service provision.

As part of this strand of research the number of interviews conducted with the various stakeholder groups was as follows;

- Access service users and access users' representative groups; 8 interviews
- Broadcaster representatives; 7 interviews
- Providers of access services and those involved in the provision of training for access service providers; 8 interviews
- **Workshop with BAI officials;** to consider and assess the emerging findings secured through the various strands of consultation together with the framing of some potential policy options which could be tested with groups of television access service users and broadcaster representatives as part of a series of facilitated workshops.
- **Three facilitated workshop meetings** with;
  - (1) One group of users of subtitling and Irish Sign Language.
  - (2) One group of users of audio description.
  - (3) One group of broadcaster representatives.

The three workshop meetings were designed to:

- Support further engagement on the part of access users, access users' representative groups and broadcasters with the review process.
- Share key findings which had emerged through the various strands of research.
- Gather broadcaster, access user and user representative views on some of the potential policy options which have been informed by the review work and which may be considered by the BAI in the context of the ongoing development of the Access Rules.
- **Analysis & Reporting;** Minutes of the facilitated workshop meeting were prepared and presented to the BAI. All of the field work data was analysed to inform the material presented as part of the three workshop meetings and this particular research findings report. In parallel to this research process the BAI also supported the conduct of a number of additional and separate strands of work to inform the review process. These parallel strands of work included a jurisdictional review, a technical review and a review of broadcaster compliance with the BAI Access Rules. Separate reports have been prepared by the BAI in respect of each of these additional strands of work.

### 3. Findings

Findings which emerged from the stakeholder research together with research conducted on the role of human resource factors and costs associated with the provision of the various access services can be considered across five categories as follows;

- i. Targets set for access service provision and quantities of service provided.
- ii. Quality of access services provided.
- iii. Enforcement of the Access Rules by the BAI.
- iv. Quality of engagement in respect of the Access Rules between the BAI, broadcasters and access service users.
- v. Potential policy options which have been informed by the research conducted and which may be considered by the BAI in the context of the ongoing development of the Access Rules.

This presentation of findings features the views and perspectives of access service users, access users' representative groups, broadcasters and, where relevant, providers of access services. On some of the issues presented the views of access services users and broadcasters contrasted, and in some instances significantly so. In such instances the access service user and broadcaster perspective is presented separately. On some of the themes there was a convergence of views and where this was the case this is presented accordingly.

Since its first official meeting in May, 2013 the BAI Television Access Services User Consultative Panel (UCP)<sup>2</sup> has met together with BAI officials three times each calendar year. Across a series of now 14 meetings the UCP has set out views and described member experiences of the television access services, as provided by the Irish broadcasters, across a number of key thematic areas. These views, experiences and the trajectory across same have been summarised within the relevant sections of the report which follows.

An analysis of all of the various consultations informed the selection of a number of potential policy options which may be considered by the BAI in the context of the ongoing development of the Access Rules. The views of access service users / user representative groups and broadcaster representatives on the relevance of such potential policy options are also presented where this was recorded.

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<sup>2</sup> Background to the BAI UCP and Terms of Reference for the UCP set out as part of Appendix 3 and 4

## (i) Targets set for access service provision and quantities of service provided

### *The access user perspective;*

- Improvements in the quantity of access services provided not mirrored by comparable improvements in the quality of those same services;

The targets set for access service provision have increased year on year as part of the current set of Access Rules. BAI monitoring of broadcaster performance indicates that these targets have been met by the majority of broadcasters.

Access service users and access user representatives however commonly described overall progress as ‘slow’. Indeed many of those consulted suggested that progress, across the lifespan of the current set of Access Rules, was ‘frustratingly slow’.

While access users, in the main, recognised that there is now a greater amount of access service provision, and particularly so in respect of subtitling, when compared with levels provided as recently as three or five years ago – with the Access Rules being largely credited for bringing about this increase in provision – a majority were of the view that this increased level of provision has been largely nullified by a failure to bring about comparable improvements in the quality of the access services provided. This was particularly notable in respect of access service user views on subtitling. Consistently, access service users emphasised that improvements in the quantities of access services provided by Irish broadcasters are immaterial if they are not matched by an appropriate standard of delivery in respect of quality and reliability.

In respect of poor or inferior quality access service provision, users strongly believe that such provision should not count towards the broadcaster’s attainment of targets set under the Access Rules.

### **The UCP Perspective; Quantities of access services provided thought to be overestimated.**

Discussions on the part of the UCP in respect of Access Rules targets and the quantities of the various access services provided by the Irish broadcasters have been largely consistent in their nature across the Panel’s five year life span. In particular, UCP members have consistently expressed the view that the reported figures submitted by broadcasters to the BAI for subtitling provision are “not accurate and overestimated”, and in some cases significantly so, the quantity of subtitling provided.

Panel members have frequently requested that their “sense of frustration” be noted by the BAI as their viewing experience does not match with the broadcaster annual reports or with the views of the BAI Compliance Committee on broadcaster performance.

While UCP members have, across the term of the Panel to date, recognised that the amount of subtitling provided by the Irish broadcasters has increased, and in some cases significantly, it has been emphasised that this increase has not been recorded accurately and has not been matched by a comparable improvement in quality. The UCP has recognised that some broadcasters are more accurate in their reporting of quantities of subtitling provided than others.



### **The UCP Perspective; Improvements in quantity of provision not matched by required improvements in quality or reliability**

UCP members have, across the five year term, recognised broadcasters for their plans to increase access service provision, particularly so in respect of the subtitling of live programming. The resultant product made available by some broadcasters has, however, disappointed many of the UCP members. (UCP, 2015, 2016, 2017)

'Carry through' or 'continuity' of subtitling provision across any one television series was thought to be particularly important for viewers that depend on subtitles. Panel members have frequently suggested that there had been a number of examples where continuity of provision had been poor across series of programmes.

### **Differentiation in the approach set for different types of broadcast services**

Access service users recognised the rationale for the variation in approach and targets set for different types of broadcast services under the Access Rules. Expectation levels for both commercial broadcasters and those with a public service remit were particularly high with lower levels of expectation evident amongst access users for community broadcasters.

### **Recognition of growing level of access service provision across online and on-demand services**

The availability of accessible content on the broadcasters online and on demand services was commended by users where this was provided. There was, however, considerable frustration that only some rather than all content provided online is made available with the accompanying access service.

While access service users, in the main, recognised that the BAI's regulatory remit does not extend to non-linear services the absence of a formal rule or requirement for broadcasters to provide online content with accompanying access services was a point of frustration for many.

### **The UCP Perspective; Access services to be made consistently available on non-linear services**

Across the lifespan of the UCP there has been an expectation, amongst Panel members, that access services ought to be made available for programming that is shown on the broadcasters' internet players. (UCP, 2013, 2014, 2015, 2016, 2017)

### **Scope for broadcasters to provide additional content accompanied by access services**

Access service users put forward the view that broadcasters retain considerable scope for improvement and propose that 'easy wins' are still available to the broadcasters – particularly so in respect of broadcast content acquired from international sources where the access service will have been previously created.

While this view was put forward frequently in the context of subtitles it was emphasised most strongly in the case of audio description.

While access service users maintain that significant increases in the quantity of audio description provided is attainable through a requirement for the purchase and playout of the audio description file where it was previously developed a majority of those consulted emphasised that audio description for home produced programming must be prioritised over acquired content.

**The UCP Perspective; Call to prioritise audio description for home produced content.**

The call to prioritise the provision of additional audio description for home produced programming was emphasised repeatedly by UCP members. UCP members recommended that broadcasters ought to be required to provide separate figures for audio described home produced content and purchased in programming. (UCP, 2015-2017)

Rebroadcasts or repeats of programmes which are provided with audio description should, according to UCP members, not count towards targets set for provision of audio description.

**Targets set for access service provision to be increased on an incremental basis**

Access users proposed that targets for all access services should continue to be raised on an incremental basis. Those consulted emphasised that targets set for audio description, ISL and any newly licensed broadcast services are, in particular, insufficient.

In the case of newly licenced broadcast services what was perceived to be an overly lenient treatment of UTV Ireland was cited frequently by access service users consulted.

Many of the access service users consulted also cited the relevance of an evolving policy landscape in respect of the rights of persons with disabilities to access to key services. There was a general call for the BAI, in respect of its ongoing oversight of the Access Rules, to observe this policy and for the Rules to keep pace with the principles and provisions set out within this emerging policy.

**The UCP Perspective; Pressing need for increases to be introduced for targets for both audio description and Irish Sign Language**

In respect of the quantity of both Irish Sign Language and audio description made available by the Irish broadcasters UCP members have continually emphasised the pressing need for higher quantities to be provided. (UCP, 2014, 2015, 2016, 2017).

The panel members put forward the view that audio description made available by the relevant broadcaster in the initial years where specific targets had been set was of "an excellent standard" but, according to the Panel members, the broadcaster "must be encouraged to provide significantly more AD content given the extremely low level at which the target is set." (UCP, 2015)

Panel members also expressed considerable disappointment with the minimal level of Irish Sign Language provided to accompany important public interest debates relating to key referendums. (UCP, 2014, 2016)

UCP members also highlighted their frustration in 2013 with the failure of the targeted broadcaster to produce the required level of Irish Sign Language.

UCP members also highlighted their deep sense of dissatisfaction with the decision on the part of the relevant broadcaster to "cut Hands On completely" and put forward the view that the broadcaster has "failed", in this context, in respect of its target to provide quality ISL at a particular level. (UCP, 2014). The UCP expressed concern that the decision to discontinue the Hands On programme may prompt the broadcaster to apply the majority of any ISL provision solely to late night programming which, in the view of the UCP, would be "completely inappropriate." (UCP, 2014)

#### **The UCP Perspective; Call for programmes to be repeated when subtitles not carried on original broadcast**

The failure of broadcasters to repeat programmes in those instances when the original programme did not successfully carry subtitles has been an ongoing source of disappointment for many of the Panel members. Panel members have frequently suggested that the broadcasters should be obliged to repeat the programme, with subtitles, if subtitles are not successfully provided to accompany the original broadcast. (UCP, 2013, 2015)

#### **The UCP Perspective; Frequent absence of English language subtitles on Irish language services noted by UCP members**

In respect of Irish language television services UCP members frequently noted their disappointment when subtitles for English language movies are missing. Members were also disappointed when English language subtitles were not available to accompany spoken English during an Irish language programme.” (UCP, 2013, 2014, 2015)

#### **Preference for move from target range to single figure target**

Specific targets for access service provision have been identified for each of the broadcast services and broadcasters are required to comply with the targets set. As part of the current set of Access Rules the targets in respect of subtitling are specified as a range of percentages where in earlier iterations of the Rules such targets were set as single figure percentages.

While access service users recognised the logic underpinning the BAI’s introduction of a target range for subtitling rather than a single figure target this move was not thought to have produced the desired effect. Indeed, there was a strong view that the Rules should be based around a single figure target for each broadcast service.

#### **Dissatisfaction with choice afforded to programme makers to select, as part of BAI funded schemes, between the access services to be provided**

The role and value of the BAI administered Sound and Vision Scheme in developing high quality programmes based on Irish culture, heritage and experience was both recognised and cited frequently by access service users. The Scheme was also credited with increasing the availability of accessible programming as funding granted under the Scheme provides for the costs associated with the development of the appropriate access service.

There was a sense, however, among many of the access service users consulted that the Scheme as it is currently constructed inappropriately enables programme makers to choose between the development of one access service over another and therefore unfairly disadvantages one access user group over another.

#### **Importance for broadcasters to promote what accessible content is available**

Promotion of access services has been an issue identified as part of previous BAI compliance reviews. Access service users consulted as part of this current research noted their frustration when broadcasters did not promote their access service provision.

The accessibility of the broadcasters’ online listing pages was also identified as an area which would merit some further improvement.

## ***The broadcaster perspective***

### **Commitment to both the purpose and ethos of the Access Rules**

Broadcasters consulted as part of the research emphasised their commitment to both the purpose and the ethos of the Access Rules. Supporting greater access for viewing audiences was cited as a common goal by all of the broadcasters consulted.

A number of the broadcasters affirmed their commitment to accessibility and the provision of high quality accessible services to support those who are Deaf, hard or hearing, blind or partially sighted. The role of the Access Rules targets in supporting a greater focus on and investment in the provision of access services was commented on by several of the broadcasters.

### **Approaching or have already reached ceiling of provision**

Although emphasising their strong commitment to the provision of access services a very significant majority of broadcasters claimed additional access service provision will be challenging and indeed very challenging to attain across the coming years.

This view on the part of the broadcasters was particularly notable in respect of subtitling as the broadcasters argue that they have reached or will soon reach a 'ceiling' of provision. A combination of barriers including cost and the limited available playout time for access service compatible content were cited in this context.

Broadcasters suggested that both service user and BAI expectation, in respect of the ability of broadcasters to increase subtitling output on a steady year on year basis, is very high and perhaps 'unrealistically high.' It was also suggested by many of the broadcasters that the baseline or 'Year one' targets introduced at the time of the launch of the original set of Access Rules were set at too high a level and in the context of 'a time of plenty.'

### **Gap in user knowledge regarding level of required investment in respect of costs and other broadcaster resources**

Broadcasters highlighted the challenge in providing definitive figures for the total costs involved in providing access services given the significant level of resources which are absorbed rather than listed by the broadcast service.

Broadcasters specifically highlighted the required level of investment when purchasing access service files which have previously been developed for another broadcast service. Broadcasters suggested that there is very often an unfair and inaccurate perception that the provision of such access services comes without a cost or investment of some human resource element on the part of the broadcaster.

### **Targets set to influence programme scheduling decisions**

Broadcasters cited examples of occasions where the Rules and the associated targets for subtitling have, in the past, influenced programme scheduling decisions. The influence of the targets for subtitling provision is, according to broadcasters, only going to become more significant were such targets to continue to increase.

### **The setting of targets does not, according to broadcasters, account for the unique nature of individual broadcasting services**

The Rules were commonly characterised by broadcasters as being either 'blunt', 'crude' or 'inflexible' and particularly so in respect of the BAI's approach to the setting of targets for the different services.

It was proposed that the Rules, as they are currently constituted, do not fully account for the unique make up of each broadcast service and influencing factors such as the broadcast services share of viewing audience, language of access or source of subtitles. Most, if not all, of the broadcast services which were consulted as part of the research held the view that the unique nature of their own service was not appropriately or adequately accounted for by the BAI when setting the target for that particular service.

Broadcasters arguments for uniqueness were based on a wide range of dimensions including available budget, share of viewing audience, the language of access, the source of subtitles in respect of the quantity acquired compared with subtitle files which have to be developed anew or the quantities of access services provided at peak viewing as opposed to off peak.

The proportion of live programming and particularly talk shows, panel debates and live sports events broadcast by the different services and the challenges associated with subtitling for such live programming was also not thought to be factored in to the BAI's decision making when setting targets for access service provision.

A number of broadcasters suggested, in this context, that the BAI's requirements for subtitling could at times work against the broadcasters goals to increase audience share. Examples were cited of 'premium, high value' live programming which had been moved to the broadcasters' online service due to the cost or complexity which would be involved in subtitling the programme.

A significant proportion of broadcasters were critical of the absence of recognition for their considerable investment in and commitment to providing accessible content on their non-linear services.

### **Responding, simultaneously, to multiple user groups with different needs**

Representatives of those services which broadcast in more than one language highlighted the additional and significant challenges which can be involved in meeting what can be very different needs of different audience groups. According to those broadcasters the BAI does not attach sufficient weight to this challenge.

### **Range of cost and human resource related factors which can limit broadcaster capacity to provide access services**

Additional cost and human resource related factors cited by broadcasters for not providing increased levels of access services included the following;

#### ***Scale of indigenous service provider market***

In the context of broadcasters who require a combined translation and subtitling service there is one specialist company providing Irish language translation and subtitling services. As in 2009, a further three to four specialist translation companies have established 'add-on' subtitling services and are actively engaged in providing Irish language translation and subtitling services to the Irish based broadcasters. A further two to three sole traders are also known to currently contract themselves to broadcasters for Irish language translation and subtitling services.

Broadcasters highlighted the challenge in both sustaining and managing the cohort of suppliers within this niche market.

It would appear that the specialist indigenous providers are operating at, or are close to, 'full capacity' in meeting the partial subtitling needs of the Irish based broadcasters. In parallel, two of the larger Irish broadcasters would appear to be commissioning subtitling from either two or three UK based subtitling providers and one Australian based provider. These international suppliers would appear to have sufficient capacity to meet much of the demand placed by the Irish based broadcasters.

The sustainability of supply to the Irish access service market and risks to same, particularly in respect of subtitling services, was however emphasised by several of the broadcasters. Many of the broadcasters described it as a "vulnerable sector and set of providers." The role of this sub sector within the production process was thought to be critical yet the absence of skill and knowledge sharing was noted as a significant weakness.

Irish based **providers of access services** suggested that their position within this market has been compromised further through the increasing take up of market share by UK based providers.

The impact of reduced pricing on the **access service providers'** ongoing ability to produce high quality levels of subtitling was also highlighted by many of the service providers consulted.

### **Technical and resource issues**

Broadcasters highlighted the limitations and cost related challenges involved in developing bespoke transmission systems which will provide for consistent high quality play out of access services.

Barriers, including those relating to cost and compatibility with existing equipment, have prevented broadcasters from introducing new technologies which may support greater quantities of access services to be provided.

Direct cost alone, or the purchase price that may be involved in commissioning subtitles and other access services, is not the only overhead or human resource related challenge which broadcasters must absorb. The majority of broadcasters consulted indicated that the costs involved in providing access services and, in particular, subtitling include both listed or 'direct' and non-listed or 'absorbed costs'. Broadcasters commonly suggested that it is difficult and even impractical to accurately estimate the actual costs associated with the additional activities that the broadcaster can often be required to undertake. Several of the broadcasters suggested, therefore, that it was not possible to define the true cost profile borne by the broadcaster.

The majority of broadcasters also expressed a reluctance to share details of the direct costs incurred for purchasing the access services.<sup>3</sup>

The most frequently cited and significant 'absorbed' or indirect costs and process related challenges which broadcasters may have to manage when providing subtitling and other access services include the following:

- **Appointment of an in-house editor to bring acquired and incomplete subtitle files up to the required standard**

It was estimated that a transmission editor can spend approximately three minutes checking that subtitles are in place for every one hour of programming that is subtitled.

- **Project management time involved in coordinating suppliers**

Estimates for project management commitments and associated costs varied considerably from c. three to four weeks of a volunteers' time each year in the case of the community broadcasters to one-half and two whole time equivalents in the case of the public service and commercial broadcasters. Broadcasters emphasised that, where relevant, these roles introduce additional associated salary costs for the broadcaster.

- **Additional costs when translation from a second language is involved**

In addition to the higher range of direct costs involved in commissioning translation and the development of English language subtitles an Irish language broadcaster can also face other unique workflow related issues which can impact directly or indirectly on cost;

- Very limited pool of suppliers who are suitably skilled to offer subtitling services involving a second language.
- The need for local and contextual knowledge of the subject matter and the dialect being subtitled will, it was suggested, restrict the pool of available providers even further for specific programming.

Both **access service providers** and Irish language broadcasters highlighted the significant amount of additional research time which can be involved in producing subtitles for programmes which involve a second language as place names, titles and dialects will often need to be researched further.

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<sup>3</sup> Estimated costs involved in the production of accessible content are summarised on Page 14

- **Additional costs involved in subtitling for live programming**

Producing subtitles for live programming, as noted in Table 1, is considerably more expensive than either developing or acquiring subtitles for pre-recorded material. A number of broadcasters indicated that changes to their programme schedules in recent years had seen an increase in the proportion of live programming. This in turn has, according to the broadcasters concerned, impacted on the broadcasters cost base and their scope to attain targets set for subtitling provision.

- **Available office hours maintained by subtitling providers**

Only a limited number of the **access service providers** operate a weekend service to ensure provision across a seven day schedule. This introduces an additional capacity constraint for broadcasters who will often have to pay a premium for the subtitling of material played out at the weekend.

- **Late delivery of programme files which can restrict the proportion of the broadcasters' available programme schedule that can be subtitled.**

With many programmes finalised for broadcast within 24 hours of the scheduled transmission time the window available for subtitling those same programmes can be very limited. This can mean that particular programmes, which had previously been assigned for subtitling, are not subtitled in time for transmission. The margin for error on subtitling quality can also be increased as the timeframe available for subtitling and necessary quality control shortens.

What were considered to be unrealistic expectations associated with the potential benefits which may be available through technological advances were also highlighted by broadcasters. Much of this new technology, including re-speak, was thought to be unproven.

The repeated reductions to both budgets and staffing complements across a near ten year period were also highlighted by broadcasters as a significant limiting factor.

The multi annual nature of the Rules and targets set out within the Rules also can also present a level of challenge for broadcasters the majority of whom would budget on a year to year rather than multi annual basis.

- **Scheduling changes place requirement for more labour intensive and costly access services**

The significant changes which have been introduced to the broadcasters scheduling profiles, and in particular the increased proportion of live programming, were also highlighted as a further challenging factor for broadcasters in their goal to provide access services.

**Limited sharing of skills and experience across the sector**

Broadcasters described their experience to date in responding to the goals and meeting the targets set out under the Access Rules as a very focused task which could be enhanced through exchange of practice and experience with other sectoral members.

**Limited focus on programme makers**

The significant role played by programme makers in providing accessible content was highlighted by both broadcasters and access users. **Access service providers** further reinforced the significant role and indeed responsibility of programme makers in making accessible content. Broadcasters and service providers alike suggested that awareness and understanding levels amongst programme makers as to the role and purpose of access services were very limited. This set of stakeholders was identified as a priority group to consider in the context of enhancing the availability and quality of access services.



**Table 1: Estimated costs for the production of accessible content**

The following information on costs involved in the purchase of accessible content was informed by interviews with a combination of both broadcasters and **providers of television access services**. These *estimated* 'listed' costs for providing subtitling, sign language and audio description are set out below on either a cost per hour or half hour basis.

<b>Programme format / nature of subtitling provided</b>	<b>Costs involved</b>
<i>Production</i> of subtitles for live programming	€250 - €500 per 60 minutes of content
<i>Production</i> of subtitles for non-live pre-recorded home produced programme (single language)	€150 - €250 per 60 minutes of content
<i>Production</i> of subtitles for non-live pre-recorded home produced programme <i>with</i> requirement for translation from second language	Cost range cited most frequently: (1) €250 - €300 for 'translation file' per 26 minutes of content. (2) Additional €90 for provision of separate, colour coded 'access file' for hard of hearing.  €450 - €500 cited in the case of provision of very complex translation from second language and provision, in parallel, of separate colour coded 'access file' for hard of hearing.
<i>Purchase</i> of subtitle files for pre-recorded programmes where subtitles files have already been created.	c. €100 per hour
<b>Programme format</b>	
Irish Sign Language	€350 - €600 per hour*
Audio description	€600 - €700 per hour

\* The cost involved will, more often, feature at the upper end of the range as there will frequently be a requirement for two rather than one interpreter to provide for required breaks and monitoring for quality.

## Summary and conclusions

'Slow' and 'frustratingly slow' were the terms commonly used by access service users to describe progress in respect of improvements in the quantities of access services provided by the Irish broadcasters.

Although the increase in levels of access services provided were recognised these improvements in quantity have not, according to access service users, been mirrored by comparable improvements in the quality of those same services. Access users consistently reinforced the intrinsic link between quality and quantity of provision; Without enhanced quality any improvements in the quantity of provision will be largely immaterial and irrelevant for many access service users.

Current estimates on the levels of access services, and in particular subtitling, provided by the Irish broadcasters and recognised by the BAI in respects of the targets set under the Access Rules are thought, by many access service users, to be inaccurate, overestimated and in some cases significantly so.

Where poor or inferior quality access service provision is identified it should not, according to access service users, be recognised by the BAI in the context of the broadcaster's attainment of targets set under the Access Rules.

The increased availability of accessible content on broadcasters' non-linear services was commended by access service users. Additional levers could, according to service users, be usefully applied by the BAI to facilitate further increases in this area.

Access users proposed that targets for all access services, and in particular those for audio description, Irish Sign Language and any newly licensed broadcast services, should continue to be raised on an incremental basis. The need to prioritise increased levels of audio description for home produced programming was, in particular, emphasised. A strong call was also put forward by access service users for the Rules and associated targets to be based around a single figure target rather than a target range for each broadcast service.

Interestingly, both access service users and broadcasters alike questioned, for very different reasons, whether a goal of 100% provision might actually be achievable. Access service users, however, maintained that this goal must be continually aspired to in order that appropriate levels of access service provision would over time become available.

In emphasising their strong commitment to the provision of access services many of the broadcasters claimed additional access service provision will be challenging to attain across the coming years. This view was particularly notable in respect of subtitling as the broadcasters argue that they have reached or will soon reach a 'ceiling' of provision. A combination of barriers including costs - both listed and 'absorbed' - the increasingly limited available playout time for access service compatible content and capacity constraints on the part of indigenous **access service providers** were all cited in this context.

Broadcasters suggested that the Rules, as they are currently constituted, do not fully account for the unique nature of each broadcast service and influencing factors such as available budget, share of viewing audience, language of access and programming schedule.

The facilitated exchange of practice and experience between sectoral members was recommended by many of the stakeholders consulted as a key means to build capacity and support further commitment to the provision of increased levels of high quality television access services.

## (ii) Quality of access services provided

### Views of access service users and broadcasters vary in respect of quality of access services provided

Through the consultation a divergence of opinion was evident between the views of access service users and broadcasters on the subject of the quality of access services provided. Much of the discussion centred on the quality of subtitling but some commentary also focused on the quality of both ISL and audio description.

The majority of access service users and representatives of access service user groups suggested that a significant percentage of the total output produced across the licensed broadcast services is of an appropriate standard. Indeed many of those consulted suggested that much of this output could be described as ‘high quality.’

Access service users indicated, however, with considerable frustration that these quality levels are not attained by *all* broadcasters with a small number of broadcasters thought to produce a very inconsistent and, in some cases, consistently poor standard of subtitles.

#### **The UCP Perspective; Inconsistencies in the quality of provision cited as a key concern by UCP**

The absence of consistency in terms of the adequate and reliable quality of subtitling provision was put forward as a, and most probably the, most significant and frequently raised concern by UCP members. (UCP, 2013, 2014, 2015, 2016, 2017)

This view on poor performance was particularly notable in the case of subtitling for live programming. (UCP, 2016, 2017)

In the case of those services where there is consistently poor quality provision access service users frequently suggested that such broadcaster investment should be reallocated to areas of programming, and in particular non live programming, which produce a better return.

#### **The UCP Perspective; Poor quality provision particularly notable in the case of small number of broadcast services**

UCP members have continually re-affirmed their view that the quality of subtitling provided by one particular broadcaster has been “extremely poor” and “so poor that many members of the Deaf community have given up on it all together.” Members suggested that there “is no way that this broadcaster could be viewed as having reached its target...given its quality is so poor.” (UCP, 2014, 2015, 2016)

Panel members emphasised their ongoing frustration with this matter and with, what a number of members perceived to be, the low level of progress achieved in respect of improvements by such broadcasters.

UCP Panel members suggested that the quality of live subtitling on some programmes was “very poor” and in many cases “unwatchable” with whole sentences often missing. (UCP, 2013, 2014, 2015, 2016, 2017). Acceptable delays with live subtitling were thought to be in the region of four to a maximum of six seconds. Live subtitling provided by one Irish based broadcaster was thought to be particularly poor on the basis that the delay between spoken word and the appearance of relevant subtitles would very often take a minimum of ten seconds.

Broadcasters, on the other hand, held the view that the quality of access service provision, including that of subtitling, is of a consistently high standard. The view that access service users “just want more quantity” was cited frequently. Interestingly, a number of broadcasters suggested that the absence of complaints from users was evidence that quality is of a sufficiently high standard.

### **The UCP Perspective; Style and format related issues highlighted frequently by Panel members**

The use of block capital, American style captioning was, in the earlier years in which the Panel convened, put forward as a concern with members indicating at that time that this practice should no longer count towards the target set for a given year. Indeed, it was suggested that it should be reasonably straight forward for a broadcaster to change the text file from captions to subtitles. (UCP, 2013)

The on screen placement and positioning of subtitles for live broadcasts generated a level of ongoing criticism with some Panel members suggesting that more specific guidelines should be develop to enhance subtitling practice. (UCP, 2013, 2014)

Issues were frequently highlighted in respect of synchronisation, delayed starts and overspill at the end of programmes. Poor spelling, freezing and the provision of incorrect subtitling on prepared programmes was also noted by Panel members. (UCP, 2013, 2015, 2016)

The speed at which subtitles are played through on screen was often put forward as a concern. However, reaching agreement on an appropriate speed was understood to be challenging given the range in literacy levels amongst the viewing population. (UCP, 2013, 2014, 2016)

Panel members were also concerned that certain broadcasters were taking “short cuts” by, what was described as, “over simplifying” on screen dialogue when developing the accompanying subtitles. (UCP, 2013, 2015)

### **The UCP Perspective; Quality concerns highlighted by Panel members in respect of ISL**

Views were put forward by UCP members that the standard of translation in respect of Irish Sign Language provision could, at particular points, be “extremely poor.” Panel members indicated that by 2015 this had become a very significant and long standing point of frustration and disappointment for them. (UCP, 2014, 2015)

Panel members also expressed their concerns in relation to the quality of signing made available and likened some of the relevant broadcasters provision at particular times to “translation” rather than “signing.” News and other signed programming provided was thought to be absent, particularly during 2013 and 2014, of “any quality control.”

In comparison, the former ‘Hands On’ team was recognised for being very experienced with strong quality control being applied to ISL provision. (UCP, 2014)

On a consistent basis panel members strongly recommended that American Sign Language (ASL) or British Sign Language (BSL) should not be recognised against the broadcasters targets set for ISL provision. (UCP, 2013, 2014)

Several of the broadcasters emphasised the importance that they attach to quality control and the pride that they take in providing high quality access services.

In respect of quality, there appeared to be limited awareness amongst access service users or user representative groups of the standards and guidelines published by the BAI and against which the BAI considers and assesses the quality and reliability of access services provided. Furthermore, many of the access users consulted suggested that future iterations of the Access Rules could usefully include relevant quality related measures.

### **The UCP Perspective; Heightened quality related expectations in respect of audio description**

Feedback on the quality of audio description provided to accompany early stage content delivered across 2014 and 2015 was 'positive' and, in some cases 'very positive' with Panel members confirming that the broadcaster concerned has 'set the bar very high'. It was suggested that such early stage delivery of audio description had compared very favourably with content produced by the international broadcasters. The members, at the time, indicated that they would be very pleased were this broadcaster to maintain this standard of quality while also providing audio description to accompany additional home produced programming. (UCP, 2015)

More recently however UCP members have begun to question the quality standards applied to audio description provided by the Irish broadcasters.

Panel members often queried as to the particular set of quality standards that are applied to audio description provision in Ireland and suggested that any such standards could usefully be reviewed from an Irish perspective. (UCP, 2016)

### **Supply chain for access service provision not within broadcasters' full control**

Carry through and the critical role played by the platform provider was identified as a significant issue in respect of the supply chain involved in providing reliable, high quality access services.

The supply chain for access services which involves both access service suppliers and platform providers introduces considerable complexity for the broadcaster which they state is not always within their scope to manage or influence directly. Broadcasters were very aware of the impact of the supply chain, and particularly so in respect of the role of the platform provider, on the user experience. The absence of a 'must carry rule' for platform providers was emphasised frequently;

### **The UCP Perspective; Recognise role played by platform providers in ensuring access to high quality services**

Panel members have recognised that the BAI's remit does not extend to the platform provider. This, according to access service users, represents a significant gap in the legislation.

Panel members have highlighted that "very significant problems" exist in respect of broadcast material and associated subtitling provision accessed across particular platforms. The BAI's own work and much of the effort of the broadcasters is, according to UCP members, "being undermined" by the inability of some platform providers to successfully carry subtitles. (UCP, 2013, 2014, 2015, 2016).

The additional challenge for bilingual services in providing subtitles for two languages simultaneously was also highlighted.

The availability of different set top boxes was also thought to impact on the user experience and their ability to access subtitling and other access services provided by the broadcasters. The absence of a universal approach to set top box standards and access was highlighted as an ongoing barrier to consistent or universal access service provision.

### **Requirement for considerable in house investment to ensure access service is provided at appropriate standard**

Broadcasters consistently described the significant level of work that can be required in preparing acquired subtitling files to ensure that the content is made available at an appropriate standard.

### **Levers within Sound and Vision to facilitate stronger engagement with programme makers and increased amounts of high quality access service provision.**

**Access service providers**, together with a number of broadcasters, also recommended that the profile of access service provision could usefully be elevated with greater recognition given to good practice provision.

### **BAI's suitability to monitor access service quality questioned by access service users**

Access service users have, both across the lifespan of the User Consultative Panel and during the course of this research, consistently questioned BAI's suitability to monitor the quality of access services provided by the broadcasters. In particular, the absence of Deaf user input has been highlighted as a key gap in the BAI's monitoring process.

### **Rules though to have a bias towards stimulating quantity of provision with limited focus on quality improvement**

Access users proposed that the Rules, as they are currently designed, focus primarily on the quantity of access services provided but have few if any levers to promote what are believed to be necessary quality improvements.

### **Summary and conclusions**

Access users proposed that the Rules, as they are currently designed, focus primarily on the quantity of access services provided but have few if any levers to promote what are believed to be necessary quality improvements.

Much of the access services provided by the Irish broadcasters are described, by users as being of an appropriate or acceptable standard. However, inconsistency in the quality of the provision was cited as the most significant concern on the part of access service users consulted. Poor performance was considered to be particularly notable in the case of subtitling for live programming.

Style, format and presentation related issues were highlighted frequently by access service users. The development of new standards and guidelines for access services and in particular to support audio description provision in an Irish context was proposed by service users. BAI's suitability to monitor the quality of access services provided by the broadcasters was also brought in to question given what was understood to be an absence of direct user involvement in the monitoring process.

Broadcasters held the view that the quality of access service provision, including that of subtitling, is of a consistently high standard. The perception that access service users "just want more quantity" was cited frequently.

The impact of the supply chain, and in particular the role of the platform provider, on the user experience was referenced by access service users and broadcaster alike. The absence of a 'must carry rule' for platform providers was emphasised frequently by all stakeholders in this context.

### (iii) Enforcement of the Access Rules by the BAI

Once again there was a divergence in the views put forward by access service users and broadcasters in respect of the BAI's approach to enforcing the Access Rules. In the main, access service users viewed enforcement to be overly lenient while a number of broadcasters suggested that the BAI's approach in this area can be overly onerous.

#### *The access user perspective;*

Access users frequently described the BAI's approach to enforcement as being 'light touch'. It was suggested that there is very little hard hitting follow up in respect of broadcasters who have consistently failed to deliver access services to an appropriate standard.

#### **The UCP Perspective; Call for stronger enforcement and clearer process of escalation to be applied in cases of ongoing performance issues**

UCP members frequently highlighted their ongoing disappointment with the quality of subtitling provided by one particular broadcaster so much so that such members suggested that they may not be able to remain in place as members of the Panel.

What was perceived to be an absence of enforcement levers was put forward as a key concern by many of the access service users consulted during the course of the research. In particular, service users queried whether there is a well-defined 'cycle of engagement' involving clear stages of escalation for the BAI when responding in the event of non-compliance.

Access users proposed that greater transparency and profile could usefully be brought to the enforcement process and particularly so in the case of those instances where broadcasters have breached the Rules. An annual or bi-annual publication of progress was suggested by several of the access service users consulted.

#### **The UCP Perspective; Perceived lack of clarity around escalation process**

Panel members expressed disappointment with what was perceived to be a lack of clarity in respect of the BAI's escalation process for any failure on the part of a broadcaster to reach the targets set. (UCP, 2013, 2014)

Panel members also set out their frustration in having to wait for what were perceived to be extended periods of time before any potential action might be taken in the case of ongoing failure on the part of broadcasters to reach targets set. (UCP, 2015)

Concern was also raised by access service users with the perceived weighting or absence of influence attached to Panel member feedback. (UCP, 2015, 2016)

Access service users also called on the BAI to publish the outcomes arising from review meetings with broadcasters in the event of non-compliance.

### **The UCP Perspective; Strong enforcement called for in respect of Sound and Vision funded programming**

The absolute requirement for Sound & Vision funded programmes to be provided with accompanying subtitles and, where relevant, audio description and/or Irish Sign Language, has been consistently emphasised by Panel members. Panel members indicated that a number of Sound & Vision funded programmes have been broadcast without accompanying subtitles. (UCP, 2013, 2014, 2015).

Concerns were raised by access service users in relation to a number of aspects of the BAI's approach to compliance. The absence of more direct access user involvement in the BAI's formal monitoring process was questioned frequently.

Access users emphasised that additional weight ought to be applied by the BAI to monitoring for quality in parallel to the quantity of access services provided. As referenced previously there appeared to be limited awareness, amongst access service users, of the BAI's Guidelines against which it assesses the quality and reliability of the access services.

There was a general level of frustration amongst access service users who suggested that failure to comply with standards in respect of quality and reliability does not appear to carry the same consequences as a failure to comply with other provisions of the Rules.

The scale of involvement by broadcasters in the reporting process, and what was perceived to be an over reliance on the part of the BAI on such reporting, was also a concern raised by the majority of access service users consulted.

Access service users also suggested that the scale and depth of the BAI's own monitoring, which relies on a review of one week's worth of programming, is insufficient.



### **The UCP Perspective; Monitoring process and the need for appropriate levels of quality assurance**

Panel Members frequently questioned the approach taken by BAI as part of its monitoring; It was, in particular, often suggested that the terminology used in BAI monitoring reports such as “good” or “very good” was too subjective and imprecise. (UCP, 2015)

The absence of a user perspective as part of the BAI’s monitoring process was raised frequently by Panel members. (UCP, 2015, 2016)

Panel members proposed that members of the deaf community could be invited to conduct monitoring work on a volunteer basis. (UCP, 2014, 2015, 2016)

The quality and methods for monitoring sign language provision on the News for the Deaf was also raised several times by Panel members. It was suggested that neither the broadcaster concerned nor the BAI have suitable monitoring mechanisms in place to ensure appropriate standards are consistently maintained. (UCP, 2015, 2016)

Panel members frequently put forward the view that a single period of BAI monitoring, typically confined to one week of access service provision, albeit supported by some random spot checks is insufficient. (2013, 2014, 2015)

Panel members have called for the various access service guidelines to be reviewed and for such review to be supported by consideration of good international practice and consultation with access service users, (UCP, 2013, 2016, 2017)

Access service users are very aware of the role of the platform provider in enabling successful transmission of the access service and the impact of this role on the user experience. It was suggested therefore that a comprehensive approach to monitoring would involve review by the BAI of sample content across all available platforms.

### **The UCP Perspective; Monitoring across platforms and clarity of responsibilities on the part of platform providers**

The platform provider is understood to play an important role in making access services available to the end user. UCP members have frequently questioned the BAI on the different formats that the regulator uses to record broadcast output for monitoring purposes.

Panel members expressed frustration with both broadcasters and platform providers who can, according to access service users, “blame each other” for the poor quality provision of subtitling. This perceived absence of clarity in respect of roles and responsibilities on the part of broadcasters and platform providers must, according to UCP members, be addressed. (UCP, 2013, 2014, 2015).

The role of the BAI Compliance Committee was questioned by both access service users and broadcasters alike with concern expressed by both groups over what was perceived to be the Committees lack of direct engagement with either stakeholder group.

### ***The broadcaster perspective***

A number of broadcasters, conversely, suggested that the BAI's approach to enforcement can be overly demanding.

Smaller broadcasters in particular highlighted the challenge they face in meeting the reporting requirements associated with the Rules.

A very small number of broadcasters suggested that the BAI's approach to enforcement can be very assertive and overly so at times.

A call for greater flexibility to be built into the Rules and particularly the application of the Rules was articulated by many of the broadcasters.

The unique aspects of each broadcast service were also not thought to be considered sufficiently as part of the BAI's enforcement process.

### **Summary and conclusions**

The BAI's approach to enforcement was, for many access service users, perceived to be overly lenient while a number of broadcasters suggested that the BAI's approach in this area can be overly onerous with smaller broadcasters in particular highlighting the challenge they can face in meeting the reporting requirements associated with the Rules.

The absence of further 'harder hitting' follow up in the case of broadcasters who have consistently failed to deliver access services to an appropriate standard is a particular point of frustration for many access service users. A call for stronger enforcement and a more transparent process of escalation to be applied in cases of ongoing performance issues was voiced by many of the access service users consulted. An annual or bi-annual publication of progress was also recommended by a significant number of service users.

#### **(iv) Quality of engagement between the BAI, broadcasters and access service users.**

There are a number of methods to support ongoing engagement and dialogue between broadcasters, access service users and the BAI in respect of the Access Rules and the provision of access services. To support its assessment of broadcaster compliance and to ensure it has access to user's experience the BAI has put in place a small consultative panel of television access service users. Typically this User Consultative Panel (UCP) meets with the BAI three times each year. The BAI also meets with each of the broadcasters on an annual basis to discuss broadcaster performance in the previous year and broadcaster plans for the provision of access services in the year to follow. Broadcasters are also required, under the Access Rules, to meet with access service user representatives once a year to discuss broadcaster plans and performance relating to access service provision.

A number of issues were highlighted in respect of each the current methods of engagement;

A number of broadcasters were credited with having improved, significantly in some cases, the quality of their approach to engagement with access service users. Several users consulted suggested that the balance of power in respect of engagement can, however, be weighted unevenly towards the broadcaster. Conversely, broadcasters proposed that relationships with access service users, where these have been developed, are very positive with access service users being thought to benefit considerably from the engagement.

Access service users highlighted their difficulty in making contact with particular broadcasters. A range of possible factors were surfaced including the absence of a designated Access Rules liaison and designated email contact points.

##### **The UCP Perspective; Ebb and flow in respect of quality of engagement between broadcasters and assess service users**

UCP members noted their sense that relationships with the broadcast services had generally improved with particular broadcasters being described as "more responsive" and "more open to dialogue" in recent years. (UCP, 2013, 2015, 2016)

In the case of one broadcaster however the quality of the relationship was thought to have taken a retrograde step in recent years following the retirement of key personnel. (UCP, 2016)

The quality of these annual engagement sessions between broadcaster and access service users was also questioned. (UCP, 2015, 2016)

Panel members also noted their frustration with the poor response by some broadcasters to attempts by access service users to contact the broadcasters by means of their dedicated Access Services telephone number or email address. (UCP, 2016)

Engagement with user groups has been identified as an issue as part of previous compliance reviews. Instances were noted, as part of these reviews, where smaller broadcasters did not engage at all with any user groups. A number of broadcasters highlighted, as part of this particular research, the challenges that they have experienced in accessing access service user involvement. Location and language of access were thought to heighten the challenge involved for certain non-Dublin based broadcast services.

Broadcasters also spoke of the variation in access service user feedback which can make it difficult for broadcasters to make user informed decisions. In particular, the absence of consistent positions on the part of the access service user viewing base appeared to provide a point of challenge for the broadcasters.

### **The UCP Perspective; Lack of awareness on part of broadcaster of access user quality concerns**

The most significant point of concern or frustration on the part of Panel members appeared to be what UCP members regarded as an ongoing lack of awareness or appreciation on the part of broadcasters as to the poor quality standards of subtitling provided by a number of broadcast services. (UCP, 2014-2017)

Interestingly, a significant proportion of access service users suggested that both the Access Rules and the various access services together with their value and application could usefully be promoted both by broadcasters and the BAI more widely.

### **Summary and conclusions**

Broadcasters, in the main, were credited with having improved, in recent years, their approach to engagement with access service users. However the current engagement approaches hosted by some of the broadcasters do not always feel appropriately 'balanced' according to some access service users. The absence of a designated Access Rules liaison and email contact points for several of the broadcasters was also highlighted.

The challenge experienced by certain broadcasters in accessing access service user involvement on a consistent basis was surfaced as was the variation in access service user feedback which can make it difficult for broadcasters to make user informed decisions. In particular, the absence of consistent positions on the part of the access service user viewing base appeared to provide a point of challenge for the broadcasters.

### **(v) Potential policy options which could be considered by the BAI**

The various consultations conducted with both broadcasters and access service users as part of the research process highlighted a number of potential policy options which could be considered by the BAI in the context of the ongoing development of the Access Rules. Potential policy options were identified across four areas relevant to the Access Rules;

1. Targets for access service provision
2. Quality of access service provision
3. Enforcement of the Access Rules
4. Engagement between the BAI, broadcasters and access service users.

These potential policy options were presented at both the access service user and broadcaster workshops and where access service user and/or broadcaster reaction to the various policy options was made available this is noted in the following section.

## 1. Targets for access service provision

<b>Move from target range to a single figure target.</b>	<p>In the main access service users favoured such a move on the basis that it may promote greater clarity and certainty as to targets to be reached by each of the broadcasters. The move to a single figure target would, according to access service users, also remove opportunity for broadcasters to focus solely on the lower entry point of the target range.</p> <p>Broadcasters, conversely, suggested that such a move would represent a retrograde step and would reduce scope to invest in quality improvements and trial new approaches.</p>
<b>Targets for both Irish Sign Language and audio description to be considered for all broadcasters, rather than just RTÉ, subject to consideration of the relevant influencing factors.</b>	Access service users were very supportive of such a potential policy change. A number of broadcasters highlighted their interest in providing both ISL and audio description but expressed concern with the prospect of being tied into a new and, based on the developmental trajectory of the targets to date, ever increasing demand for what may be additional costly services.
<b>Group wide – rather than individual broadcast service – approach to setting of targets where appropriate.</b>	The majority of those consulted, both access service user and broadcaster alike, suggested that such a proposal appeared to be reasonable as it would afford the broadcasters involved some flexibility to invest in providing access services where they are most in demand.
<b>Requirement for newly licensed services to provide access services from the outset - subject to consideration of the influencing factors.</b>	Access service users were very supportive of this potential policy option while broadcasters did not appear to disagree with such an option.
<b>Opportunity for broadcasters to offset a portion of the target, up to and including a threshold level, against the provision of access services as part of the broadcasters online or on-demand service.</b>	Both access service users and broadcasters appeared to be very supportive of this potential policy option.

<b>Application of a 'carry forward' requirement for broadcasters who may fall short in their required provision of access services in a given calendar year.</b>	Access service users were very supportive of this potential policy option while broadcasters did not offer a formal view on this proposal.
<b>Audience share to be considered as an explicit measure within the influencing factors when setting targets.</b>  <b>Separate peak and off peak targets to be considered to reflect viewing audiences with additional weighting or recognition afforded to prime time provision (6pm-11.30pm).</b>	Broadcasters were generally supportive of such a potential policy option while access service users expressed some concern on the basis that such a move may (1) disadvantage viewers who do not watch broadcast content at peak times and (2) act as a disincentive for broadcasters in investing in off peak access service provision.
<b>Introduction of a cost cap for broadcasters whereby expenditure on access services would be set at a ceiling equivalent to a maximum of c. 1% of total broadcaster costs.</b>	<p>This proposal was neither endorsed nor rejected by broadcasters with representatives indicating that they would require further detail on the nature of such a proposal ahead of providing a view on its merits or otherwise.</p> <p>Access service users suggested that no such ceiling or limit should be placed as it would cap the future development of access service provision at a particular, and likely to be unsatisfactory, level.</p>
<b>Introduction of exemptions to the Access Rules for particular service types, for example those with a heavy concentration of live events.</b>	<p>Access service users expressed mixed views with this potential policy option with some supporting and some opposing this particular suggestion.</p> <p>Broadcasters noted that such an exemption to the Rules could be introduced but made no further observations on such a suggestion.</p>
<b>Targets which facilitate or encourage broadcasters in the development of online archives of accessible content.</b>	Both access service users and broadcasters alike signalled their interest in the further development of online archives of accessible content but did not provide a view on whether such development should be linked to targets set under the Access Rules.

<p><b>Any facility for broadcasters and/or programme makers to offset the selection of one access service against another.</b></p>	<p>Although not put forward by the BAI as a potential policy option under consideration access service users suggested that certain measures included with in the Sound and Vision scheme can require programme makers to select between particular access services and in particular between ISL and audio description. This appeared to be a source of frustration for some access service user representatives on the basis that this may disadvantage one access user group over another</p>
<p><b>Mandatory access service provision for recognised national emergencies</b></p>	<p>The requirement for both Irish Sign Language and subtitles to be provided to accompany key announcements relating to recognised national emergencies was emphasised by a number of access service users consulted during the course of the research.</p> <p>Broadcasters noted this option and suggested that some additional guidance on this subject could usefully be provided by key agencies operating in this area such as the Office of Emergency Planning.</p>

## 2. Quality of access service provision

<p><b>Introduction of measures to support greater focus by the BAI in respect of its approach to monitoring for quality.</b></p> <p><b>Such measures could include the introduction of a new approach to the sampling of broadcaster content as part of the BAI's monitoring process together with the introduction of additional quality assurance methods.</b></p>	<p>Access service users were very supportive of this potential policy option while broadcasters did not offer a formal view on this proposal.</p> <p>Access service users, in particular, emphasised that the monitoring process ought to support direct user involvement to ensure the process is sufficiently robust.</p>
<p><b>The conduct of a review of the BAI Guidelines for the three access services types – subtitling, ISL and audio description - to be informed by a consideration of international best practice and consultation with access service users.</b></p>	<p>Access service users were particularly supportive of this proposal while broadcasters did not offer a formal view on this proposal.</p>

<p><b>Facilitation of a Working Group to consider relevant technical solutions and facilitate skill and knowledge sharing amongst broadcasters</b> and, where relevant and possible, programme makers and <b>access service providers</b>.</p>	<p>Both access service users and broadcasters appeared to be very supportive of this potential policy option.</p> <p>Both groups emphasised that the targeted membership of such a working group would benefit from careful consideration. The value of good practice in access service provision being showcased as part of such a convening was also emphasised.</p>
<p><b>Measures to support promotion of both the Access Rules and the various access services. Such measures could potentially include special screenings of Sound and Vision funded accessible content and the introduction and/or BAI support of an access service award(s).</b></p>	<p>Access service users, broadcasters and access service providers alike were very supportive of such a suggestion with stakeholders suggesting that such an approach could help to elevate the status and demonstrate the value and wide application of the television access services.</p> <p>The value in targeting both programme producers together with providers of access services, as part of such approaches, was emphasised by both access service users and broadcasters alike.</p>
<p><b>Measures, either directly as part of or to be introduced in parallel to the Access Rules, to support capacity building for the indigenous sector supplying accessible services for the Irish broadcast market.</b></p>	<p>This possible option was welcomed by both access service users and broadcasters alike with broadcasters, in particular emphasising the vulnerability of the indigenous sector of suppliers of access services.</p>

### 3. Enforcement of the Access Rules

<p><b>The introduction of measures to increase transparency in respect of the BAI process for monitoring compliance.</b></p> <p><b>Potential proposals in this area included the publication of the BAI's Compliance Processes and the release of an annual BAI Statement on broadcaster performance.</b></p>	<p>Access service users were particularly supportive of such a suggestion while broadcasters suggested that any proposals in this area should be considered very carefully.</p> <p>Broadcasters suggested that any such measures - and particularly the publication of any statement on broadcaster performance - must not endanger the developing and what was described as an increasingly positive dynamic emerging between broadcasters and access service users.</p>
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#### 4. Engagement between the BAI, broadcasters and access service users.

<b>Obligation on broadcasters to designate an Access Rules Liaison Officer.</b>	Access service users were very supportive of such an option while broadcasters suggested that such a position is already in place across most of the broadcast services.
<b>Ongoing facilitation of the BAI User Consultative Panel.</b>	<p>Access users reaffirmed the value of the User Consultative Panel and recommended that the Panel should be maintained. It was proposed that specific aspects of the Panel's approach to engagement could usefully be revisited and defined more clearly. In particular, access service users highlighted the need for;</p> <p>(1) Measures to be introduced at Panel meetings which would support the progression of discussions in line with the agreed agenda and, in particular, avoid unnecessary repetition of 'agreed points' at Panel meetings.</p> <p>(2) Clarity to be brought to the methods by which abridged versions of meeting minutes are presented and circulated beyond the User Consultative Panel membership.</p> <p>(3) Measures which would support some level of direct engagement between the User Consultative Panel and the membership of the Compliance Committee.</p>
<b>Ongoing requirement for broadcasters to support regular engagement with access service users.</b>	<p>Both access service user and broadcasters alike reaffirmed the requirement for such engagement.</p> <p>The importance of developing a spirit of engagement based on mutual trust, good faith and a shared vision for high quality access service provision was expressed by both broadcaster and access service user. BAI support in developing such an atmosphere of engagement would be welcomed by both broadcasters and access service users alike.</p>
<b>Facilitation, in parallel to the standing schedule of UCP convenings and broadcaster meetings with the BAI, of an annual or biennial joint forum to involve the BAI, broadcasters, access users and, potentially, programme makers in a knowledge sharing exchange.</b>	<p>Such a proposal was warmly welcomed by the majority of broadcasters and access service users consulted as part of the research. It was suggested that such engagement could play a role in enhancing the level of trust and respect which exists between access service users and broadcasters.</p> <p>It was proposed that such wider engagement sessions could be usefully be held every two to three years rather than annually in order that discussions could be held within the context of relevant progress and barriers over a meaningful period of time. The value of showcasing good practice in access service provision as part of such engagement sessions was also emphasised.</p>

## Appendix 1: Access Targets and Timeframes 2014-2018

### Subtitling Targets

	2014	2015	2016	2017	2018
<b>RTÉ One</b>	82 - 87%	84 - 89%	85 - 90%	86 - 91%	87 - 92%
<b>RTÉ Two</b>	60 - 66%	63 - 69%	67 - 73%	70 - 76%	73 - 79%
<b>TV3</b>	43 - 47%	45 - 49%	47 - 51%	49 - 53%	51 - 55%
<b>TG4</b>	44 - 50%	47 - 53%	51 - 57%	54 - 60%	57 - 63%
<b>3e</b>	16 - 20%	19 - 23%	22 - 26%	25 - 29%	28 - 32%
<b>Setanta Ireland</b>	8 - 10%	9 - 11%	10 - 12%	11 - 13%	12 - 14%
<b>RTÉ plus One</b>	As per RTÉ 1	84 - 89%	85 - 90%	86 - 91%	87 - 92%
<b>RTÉ News Now</b>	Original broadcast carry through	15 - 18%	18 - 21%	21 - 24%	24 - 27%
<b>RTÉ jr.</b>		36 - 40%	40 - 44%	44 - 48%	48 - 52%
<b>UTV Ireland</b>			46 - 52%	52 - 56%	56 - 60%
<b>Irish TV</b>			3%	4%	6%
<b>Oireachtas TV</b>			5 - 6%	12 - 14%	16 - 18%
<b>CCTV</b>	3%	5%	7%	9%	11%
<b>DCTV</b>	3%	5%	7%	9%	11%

### Audio Description Targets

	2014	2015	2016	2017	2018
<b>RTÉ One</b>	1.5%	1.75%	2%	2.25%	2.5%
<b>RTÉ Two</b>					
<b>RTÉ jr</b>		2%	3%	4%	5%
<b>RTÉ Plus One</b>		Any audio description carried on the main RTÉ 1 television service will be made available on this service			

## Irish Sign Language Targets

	2014	2015	2016	2017	2018
<b>RTÉ One</b> <b>RTÉ Two</b>	1.5%	1.75%	2%	2.25%	2.5%
<b>RTÉ jr</b>	0.5%	0.75%	1%	1.25%	1.5%
<b>RTÉ News Now</b>		Broadcasts which had Irish Sign Language when broadcast on the main channels will be made available on this service			
<b>RTÉ Plus One</b>		Broadcasts which had Irish Sign Language when broadcast on the main RTÉ 1 television service will be made available on this time shifted service			
<b>Oireachtas TV</b>			1%	2%	3%

In the case of RTÉ One and RTÉ Two, the audio description and Irish Sign Language percentages are based on the cumulative programming output of both services.

Oireachtas TV may set off any Irish Sign Language provision against the targets for subtitling in 2016.

## Appendix 2: Legislative Provisions

**Section 43(1)(c) of the Broadcasting Act 2009** provides that: -

“The Authority shall, subject to the requirements of section 41(2) and, in accordance with subsection (4), prepare, and from time to time as occasion requires, revise rules (“broadcasting rules”) with respect to-

(c) The specific steps each broadcaster is required to take to promote the understanding and enjoyment by –

persons who are deaf or have a hearing impairment,

persons who are blind or partially sighted, and

persons who have a hearing impairment and are partially sighted,

of programmes transmitted on any broadcasting service provided by the broadcaster.”

**Section 43(2) of the Broadcasting Act 2009** provides that: -

“Without prejudice to the generality of subsection (1)(c), broadcasting rules with respect to that paragraph shall require each broadcaster of audio-visual material to take specified steps to provide access to that material by persons who are deaf or have a hearing impairment, persons who are blind or partially sighted, and persons who have a hearing impairment and are partially sighted by means of specified services such as -

(a) sign language,

(b) teletext services.

(c) subtitling, and audio description, and

(d) Have regard to whether the foregoing material is being provided –

(i) Daily or at other regular intervals,

(ii) At popular viewing times as well as at other times, and

(iii) For news and news-related matters as well as for other matters.”

**Section 43(3) of the Broadcasting Act 2009** provides that: -

“Rules under subsection (1)(c) may, in respect of any period specified in them beginning on or after the passing of this Act, require a broadcaster to ensure that a specified percentage of programmes transmitted on a broadcasting service provided by him or her in that period employs specified means by which the understanding and enjoyment by persons referred in subparagraphs (i), (ii) and (iii) of that paragraph of that percentage of programmes may be promoted.”

**Section 43(6) of the Broadcasting Act 2009** provides that: -

“The Authority shall every two years, or such lesser period as it may decide, review a broadcasting rule made under subsection (1)(c).”

### **Appendix 3: Background to the BAI Television Access Services User Consultative Panel**

To support its assessment of broadcaster compliance and to ensure it has access to user's experience the BAI put in place, across 2013, a small consultative panel of television access service users.

In establishing the User Consultative Panel (UCP or Panel) the BAI wanted to be able to access user experience of the television access services while also building knowledge among a group of access users as to how the BAI's approach to compliance and review works.

The purpose of the User Consultative Panel, agreed with UCP members across the first two initial meetings held in 2013, is to:

- Offer views and advice to the BAI based on first-hand experience of the television access services provided by Irish broadcasters.
- Provide views and advice to the BAI in relation to monitoring compliance with the Access Rules. In particular, it was felt that the views of the Panel would strengthen and enhance the more quantitative assessment of the levels of broadcaster provision carried out as part of BAI monitoring.
- Provide views and inputs on consultations undertaken by the BAI in respect of the Access Rules and television access services.

Invited by the BAI to join the User Consultative Panel members represent a cross section of access service users. In inviting new members efforts are made to achieve a membership which is balanced in the representation of access service users who are deaf, hard of hearing, partially sighted or blind. Membership is weighted in favour of those with direct experience in using the television access services.

The Panel is sub divided in two with one panel sub-group meeting to consider developments and issues relating to subtitling and Irish Sign Language while a second panel sub-group focusses on audio description. Since its establishment in 2013 the membership of the panel sub-group considering subtitling and Irish Sign Language provision has ranged in size from six to nine group members while membership of the panel sub-group considering audio description has ranged in size from four to eight participants.

Since its first official meeting in May, 2013 the UCP has met together with BAI officials three times each year. The outcomes of each BAI User Consultative Panel meeting are captured as part of a set of agreed meeting minutes.

## **Appendix 4: BAI, Television Access Services User Consultative Panel; Terms of Reference<sup>4</sup>**

### **Background**

The Broadcasting Authority of Ireland (BAI) Access Rules set out the levels of subtitling, sign language and audio description that broadcasters in Ireland are required to provide to increase the understanding and enjoyment of programmes by people who are deaf, hard of hearing, partially sighted or blind.

The Access Rules set out targets for each broadcaster for each of the three television access services that it must provide in any one year and over a five year timeframe in total. The current Rules were launched in May 2012 and replaced the BCI Access Rules which had been in place since 2005.

### **BAI Consultation with Access Service Users**

The BAI is required to assess compliance with the Access Rules on a yearly basis and to review the Rules every two years. In order to ensure that it has access to user's experience to assist in these processes, the BAI is now looking to put in place a small consultative panel of access service users. This would allow the BAI to more easily access user experience while also building knowledge among a group of access users as to how the BAI approach to compliance and review works.

It is expected that the BAI User Consultative Panel would be gathered together approximately three times each year and its views would inform decision making by the BAI Compliance Committee and the Authority.

It is anticipated that the User Consultative Panel will:

- Offer views and advice to the BAI based on first-hand experience of the television access services provided by Irish broadcasters
- Provide views and advice to the BAI in relation to monitoring compliance with the Access Rules. The views of the Panel would strengthen and enhance the more quantitative assessment of the levels of provision carried out in monitoring.
- Offer views, where relevant, on consultations undertaken by the BAI. In particular as the BAI is required to review the Access Rules every two years it is anticipated that a User Consultative Panel, with experience of the Rules and Rules Process, could provide valuable inputs to the review.

### **Role and Functions of the BAI User Consultative Panel**

In accepting membership of the BAI User Consultative Panel, members agree to the following terms of reference and operating procedures:

#### **Terms of Reference:**

1. The expectation is that the BAI User Consultative Panel will advise the Broadcasting Authority of Ireland about the experiences and opinions of television access service users living in Ireland. This will help to ensure that the work of the regulator is informed by the experience of users of the access services.
2. The BAI User Consultative Panel will be established as an ad-hoc stakeholder group organised and operated by the BAI to provide a platform for discussion and exchange between the broadcasting regulator and users of the access services.

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<sup>4</sup> As agreed at meeting of the BAI User Consultative Panel, 2 May, 2013

3. The scope of the BAI User Consultative Panel's work will be limited to areas related directly to the operation, monitoring and ongoing development of television access services in Ireland.

## **Membership and operation of the BAI User Consultative Panel**

It is expected that;

- The BAI User Consultative Panel will consist of a maximum of fourteen members at any time.
- Members will be invited, by the BAI, to join the User Consultative Panel with members representing a cross section of access service users.
- In selecting new members, reasonable efforts will be made to achieve a membership which is balanced in the representation of access service users who are deaf, hard of hearing, partially sighted or blind and will be weighted in favour of those with direct experience in using the television access services.
- Members will be invited to join the User Consultative Panel in their personal capacity as users of the television access services. This will not, however, preclude any member from introducing viewpoints or recommendations on behalf of any relevant representative body or organisation.
- Members should strive to attend all meetings of the BAI User Consultative Panel to facilitate the continuity of discussions. However a list of agreed alternative attendees will be maintained by the BAI.
- The BAI User Consultative Panel will meet approximately three times during 2013. If the BAI feel it is required further meetings can be arranged on an ad hoc basis.
- All BAI User Consultative Panel meetings will be held at the BAI's offices in Dublin.
- In the first place the BAI, or a representative of the BAI, will invite all members to meetings. The BAI will invite the relevant alternative attendee when a member notifies the BAI that they cannot attend a meeting. The BAI, or a representative of the BAI, will chair the meetings and a meeting agenda will be circulated by the BAI to all members by e-mail in advance of each meeting. This ensures that the BAI are aware of all attendees at meetings and that all attendees have an opportunity to review circulated documents.
- Members, and in their absence their invited alternate, are the only people allowed to attend BAI User Consultative Panel meetings. Additional people will be considered for certain meetings, but only by BAI invitation on a case by case basis.
- Members who fail to maintain reasonable attendance at User Consultative Panel meetings will be asked to step down by the BAI to make way for other people wishing to become members.
- BAI will maintain a list of people requesting membership of the BAI User Consultative Panel and appoint new members from the list with the agreement of existing members whilst maintaining the balance of membership outlined above.
- The outcomes of each BAI User Consultative Panel meeting will be submitted by the BAI Executive to the BAI Compliance Committee for noting.
- Members of the BAI User Consultative Panel will not speak on behalf of the BAI or make any public statements on behalf of the BAI. Members making public statements on their own account are asked to make clear that they are speaking in a personal capacity and not on behalf of the BAI.
- BAI reserves the right to terminate the membership of any person.

- All BAI User Consultative Panel meetings will be served by signing, speed texting and other support as required.
- BAI will meet travel costs incurred by BAI User Consultative Panel members in travelling to and from the User Consultative Panel meetings.





**Broadcasting Authority of Ireland**

**Appendix 4  
Compliance Review**



# Broadcasting Authority of Ireland

## Report on Compliance with Access Rules since 2012

This Report provides details of broadcasters' compliance with the requirements of the BAI Access Rules between 2012 and 2016. It also explains the BAI's compliance assessment process with respect to Access Rules and enforcement action taken by the BAI in circumstances where there was apparent non-compliance with the Access Rules.

### 1. Introduction

Section 43 of the Broadcasting Act, 2009 requires the Authority prepare and, from time to time, revise rules with respect to:-

*The specific steps each broadcaster is required to take to promote the understanding and enjoyment by-*

- (i) persons who are deaf or have a hearing impairment,*
- (ii) persons who are blind or partially sighted, and*
- (iii) persons who have a hearing impairment or are partially sighted,*

*of programmes transmitted on any broadcasting service provided by the broadcaster.*

The BAI Access Rules were developed in this context. Further to the Rules, broadcasters are required to comply with the following:

- The requirement to meet target ranges and timeframes in respect of the provision of specific access services, namely subtitling (including captioning), audio description and Irish Sign Language;<sup>1</sup>
- The requirement that broadcasters promote the access services that they provide both on- and off-air;
- The requirement to consult, at least once annually, with groups representing those who use access services;
- The requirement to provide access provision in accordance with the standards set out in the BAI Guidelines for Subtitling, Audio Description and Irish Sign Language, as issued from time to time. The BAI has published Guidelines setting out the requisite standards for each of the access services: subtitling, audio description and Irish Sign Language.

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<sup>1</sup> A brief description of these access services is included in the attached Rules.



# Broadcasting Authority of Ireland

The Rules and Guidelines apply to the public service broadcasters RTÉ, TG4 and Oireachtas TV and television services licensed by the BAI in Ireland, namely TV3, 3e, Be3, eir sport, Cork Community Television Limited and Dublin Community Television Society Limited.

The current Access Rules came into effect on the 1<sup>st</sup> March 2015 following a full review of the Rules in 2014.

## 2. BAI's approach to compliance

The BAI's compliance assessment process is informed by the following inputs:

- (i) Twice yearly compliance reports, provided by the broadcasters to the BAI, indicating the levels of subtitling and, in the case of RTÉ, audio description and Irish Sign Language. The compliance report includes details on the individual programmes which had accompanying access services. Figures are provided showing the percentage of programming that carries access services across each channel, enabling an assessment of performance against the targets set. Broadcasters are also requested to provide a written account of what progress has been made with a rationale provided for any disparity between the targets set and the performance attained and to identify their estimated targets and other proposals (promotion of access service provision, engagement with user groups etc.) for the next year.
- (ii) BAI's monitoring reports on the broadcasters' content broadcasting output. The BAI monitors on average two weeks of broadcaster content, randomly selected over the year. In 2016, the BAI monitored 53 days. The output is assessed against the compliance reports submitted by the broadcasters, the Rules and the BAI Guidelines for quality and reliability.
- (iii) In order to support and further inform its assessment of quality and reliability of access service provision, the BAI established two User Consultative Panels (UCP),<sup>2</sup> one comprised of viewers who are deaf or hard of hearing and the other comprised of viewers who are blind or visually impaired. Members of these Panels provide important and valuable feedback, views and advice based on their first-hand experience of access service provision by the broadcasters with a particular emphasis on the quality and reliability of the service.
- (iv) The BAI Executive also holds annual meetings with the broadcasters to discuss the outcomes of steps (i) to (iii) above.

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<sup>2</sup> These Panels were established in 2013.



# Broadcasting Authority of Ireland

- (v) An Executive Compliance Report which reports on the performance of the broadcasters and highlights any apparent non-compliance with the Rules, along with the submissions of the broadcasters and feedback from the UCP is submitted to, and considered by, the BAI's Compliance Committee bi-annually.<sup>3</sup>

This approach to compliance assessment reflects a shift since 2012 in the BAI's approach to assessment which now sees an emphasis not just on the *quantity* (percentage targets only) of access service provision but also on the quality and reliability of such provision. In 2012, target ranges (e.g. 45-50%) replaced single targets. Broadcasters are deemed to be compliant if they attain a level of service that falls within the specified target range. The point in the range to be attained is identified by the broadcaster early in the year. For example, broadcasters who are focused on increasing the level of subtitling on live programming or new Irish content may aim for the lower end of the range (this takes account of the additional cost of live subtitling and the fact that the broadcasters are prioritising particular genres of programming in accordance with user preferences).

It must be noted that the targets and timeframes detailed in the Rules do not exist in isolation. They exist in relation to other rules including, the obligation to provide access services to a specified standard, and to prioritise children's programming and home produced programmes when increasing Irish Sign Language and audio description. There is also the obligation to promote access services and to meet with groups representing those who are deaf, hard of hearing, blind or partially sighted.

### 3. Enforcement Action

The different types of enforcement action that may be taken by the BAI in respect of the apparent non-compliance are set out in the *BAI Compliance and Enforcement Policy* and include the following:

#### *Compliance Notice*

This is the lowest level of engagement and provides the broadcaster with an opportunity to address the apparent non-compliance without the need for further regulatory intervention. The broadcaster must agree a plan with the BAI for addressing and remedying the apparent noncompliance.

#### *Warning Notice*

A Warning Notice requires the broadcaster to meet with the BAI Executive and agree a plan for remedying the apparent non-compliance. If the matter is not remedied to the Executive's satisfaction, the Executive may refer the matter to the Compliance Committee and further enforcement action may ultimately result in an investigation and formal sanctions, including financial penalties.

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<sup>3</sup> This report is informed by the compliance assessment process described in steps (i) to (iii) above.



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The practical effect and outcome of the notices is the same; broadcasters must set out to the BAI the specific steps they will take to ensure the identified non-compliance has been remedied and will not re-occur. However, the consequence of continuing non-compliance is more serious following the issue of a Warning Notice. The Compliance Committee will consider the nature of the continuing non-compliance and may consider an investigation and formal sanctions against the broadcaster.

As noted in section 4 below, in circumstances where non-compliance has been identified, this compliance and enforcement framework has ensured the broadcasters have engaged with the BAI and taken appropriate action to ensure the resolution of such issues.

## 4. Compliance by broadcasters with the BAI Access Rules

The target ranges (quantity) set out in the Rules have increased year on year and have been met by the majority of broadcasters. The table attached at *Appendix 1* details the actual percentages achieved by broadcasters for (i) subtitling, (ii) audio description and (iii) Irish Sign Language between 2012 and 2016. Unfortunately, the quality and reliability of the access service provision has been inconsistent and varied and remains the primary cause of frustration for the majority of access service users. The BAI would observe that there has been an improvement in the direct engagement between broadcasters and users on these issues with feedback and/or complaints by users being directed to, and responded to by, broadcasters in the first instance.

### 4.1 RTÉ

#### Irish Sign Language (ISL)

RTÉ has achieved the ISL percentage targets specified in the Rules.<sup>4</sup> Users report that the quality and reliability of the access provision is generally good but expressed dissatisfaction with the broadcaster's decision to cease the 'Hands On' series, the only dedicated ISL series on the service.

However, it should be noted that this is an editorial matter for the broadcaster and falls outside the remit of the Rules.

To mark ISL Awareness Week in 2016, RTÉ commissioned a series of 10 episodes of Signed Stories which were broadcast in September 2016.

While the Access Rules do not apply to the RTÉ Player, there is now an Irish Sign Language Hub on the Player which offers 100 titles at any time to the ISL community. This hub serves as both a programme catch up and archive service and is constantly refreshed by RTÉ.

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<sup>4</sup> The ISL percentages specified in the Rules are based on the cumulative programming output of both RTÉ One and RTÉ Two. Separate percentages are specified for RTÉjr.



# Broadcasting Authority of Ireland

## Subtitling – Quantity and Quality

Between 2012 and 2015, RTÉ achieved its subtitling percentage targets for all channels. The main channels, RTÉ One and RTÉ Two, exceeded their percentage targets during peak time viewing. Users report that the quality and reliability of the access provision is generally good.

In 2016, the RTÉ Two and RTÉjr channels did not, for the first time, meet their respective subtitling target ranges specified in the Rules, missing their targets by 2.2% and 3.5% respectively. RTÉ Two did, however, exceed its target range during peak viewing times. The BAI Compliance Committee issued a Compliance Notice to RTÉ in 2017 in respect of the apparent non-compliance with the targets for RTÉ2 and RTÉjr in 2016. RTÉ set out an action plan to remedy the non-compliance in 2017. The broadcaster's compliance with the Rules in 2017 will be assessed by the BAI in early 2018.

## Audio Description (AD)

Since 2014, when AD commenced, RTÉ has exceeded the percentage targets for AD on RTÉ One and RTÉ Two, ensuring that home produced programming carried AD.<sup>5</sup>

The Access Rules also required RTÉ to provide 3% AD on RTÉjr. In 2015, however, RTÉ advised that it would be unable to comply with this requirement due to the absence of the necessary technical infrastructure (play-out equipment) and the matter was considered by the BAI Compliance Committee. The Committee, following consultation with the BAI User Consultative Panel, accepted RTÉ's proposal to provide 44 hours of children's programming with AD on RTÉ Two in 2016 and 175 hours of children's programming with AD on RTÉ Two in 2017 to compensate for the absence of AD on RTÉjr.<sup>6</sup> RTÉ expected to complete the necessary upgrade to its transmission play-out equipment in 2017.

## Promotion of Access Service Provision & Engagement with User Groups

RTÉ promotes its access service provision on air, on Aertel, social media and in press releases and programme listings.

RTÉ also organises an annual meeting with user groups. The meeting provides a good opportunity for representatives of user groups to provide feedback directly to senior members of RTÉ's programming teams. Members from a large cross section of user groups attend the meeting. The meeting is also attended by the providers of RTÉ's access services and the BAI.

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<sup>5</sup> The AD percentages specified in the Rules are based on the cumulative programming output of both RTÉ One and RTÉ Two.

<sup>6</sup> RTÉ provided 78 hours of children's programming with AD on RTÉ Two in 2016.



# Broadcasting Authority of Ireland

## 4.2 TG4

### Subtitling – Quantity and Quality

TG4 achieved the percentage targets for subtitling in 2012 and 2013. TG4 failed to meet the target ranges for subtitling set out in the Access Rules in 2014, 2015 and 2016. The BAI issued a Compliance Notice to TG4 in 2015 in respect of non-compliance in 2014.

Enforcement action was escalated in 2016 following a further failure to meet the targets. The Compliance Committee issued a Warning Notice to TG4 and following a meeting with the broadcaster, an action plan was agreed to ensure compliance with the targets in 2017. The broadcaster's compliance with the Rules in 2017 will be assessed by the BAI in early 2018.

TG4's online player allows the user the option of turning either English or Irish subtitles on or off, providing additional access provision to its core Irish speaking audience.

For a number of years following the introduction of the Access Rules, the broadcaster used subtitling primarily as a translation service with subtitling and/or provision captions being provided for Irish language only. This compromised the reliability of the access provision in circumstances where any English spoken on the service did not carry subtitling. This was rectified by the broadcaster in 2014. No other issues in relation to quality or reliability have been raised by the UCP members.

### Promotion of Access Service Provision & Engagement with User Groups

To promote its subtitling service, the broadcaster provides information regarding subtitles on its TV listings page and information for the press. An information page regarding TG4's subtitling practices and conventions is available on the website [www.tg4.ie](http://www.tg4.ie) and an information note regarding TG4's subtitling service can also be found on the TG4.tv app.

The broadcaster has held individual meetings with user representative groups.

## 4.3 TV3 & 3e

### Subtitling – Quantity and Quality

The TV3 Group now consists of 3 channels, TV3, 3e and Be3. Be3 was formerly UTV Ireland and became part of the TV3 Group in late 2016.

TV3 has achieved the percentage targets specified in the Access Rules between 2013 and 2016. However, user feedback along with BAI monitoring highlighted ongoing issues with the quality and reliability during these years. In 2015, the BAI issued a Compliance Notice to the broadcaster in relation to the quality and reliability of its subtitling service and a failure to meet the standards set out in the BAI Guidelines. TV3 committed to improving the quality and reliability of its subtitles by upgrading its technical infrastructure and improving its processes in 2015/2016.



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Monitoring of TV3 and 3e content by the BAI in 2015 indicated that the quality and reliability of subtitles on TV3 and 3e had improved. The upgrade of the transmission infrastructure continued into 2016.

3e did not meet its percentage targets for subtitling in 2012 and 2013 but has exceeded its targets since 2014.

## Promotion of Access Service Provision & Engagement with User Groups

TV3 holds individual meetings with various user representative groups during the year.

In terms of promotion, adverts before programmes identify subtitling provision, the web and EPG list subtitled programmes, and a list of subtitled programmes is on TV3's website. TV3 has also increased its use of social media for notifications relating to its subtitled programmes, for example, to publicise changes to its programming carrying access services and to advise viewers of any problems with access provision.

## **4.4 Eir Sport**

The channel carries sports content only and is available on Sky, Eir Vision and Vodafone TV.

### Subtitling – Quantity and Quality

Eir Sport achieved the percentage targets specified in the Access Rules with one exception in 2014 when there was a shortfall of 0.6% when compared with the target range specified. No issues in relation to quality or reliability have been raised by the UCP members.

### Promotion of Access Service Provision & Engagement with User Groups

The BAI issued a Compliance Notice to Eir Sport in 2015 for a failure to meet or consult with user groups in 2014. Eir Sport has, since 2014, consulted with a range of user groups on an annual basis.

The broadcaster's TV listings webpage provides general information in relation to its subtitling service, for example, it explains to viewers how to access the subtitling service and it also provides an email address for feedback on this service. The broadcaster also promotes its subtitling service on its Facebook and Twitter accounts.

## **4.5 Oireachtas TV**

Oireachtas TV, set up pursuant to Section 125 of the Broadcasting Act 2009, broadcasts live and pre-recorded content from the Dáil, Seanad and Parliamentary Committees. The public service is carried on Saorview, cable and satellite channels. It provides both subtitling and ISL. Target ranges for this access service provision were introduced in the Rules in 2016.





# Broadcasting Authority of Ireland

## Subtitling – Quantity and Quality

The broadcaster's subtitling provision was within the target range specified in the Rules and it exceeded its ISL target. No issues in relation to quality or reliability have been raised by the UCP members.

## Promotion of Access Service Provision & Engagement with User Groups

Oireachtas TV has been working to ensure that the relevant Electronic Programme Guides indicate when a programme is available with subtitles and/or ISL. It also uses social media to advise viewers of its access service provision.

### **4.6 DCTV (Dublin Community TV)**

DCTV is a community television service broadcasting to Dublin City and County.<sup>7</sup> The service is owned by a co-operative, representative of the community it serves and is operated by volunteers on a non-profit basis.

## Subtitling – Quantity and Quality

DCTV has exceeded the percentage targets for subtitling specified in the Rules. No issues in relation to quality or reliability have been raised by the UCP members.

## Promotion of Access Service Provision & Engagement with User Groups

The broadcaster was issued with a Compliance Notice in 2016 for failure to consult with user groups during 2015 and for a failure to promote its subtitling service on the website or on the channel itself. The broadcaster has since consulted with various user representative groups.

The broadcaster has also promoted its accessible programming through a BAI Sectoral Development funded series of workshops. There is information on the broadcaster's website regarding the availability of subtitled programmes.

### **4.7 Cork Community TV (CCTV)**

CCTV is a community television service broadcasting to Cork City and County. The service is owned by a company limited by guarantee, representative of the community it serves and is operated by volunteers on a non-profit basis.

## Subtitling – Quantity and Quality

CCTV has exceeded the percentage targets for subtitling specified in the Rules. No issues in relation to quality or reliability have been raised by the UCP members.

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<sup>7</sup> It is broadcast on Virgin Media 802.



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## Promotion of Access Service Provision & Engagement with User Groups

Subtitled programmes are highlighted on the webpage and CCTV promotes subtitled programmes on the community noticeboard on their channel. The broadcaster meets user representative groups based in Cork on an annual basis.

## 5. General Comments

Positively, the quantity and range of access service provision on television services has increased annually and significantly in line with the Rules since their introduction. RTÉ 1, for example, provides up to 94% subtitling during peak time periods of viewing. The quality and reliability of access service provision has also improved over this time. In circumstances where apparent noncompliance has been identified, the broadcasters have advised of a wide range of contributory factors including technical (supply-chain) issues, budgetary cuts, resource capacity (financial and human), scheduling changes due to the broadcast of special events and reductions in the level of acquired subtitled content. Funding and other challenges notwithstanding, broadcasters state their ongoing commitment to improving the range, quality and reliability of their access service provision and engagement with users of the services.

From the BAI's extensive and ongoing consultations with user groups, it is evident that quality and reliability of access service provision is as, if not more, important than the achievement of the targets (a quantitative measure only). The feedback provided by users of the services, however, also indicates that quality and reliability is often linked to the choice of end user equipment (set top boxes, platforms such as cable and satellite, and integrated digital televisions).

The variations in the quality of the access service provision and reception difficulties depending on the choice of set top boxes has also been a consistent theme in BAI consultations, broadcaster and user panel meetings.

This means that even though broadcasters may be compliant with the Access Rules, the service may not, when delivered to the user, be accessible. It is hoped that some of these issues will be addressed by the proposed EU Accessibility Act which sets out accessibility standard requirements for audio-visual media related consumer equipment with advanced computing capability. The latter includes EPGs, set top boxes and smart TVs as well as material and information made available on websites and players.



# Broadcasting Authority of Ireland

## APPENDIX 1

### Access Rules Summary Report: Targets for Subtitling, Irish Sign Language and Audio Description

Subtitles	2012		2013		2014		2015		2016	
	Target	Actual	Target	Actual	Target	Actual	Target	Actual	Target	Actual
RTÉ 1 RTÉ2 TV3 TG4 3e eir Sport RTÉ 1+1 RTÉ News Now RTÉ jr. Be3 Oireachtas TV CCTV DCTV	78 - 83%	80	80 - 85%	86.7	82 - 87%	84.4	84 - 89%	86.1	85 - 90%	87.8
	53 - 60%	53	56 - 62%	62.3	60 - 66%	63.3	63 - 69%	65.3	67 - 73%	64.8
	39 - 43%	32	41 - 45%	45.3	43 - 47%	66.5	45 - 49%	50	47 - 51%	48.4
	36 - 42%	42	40 - 46%	40	44 - 50%	40.5	47 - 53%	45	51 - 57%	46.5
	10 - 14%	6.5	13 - 17%	9.2	16 - 20%	22	19 - 23%	27.5	22 - 26%	32
	6 - 8%	6.5	7 - 9%	8	8 - 10%	7.4	9 - 11%	10.3	10 - 12%	10
							84 - 89%	88.2	85 - 90%	92.7
							15 - 18%		18 - 21%	
							36 - 40%	42	40 - 44%	36.5
									46 - 52%	68.7
									5 - 6%	5.4
	1%	4.8	2%	6.1	3%	7.4	5%	20.6	7%	22.5
	1%	3.1	2%	9.1	3%	8.7	5%	10.1	7%	13.7

[illegible]



**Broadcasting Authority of Ireland**

**Appendix 5  
Technical Review**



# Broadcasting Authority of Ireland

## Access Rules – Technical Review

As noted above, the review of the Rules had a number of elements - a Jurisdictional Review, Stakeholder Research, a Technical Review and a Review of Compliance. This report will look at the technological changes with regard to access service provision since the move to digital television.

### 1. Introduction

The move to Digital Terrestrial Television in 2012, when Saorview was launched, has provided new methods by which broadcasters can provide accessible programming to the Irish viewing audience. There has also been an increase in the number of platforms and operators that provide television programmes, e.g. eir TV, Netflix, Vodafone TV etc. This increase in the number of platforms has also meant that broadcasters have to deal with multiple systems to ensure that their video, audio, data and access services are carried correctly. As has been noted from access user feedback, the variety of platforms and set top boxes has vastly increased the number of possible problems that can occur between the signal leaving the studio and being received correctly on the viewer's television.

In analogue days, the broadcaster had much more control over the carriage of access services and this decreased the possibility of access service provision not being received correctly. Although the digital environment has improved the quality of picture, the number of channels available and the range of access services, the new technology has added significantly to the components in the supply chain and, thus, increased the challenges for the carry-through of reliable, high quality access services.

The move to DTT, and digital services on cable and satellite, has allowed for better quality subtitles and for much greater availability of audio description which has been of great benefit to the blind and visually impaired communities.

Sections 2, 3 and 4 of this report provide an overview of the changes and improvements in subtitling, audio description (AD) and Irish Sign Language over the past few years. Sections 5 and 6 provide some information on issues with set top boxes and improvements to online players, while section 7 provides a summary of the issues.



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The sources of information for this report include the annual meeting of the Eurovision Access Services Experts Group (EASEG)<sup>1</sup> and also the ERGA (European Regulators Group for Audiovisual Media Services) *Special Task Report on the provision of greater accessibility to audiovisual media services for persons with disabilities*, prepared in November 2016. The BAI was a member of the ERGA subgroup which prepared this Special Task Report.

## 2. Subtitling

At the annual meeting of the EASEG in 2017, BBC and Ericsson provided the following updates on technological advances in subtitling:-

- The BBC is involved in the development of EBU-TT, which is the latest standard for the provision of subtitles. As part of this, the BBC is developing an open source toolkit which should allow for the easy conversion of subtitles between the many different formats. This should simplify the methods used to deliver live subtitles to online platforms.

The use of online players by broadcasters is increasing and users with hearing or visual disabilities are relying more and more on this method of catching up on programmes. At the BAI's User Consultative Panel meetings, members have consistently expressed their view that any programmes with access services on linear television should have the same access services carried online. Although the Access Rules does not specify any requirements for online access services, the work of the BBC and the EBU should increase the availability of subtitles on online players.

- Ericsson, who provides subtitling and AD services to the BBC, have been developing a system to reduce the delay for live subtitling. Currently live subtitles are delayed by 4-7 seconds due to the time taken to produce the subtitles by re-voicing or the use of computer software. With the advent of high definition television there is an additional delay of several seconds in the transmission chain to allow for the compression and de-compression of the video information. This extra delay gives time for the subtitles to be produced which in effect means that subtitles on live programming can be almost instantaneous. Unfortunately, this is not the case for standard definition channels which do not have the extra delay to allow for subtitles to keep pace with the audio.

Although this technology is not commercially available, it should improve the quality of live subtitles over the coming years, especially as more and more channels move to high definition.

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<sup>1</sup> This group is a collection of access service experts and meets once a year to discuss the latest innovations in subtitling, AD and sign language and to encourage pan-European collaboration. The BAI attended this meeting in October 2017.



# Broadcasting Authority of Ireland

The ERGA report also notes that spoken subtitles can be provided and delivered as a second audio track, in the same manner as AD. However, this service is not provided by Irish broadcasters and is not an issue that has been raised by users.

## 3. Audio Description (AD)

AD provides spoken commentary to the normal audio channel to give visually impaired viewers information about what is happening on screen. Examples of this are; “John opened the door”, “Alison rolled her eyes” etc. There are several technological means by which this can be achieved:-

1. Broadcast mix – the broadcaster produces a second audio channel which includes the AD content. The user then chooses whether to listen to the normal audio channel or the AD version. This is dependent on the viewer having equipment that can choose between audio channels. This method incurs an additional cost for the broadcaster in terms of transmitting a second audio channel.
2. Receiver mix – a mono audio description channel is broadcast alongside the normal audio channel and then the two audio channels are mixed at the receiver in the viewer's home. This is slightly cheaper for the broadcaster as there is less additional data to be carried, but does mean that the viewer has to have a receiver that can mix the audio channels. The receiver also has to synchronise the audio channels correctly so that the AD information is presented at the correct time.
3. Non-television delivery – in this case the AD channel is delivered by some other means (radio, internet etc.) and then combined in the receiver. Again, this requires a more advanced receiver, but is likely to be cheaper for the broadcaster to deliver.

In Ireland the broadcast mix option is used and, from user feedback, is usually of good quality. There does not appear to be a move towards options 2 or 3 at present. The BAI's User Consultative Panel members (UCP) have highlighted that there are instances where the voice providing the AD information is computer generated. It is not clear whether the broadcasters are doing this for financial or technological reasons, but the UCP members' preference is for a human voice providing the AD.

## 4. Irish Sign Language (ISL)

ISL is currently delivered in the open format, i.e. the signer is visible on screen and cannot be turned off. This, in general, means that programmes with ISL are broadcast during the night, are recorded, and then watched at a later time by the viewer.





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In the opinion of access users of ISL, ISL programmes should be broadcast in the closed format so that the viewer can turn the signer on or off. However, the technology to allow this to happen is not yet available.

There are three methods which could be used to provide the closed format:

1. The ISL version of the programme could be carried as a separate channel on Soarview for example. This would mean that the broadcaster would have to pay for two versions of the programme to be carried resulting in the doubling of transmission charges which would not make financial sense.
2. A separate channel could be used to carry the signer on the multiplex. This would then be mixed with the normal channel at the receiver. This would be cheaper than option 1 (the video of the signer would require much less space on the multiplex as the signer only occupies the bottom corner of the screen), but would require that the set top box have the technology to be able to combine the two signals.
3. The video of the signer could be carried over the internet and again combined at the viewer's set top box. This would be a cheaper option for the broadcaster, but would again require a higher specification box.

There does not appear to be any development in this area, so it is unclear if and when the option of closed signing will be available.

At RTÉ's recent annual meeting with users of access services, ITV SignPost (a UK company which provide ISL services for RTÉ, ITV and BBC) gave a presentation about improvements to the delivery of ISL programmes. One of the main complaints about the inclusion of an ISL signer in the corner screen is that the signer hides part of the picture. ITV SignPost has developed a system where the normal video is reduced in size and displayed to one side of the screen. The ISL signer is displayed at normal size in the right hand bottom corner. This means that there is little, if any, overlap of the signer and normal video. This is now available for most RTÉ programmes with ISL and should make for a better viewer experience.

RTÉ also provides a collection of over 250 ISL episodes of 24 programmes on the RTÉ Player. While users would prefer more linear programmes with ISL, this option gives users of ISL the chance to watch a wide variety of programmes. The collection of programmes available is increasing with time.



# Broadcasting Authority of Ireland

## 5. Set Top boxes

There are a vast number of set top boxes on the market to allow for the reception of television channels via DTT, cable, satellite and IPTV. A large number of these will conform to internationally recognised standards, e.g. Saorview Approved devices, Sky boxes etc. However, there are many set top boxes which can be bought on-line and through various retailers which may display the video and audio correctly, but may not carry assistive services as intended by the broadcaster. Some of the latest set top boxes give the viewer the option of adjusting the subtitle format, e.g. colour, font type, font size etc., to improve the viewer experience.

The European Union is currently developing the Accessibility Act which, *inter alia*, sets out accessibility standard requirements for audio-visual media related consumer equipment with advanced computing capability. The latter includes EPGs, set top boxes and smart TVs as well as material and information made available on websites and players. Such standards should ensure the proper carriage and carry through of reliable and high quality accessible services in future.

## 6. On-Demand

Most Irish broadcasters have online players to allow viewers watch programmes after they are first broadcast, with some broadcasters providing subtitles where available. Unfortunately, as subtitles carried on linear television cannot be copied straight across to online players, a certain amount of manual work has to be done to complete the process. It is worth noting that TG4's online player gives viewers the option of choosing between English and Irish subtitles, where available, and to adjust the subtitle colour and size to suit viewer preferences. Unfortunately the technology is not available to permit this on its linear service.

RTÉ is working on a revised online platform which should go live in 2018. This will allow for the carriage of subtitles on all RTÉ channels to be made available on the Player. This new system will also allow for the carriage of any programmes with AD on the Player. The user will also have the option of turning subtitles and AD on or off.

## 7. Summary

Broadcasters are working to improve the quality and reliability of subtitles. The main areas of work appear to be in the reduction of delay for live subtitles and the improvement in the conversion of subtitles from linear television to online players. The quality and reliability of audio described programmes is good at present and there appears to be little technological advancement in this area at present.



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Irish Sign Language is only available in open format and there does not appear to be any move towards the development of the closed format. There has been work done to reduce the overlap of signer and video on screen, hence making the broadcast content more visible to the viewer.

The finalisation of the European Accessibility Act expected in 2018 should improve accessibility features on set top boxes, but this will take time to implement.

The broadcasters are focussing a lot of their efforts on the development of online players and the provision of accessible content as they feel that this will be of the most benefit to viewers. While this is a very welcome development, it must be noted that currently, the BAI's regulatory remit does not extend to online and non-linear content.



**Broadcasting Authority of Ireland**

**Appendix 6**  
**Quality Guidelines**  
**Subtitling, Irish Sign Language, Audio Description**



## **BAI Guidelines Subtitling**

### **Introduction**

In accordance with the relevant provisions of the Broadcasting Act 2009, the Broadcasting Authority of Ireland has set out the rules required under Section 43(1)(c), to which it has given the title *Access Rules*. The Access Rules were launched on 14<sup>th</sup> May 2012, and are effective from 15<sup>th</sup> May 2012. A copy of the Access Rules is available on [www.bai.ie](http://www.bai.ie) or by request from the Authority.

This is the **BAI Guidelines – Subtitling** document. In this document the BAI outlines the general and technical standards required in relation to subtitling provision. These guidelines are intended to support the implementation of the BAI Access Rules regarding subtitling. The BAI acknowledges the assistance of Ofcom's Guidance On Standards for Subtitling document in the preparation of this document. The guidelines may be changed from time to time, as deemed appropriate.

**To assist broadcasters and subtitle providers reading this document, the main points of guidance are printed in bold type. These, however, cannot be properly understood in isolation from the rest of the text.**

### **1. Key Priorities**

The key priorities for effective subtitling can be summarised as follows:

- 1.1 The viewer should be allowed adequate reading time.
- 1.2 The viewers enjoyment of the programme is increased when:
  - Subtitles match what is actually said, reflecting the spoken word with the same meaning and complexity; without censoring
  - Subtitles contain all obvious speech and relevant sound effects
  - Subtitles are located sensibly in time and space.
- 1.3 Subtitles should contain easily-read and commonly-used sentences in a tidy and sensible format.
- 1.4 Subtitles for children should have regard to the reading age of the intended audience.

### **2. General Requirements for Subtitle Display**

#### **2.1 Basic Text Display**

**Teletext characters should be displayed in double height using upper and lower case.**



Words within a subtitle should be separated by a single space.

Text should always have a high contrast against the background colour and for normal subtitling purposes should be presented in a black box.

Text will usually be centre justified, but to aid readability it can be justified left, centre or right depending on whether speaker positioning is desired.

Standard punctuation should be used. Punctuation gives valuable clues to syntactic structure and must be carefully displayed in order to be effective

## 2.2 Colour

As used on analogue services the ITU (R) Teletext format is limited to the availability of seven different text colours, including white; and eight different background (boxing) colours, including black and white. **For normal subtitling purposes black should be used, but if coloured background is used a text colour should be chosen which will also remain legible on a black background.**

The most legible text colours on a black background are white, yellow, cyan and green. The use of magenta, red and blue should be avoided.

If a coloured background is used, the most legible combinations are as follows:

Blue on white;  
White on blue;  
Red on white;  
White on red;  
Cyan on blue;  
Blue on cyan.

Of these, white on red, white on blue and cyan on blue are preferable, because certain older decoders will reduce these combinations to highly legible white on black, or cyan on black.

Colour in television subtitling is used to aid **Speaker Identification** and indicate the presence of **Sound Effects**. These are discussed later in this document.

## 2.3 Control Characters

The use of double-height boxed coloured text generally requires six control characters in the teletext line, or eight control characters if coloured background is used. Thus, the maximum space available for subtitle text is only 32 or 34 characters per line.

## 2.4 Formatting

**A maximum subtitle length of two lines is recommended.** Three lines may be used if the subtitler is confident that no important picture information will be obscured.



**Ideally, each subtitle should also comprise a single complete sentence.** Depending on the speed of speech, there are exceptions to this general recommendation, as follows:

- a) Real-time subtitling
- b) Short sentences may be combined into a single subtitle if the available reading time is limited.
- c) Very long sentences which are too long to fit into a single two-line subtitle.  
There are two procedures for dealing with such cases:

- (i) Break long sentences into two or more separate sentences and to display them as consecutive subtitles

- (ii) Allow a single long sentence to extend over more than one subtitle. In this case, sentences should be segmented at natural linguistic breaks such that each subtitle forms an integrated linguistic unit. Preference should be given to segmentation at clause boundaries. Many viewers have found that a segmentation marked by a sequence of dots (three at the end of a to-be-continued subtitle, and two at the beginning of a continuation) is helpful. For example:

*When I opened the door...*

*...I realised that I had  
been in this room before.*

## 2.5 Punctuation

The effectiveness of punctuation can be enhanced by the use of a single space at the following points:

- i) before exclamation marks and question marks,
- ii) after commas, colons, semi-colons and mid-subtitle full-stops,
- iii) on both sides of dashes (but not mid-word hyphens),
- iv) before opening brackets and inverted commas
- v) after closing brackets and inverted commas.

## 2.6 Line Breaks

**Subtitle lines should end at natural linguistic breaks, ideally at clause or phrase boundaries.**

**Line breaks within a word are especially disruptive to the reading process and should be avoided.**

Justified subtitles should balance linguistic considerations with eye movement. Therefore, when using left, right and centre justification for speaker positioning line breaks must be



carefully considered. The distance between subtitles should be minimised, that is to say, causing the eye the least distance to travel from one line to the next.

Care should also be taken to avoid disruption to the picture content – long thin lines are preferable to ‘short and fat’ subtitles, but this is not always the case.

Line breaks on conventional aspect ratio receivers (4:3) and widescreen (16:9) receivers must retain the original emphasis of the subtitle.

## **2.7 Positioning Subtitles on the Screen**

**Subtitles are usually positioned towards the bottom of the screen, but it is important that this does not obscure ‘on-screen’ captions, any part of a speaker’s mouth or any other important activity.** Certain special programme types carry a lot of information in the lower part of the screen and in such cases top-screen positioning will be a more acceptable standard.

Subtitles should be displayed horizontally in the direction of sound effects source or, in the case where speaker identification is employed, in the direction of the speaker.

When consecutive subtitles have boxes of similar size and shape and the second directly over-writes the first, it is useful to position them slightly differently on the screen. This makes it easier for the viewer to perceive that the subtitle has changed.

**Widescreen receivers with a screen ratio of 16:9 are now in common use. When these are used to display subtitles it is important to safeguard the text box. This consideration must include standard receivers of 4:3 aspect ratio. Safeguarding can be achieved by ensuring that subtitles are placed within the ‘Safe Caption Area’ of a 14:9 display.**

## **3. Timing and Synchronisation**

**Viewers must be given sufficient time to read the subtitles. The length of time that subtitles are displayed on screen must reflect this.** Presentation rates however can depend upon the programme content. For example certain programmes, such as “soaps”, where the viewer may have familiarity with the characters, can have faster paced subtitles than an unfamiliar drama or a slower moving documentary.

**The subtitle presentation rate for pre-recorded programmes should not normally exceed 160 to 180 words per minute.<sup>1</sup>**

**All obvious speech should have some form of subtitle accompaniment.** Subtitle appearance should coincide with speech onset and subtitle disappearance should coincide with the end of the corresponding speech segment.

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<sup>1</sup> 160wpm corresponds to 800 characters per minute and uses 2 seconds per line. These speeds are increased to 180wpm when add-ons are used (increasing the reading speed by one eighth again).





**Synchronisation should be at naturally occurring pauses in speech-sentence boundaries, or changes of scene.**

The same rules of synchronisation should apply with off-camera speakers and even with off-screen narrators.

#### **4. Shot Changes**

Camera-cuts in the middle of a subtitle presentation cause the viewer to return to the beginning of a partially read subtitle and to start re-reading. In practice, it is recognised that the frequency and speed of shot changes in many programmes present serious problems for the subtitler.

General guidance for dealing with camera-cuts are as follows:

- i) Subtitles that are allowed to over-run shot changes can cause considerable perceptual confusion and should be avoided.**
- ii) Shot changes normally reflect the beginning or end of speech therefore subtitles should commence on a shot change when this is in synchrony with the speaker.
- iii) A subtitle should be 'anchored' over a shot change by at least one second to allow the reader time to adjust to the new picture.
- iv) The insertion of a subtitle less than one second before a camera-cut and its removal less than one second after should be avoided.
- v) Where practical subtitles should be in exact synchrony with a camera-cut.
- vi) A decision to segment a single sentence into more than one subtitle, to be placed around a camera-cut, should depend on whether the sentence can be segmented naturally and on whether the resulting subtitles can be allowed sufficient display time.

#### **5. Special Techniques**

##### **5.1 Emphasis and Phrasing**

**Text in upper case characters can indicate an increase in volume, for example shouting, while emphasis of an individual word can be achieved by a change in colour.**

##### **5.2 Tone of Voice**

**Where tone of voice is particularly critical to meaning, and facial expression and body language are inadequate to convey the tone, the use of '(!)' and '(?)' immediately following speech can indicate sarcasm and irony.**



### 5.3 Speaker Identification

The use of colours to identify individual speakers is particularly helpful although over use is known to confuse. Where possible, therefore, each speaker should be identified by a single colour consistently throughout the programme.

An alternative is to use subtitle screen position and justification to support speaker identification. Each subtitle can be displaced horizontally towards the appropriate speaker although careful positioning will be needed when characters move about while speaking. Colours may still be added.

### 5.4 Off-Screen and Off-Camera Voices

When the source of off-screen/off-camera speech is not obvious from the visible context, special techniques should be used.

*Off-camera speakers are effectively indicated by using the 'greater than' (>) or 'less than' (<) symbols as appropriate.*

When off-screen speech is employed throughout the programme, eg as in narrative documentaries, the common approach is to centre subtitles without symbols.

Other situations where the source of speech is not immediately apparent include telephone voices, radios, tannoy announcements, etc. It is helpful to accompany the first subtitle from these sources with a labelled (See **2.9 Other Techniques**). caption:

LOUDSPEAKER:
"Fasten
your seat-belts,
please."

Character-name labels are sometimes necessary for clarification, eg for crowd scenes or scenes enacted in the dark.

JOHN:	What's
happened	to the
lights?	



## 6. Dialogue Techniques

**All obvious speech should be accompanied by subtitle information**, but under conditions of rapid dialogue, several short subtitles displayed in rapid sequence can result in staccato or ‘machine-gun’ effect. There are two possible solutions for this:

- i) Use of Double text when more than two characters speak simultaneously and contradict one another for example:

<i>Do you want to go now?</i>	
	<div>Yes.</div> <div>No</div>

Both person's speech is contained within one subtitle where the appearance of each subtitle should form the beginning of the corresponding speech segment

- ii) Use of add-ons or cumulative titles

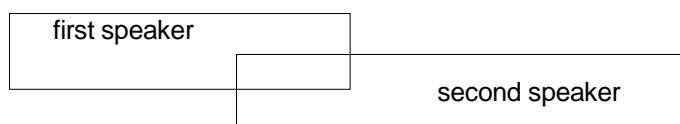
This is most effective when the two subtitles fit naturally together, for example in a question and answer sequence, or providing the punch line of a joke. Here the second part of the title is added on to the first part at the onset of the second utterance.

A further advantage of add-ons is that they appear more natural when the two corresponding speakers are not shown in the same camera shot.

Add-ons should be used with care as they can cause the first part of the cumulative title to be re-read, resulting in a frustrating 'false alarm'.

## Add-on techniques

In both double-text and add-ons, the second part should normally appear on the line immediately beneath the first part. If the second speaker is positioned to the screen right of the first speaker, then the second part of the double-text is displaced towards the right:



A general guide to the use of double-text and add-ons may be stated as follows:

- i) Double-text can be used when two characters or more speak simultaneously.
- ii) Add-ons should normally be preferred when two or more characters speak consecutively and time does not allow individual subtitles.
- iii) The total length of either double-text or add-on sequence should never exceed four lines.



## 7. Other Techniques

- i) Single quotes '...' can indicate non-synchronous speech, eg a voice-over or thoughts or nothing on screen visibly connected with speech.
- ii) Unmarked text in upper and lower case indicates synchronous speech, i.e. the speaker is visible (most of the time) and titles follow.
- iii) Double quotes "..." can suggest mechanically reproduced speech, eg radio, loudspeakers etc or a quotation from a person or book.
- iv) Text in brackets can indicate whispered speech or asides.

*(SLURRED) He wasn't there.*

- v) Brackets can also be used to indicate the way in which a person speaks:
- vi) The source of speech can be labelled by using capital letters followed by a colon:

**LOUDSPEAKER:**  
"Fasten  
your seat-belts,  
please."

**JOHN:** *What's happened to the lights?*

- vii) Uncommon abbreviations, such as SFX, should be avoided.

## 8. Sound Effects

**Any relevant sound effect not immediately obvious from the visual action should be subtitled.** This includes sound effects that become apparent in the subsequent action, eg the telephone ringing before it is picked up, an explosion occurring outside before everyone dives under the table.



Descriptive statements are normally preferable to onomatopoeic spellings for sound effects. But context and genre (cartoons versus drama, for example) must be taken into consideration.

GUNSHOT is usually preferable to BANG!!!

Sound effect subtitles can also be used judiciously to create the background atmosphere for a scene:

ROAR FROM AUDIENCE

LIVELY CHATTER

The use of background colour (eg white text on a red background) and upper-case text, provide a distinction between sound effect subtitles and speech subtitles.

## 9. Music

**At the very minimum, the title of the music playing should be given.** Where possible the words of a song should be included. This is especially important where the programme is to be viewed by younger people. Pop programmes, opera and songs connected to the story line are particularly important areas.

Song lyrics should be subtitled verbatim; but, if the pace of the song is very rapid, whole couplets or verses may be omitted.

The lyrics of a song should be made obvious by means of a sign. The 'hash' or 'sharp' sign is most commonly used. Where speech and song are interspersed, care should be taken to signpost each title correctly.

Provision of an occasional subtitle for mood music, if it is significant to the plot, can be very effective:

# IRISH TRADITIONAL MUSIC

Such subtitles should be used only sparingly.

Occasionally, consecutive scenes are enacted in pitch darkness, and scene changes are signalled entirely by changes of incidental music. In such cases, if time permits, the subtitler should use subtitles such as:

# LIVELY DANCE BAND MUSIC

Then, when the tempo of music changes dramatically, it is followed by:

# MOVES INTO SLOW DANCE MUSIC

Thereby deaf viewers are made aware of the scene change.



## **10. Silence**

**Long speechless pauses in programmes can sometimes lead the viewer to wonder whether the teletext system has broken down. It can help in such cases to insert an explanatory caption such as:**

INTRODUCTORY MUSIC

LONG PAUSE

ROMANTIC MUSIC

## **11. Failure of Subtitles**

Losing subtitles is as frustrating for the hearing-impaired viewer as losing sound is for the hearing viewer.

**If subtitle insertion fails, it is important that there is a prompt transmission of an appropriately worded apology caption and, if restoration of transmission is delayed, an early explanation is to be given.**

## **12. Acquired Programmes**

When broadcasters are converting acquired subtitling to meet the minimum standards set out in the guidelines, it is accepted that complete synchronisation or the presentation rate standards may not be possible.

## **13. Subtitling for the intended audience including children**

The typical pace and complexity of subtitling can exclude a minority of less able readers within the deaf community. For many pre-lingually deaf children, a subtitle presentation rate of 70-80 words per minute is appropriate.

Three main editing devices should be remembered:

- i) Reduce the amount of text by reducing the reading speed and removing unnecessary words and sentences.
- ii) Represent the whole meaning.
- iii) Increase the use of three-line subtitles and reduce the number of add-ons.

Subtitles should accurately reflect the spoken word and as such should not be censored.

### **13.1 Children's Subtitles**

While many deaf children over 11 years benefit from standard subtitling, those under the age of 11 years need simpler subtitles. The following guidelines are recommended for the subtitling of programmes targeted at children below the age of 11 years.



- i) **There should be a match between the voice and subtitles as far as possible.**
- ii) A strategy should be developed where words are omitted rather than changed to reduce the length of sentences.

#### **14. Real-time subtitling**

The production and transmission of subtitles in real time can present considerable problems for both the subtitler and the viewer. Current subtitling techniques, particularly for live broadcasts, do not provide the same high-quality service expected from pre-prepared scripts. **Such techniques should be limited to occasions when there is insufficient time to prepare subtitles using other methods.**

**The construction of subtitles for informative subjects such as news should convey the whole meaning of the material.**

##### **14.1 Guidelines for Real-time Subtitling**

In all cases efforts must be made to adhere to the following:

- i. Subtitles should contain a reasonable percentage of the words spoken.
- ii. Key facts should appear as a good percentage of the spoken message
- iii. Avoid key facts which are unnecessary or different from the original.
- iv. Where possible, avoid non-linguistic line breaks (splitting verbs etc).
- v. Attempt to avoid overrunning shot changes (synchronisation).
- vi. Avoid subtitling over existing video captions (in news, this is often unavoidable, in which case a speaker's name can be included in the subtitle if available).
- vii. Send an apology caption following any serious mistake or a garbled subtitle; and, if possible, repeat the subtitle with the error corrected.

When cueing prepared texts for scripted parts of the programme:

- i) Try to cue the texts so that they closely match the spoken words in terms of start time.
- ii) Try to include speakers' names if available where in-vision captions have been obliterated.
- iii) Do not cue texts out rapidly to catch up if you get left behind - skip some and continue from the correct place.



## **15. Digital Services**

The advent of digital television offers the possibility of visual and technical enhancement of subtitles. One such way is the introduction of a clearer and more legible font and the use of symbols. The purpose of these changes is to increase the user's enjoyment of television. They should not be introduced in a way which detracts from the prime purpose of the subtitling service, which is to facilitate the understanding of programmes by deaf and hard of hearing people.

The guidelines set standards on converting existing subtitle files authored in analogue for use on Digital Terrestrial Television (DTT) and other digital services such as satellite and MMD. It is not intended that these guidelines should inhibit future enhancements, but rather to control progress so that changes that deviate radically from current practice should be made only after careful consideration and consultation.

- i) Any Digital Terrestrial Television (DTT) shall use the Tiresias font for all subtitles.**
- ii) Other digital services should be encouraged to use this format or as close it as may be possible.**
- iii) The nominal size of subtitles shall be 24 television lines for the capital 'V'.**
- iv) For reasons of latency, use of intensive four-line subtitles, to include those within "add-ons", shall be avoided. (Latency means the presentation of subtitles to the screen. Intensive subtitles mean those where the subtitle rows contain a considerable amount of text).**
- v) Subtitles converted from existing EBU 3264 files (or similar) or from pre-recorded live 335 tapes shall as closely as possible retain the positioning and line breaks of the original.**
- vi) The range of colours shall be limited to 12 that shall closely replicate the range associated with analogue teletext delivery.**
- vii) The present practice of using '#' to indicate music may be changed to use of two semi-quavers as part of the Tiresias set.**

## **16. OTHER MATTERS**

### **16.1 National Emergencies**

Deaf and hard-of-hearing people need to be kept informed about national and local emergencies.

**When information about emergencies is being broadcast, the same information, including relevant telephone numbers, should be provided, preferably in open captions leaving sufficient time to write the details down.**





## 16.2 Apology Captions

**Where practicable an appropriate apology or explanation is to be transmitted as soon as possible after any loss of subtitles.**

Broadcasters, that are required to provide subtitles, must ensure that conventional subtitles (transmitted on a dedicated line within the VBI and are normally accessed via Page 888 on the remote control), are provided on all analogue terrestrial and digital satellite transmission services. Such broadcasters should, as far as possible, ensure that subtitles can be carried through on re-transmission systems including, but not limited to, cable and MMD systems.

Broadcasters are encouraged to develop experience in the provision and transmission of digital subtitles. Where subtitles are provided simultaneously in both conventional and digital modes, the conventional subtitling capacity only will be taken into account in determining the subtitling targets.



## **BAI Guidelines Irish Sign Language**

### **Introduction**

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This is the **BAI Guidelines - Irish Sign Language** document. In this document the BAI outlines the general and technical standards required in relation to Irish Sign Language provision. These guidelines are intended to support the implementation of the BAI Access Rules regarding Sign Language. The BAI acknowledges the assistance of the 'Guidance On Standards for Sign Language' document produced by Ofcom, in the preparation of this document. The guidelines may be changed from time to time, as deemed appropriate.

### **Irish Sign Language**

Irish Sign Language is the indigenous language of the deaf community in Ireland. It is a visual, spatial language with its own syntax and complex grammatical structure. Each sign language is particular to the country of origin. The targets outlined in the Access Rules refer to Irish Sign Language provision.

### **1. Format**

There are two ways of providing sign language access to programmes:

- (i) **Interpretation.** A person interprets and signs live or recorded programmes or programme segments. The image of such an interpreter is usually superimposed on a programme. This is referred to later in this document as an overlay insert.
- (ii) **Presentation.** A sign language presenter, narrator or reporter provides the main language in the programme or programme segment. The signs are then interpreted into a 'voice over', with the addition of subtitles or captions as appropriate.

Both presentation and interpretation are valid methods of meeting the requirements of the Access Rules.

### **2. General Requirements**

#### **2.1 The form of sign language provision**

Under the current technical arrangement of the analogue transmission system signed programmes can only be broadcast in an open format.

#### **2.2 Signing competence**

Broadcasters should ensure that sign language interpreters have a level of competence and fluency in Irish Sign Language.



### **2.3 Off-screen sounds**

The sign language interpreter or presenter should indicate the presence of off-screen sounds (e.g. a ringing telephone, the knocking of a door or a gun shot) where these are important to the understanding of the programme.

### **2.4 Synchronising**

Sign language interpretation should start at the same time as speech. This may not always be practical during the interpretation of live programmes.

The use of autocues has been found to be a useful aid to deaf interpreters and can help towards synchronism.

The timing of signed sentences should be as close to speech as possible. Equally with sign language presentation, a “voice over” sentence should also be as close to the sign language as possible.

It should be noted, however, that Irish Sign Language and the English language have a different grammatical structure so that the two cannot match each other directly. Every effort, where practicable, should be made to provide equivalent information to all viewers.

### **2.5 Monitoring**

Broadcasters should monitor the effectiveness of the service through contact with deaf people and their representatives.

### **2.6 Apology for loss of service**

Where practical, a visual caption or subtitle should be displayed when there is a breakdown in the service.

## **3. Guidelines specific to Irish Sign Language interpretation**

### **3.1 Quality of display**

The presentation of the signer on the display screen should be of sufficient size and resolution to show all movements of the full upper trunk together with arms, hands and fingers, shoulder, neck and all relevant facial movements and expressions. All important gestures that convey meaning through sign language must be easily and accurately recognised.

### **3.2 Size and shape of overlaid inserts**

The size of the overlay must ensure that the body and facial expressions referred to above are easily discernible from normal viewing distances. Where practicable a signer's image, when at rest, that is notionally framed to occupy at least one sixth of the picture area would normally be sufficient to ensure this condition is met.

For programmes primarily aimed at deaf people and in the “open” format a useful technique, can be to reduce the visual image by, for example, 25 per cent and use the subsequent blank area to place the interpreter.



### **3.3 Choice of dress and background colours**

It is important that the person signing can be clearly distinguished, for example by means of contrasting plain colours and suitable lighting. The visual appearance of the interpreter (e.g. choice of clothing and dress accessories) should not cause undue distraction to the viewer.

### **3.4 Speaker identification**

This can be achieved by the signer using such techniques as referencing to a person by shifts in the eye gaze and body positioning or giving the speaker's name and reflecting his or her manner. (This technique is known as characterisation).



## **BAI Guidelines Audio Description**

### **Introduction**

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This is the **BAI Guidelines – Audio Description** document. In this document the BAI outlines the general and technical standards required in relation to Audio Description provision. These guidelines are intended to support the implementation of the BAI Access Rules regarding Audio Description. The guidelines may be changed from time to time, as deemed appropriate. The BAI acknowledges the work conducted by the former AUDETEL consortium and the assistance of Ofcom's Guidance on Standards for Audio Description document in the preparation of this document.

### **Audio Description**

Audio Description is a commentary that gives a viewer with a visual impairment a verbal description of what is happening on the screen at any given moment, as an aid to the understanding and enjoyment of the programme.

#### **1. What to describe**

The following is a summary of the elements of a programme which should be described.

##### **i) Characters**

The character's dress, physical attributes, facial expressions, body language, ethnic background (if relevant to the storyline) and age should be audio described.

##### **ii) Locations**

The location including scene changes, whenever possible should be described.

##### **iii) Time of day**

The time of day, where appropriate, should be described.

##### **iv) On-screen action**

The action on the screen should be described.

##### **v) Sounds or sound effects**

Sounds or sound effects which are not readily identifiable should be described.

##### **vi) Subtitled captions**

Any on-screen signs or writing which are relevant should be described.

##### **vii) Opening Titles and/or End Credits**



## **2. When to describe**

**It is important that the audio description does not encroach on the dialogue.**

Audio description should occur when there are breaks in dialogue. It can only encroach upon dialogue which is inconsequential or is being subtitled or captioned and only then to impart relevant information or to read the subtitle or caption. If necessary it can occur over song lyrics.

Audio description should not occur over mainstream dialogue. It should not occur over sound effects, where they complement the film or the description or over critical background music.

## **3. What not to describe**

The describers personal opinion in relation to the on-screen action should not be described. For example, something unseen such as the motivation or reasoning for the action on screen should not be described.

If there are mistakes in editing or continuity, these should not be replicated in the audio description.

## **4. Programme Sound Level**

When a descriptive commentary is inserted into a programme, the background level of programme audio needs to be reduced, so that the description can be clearly heard. Care should be taken to ensure the narration sound level does not exceed that of the background.

Generally the narration should be fixed at a constant level. The narrative voice is fixed at a constant level at the start of the recording while the degree of fading of the main sound level at the appropriate junctures can be predetermined by the work station.

## **5. Audio Description Recording**

Unlike sighted viewers, who have the benefit of both visual and aural information, visually impaired viewers rely on the clarity of every word. The description therefore must not be hurried; every word should be clear, audible and timed carefully so that it does not sit uncomfortably close to incoming dialogue.

Whilst the voice should be neutral, it may be important to add emotion at different points in different films to suit the mood and the plot development. In comedy, the narration should be steady but delivered with a slight smile. The description should not, however, become a performance in its own right.

The use of 'filmic' expressions such as 'the camera pans left' etc should be avoided. A description should not censor what is on the screen.

## **6. Grammar and Language**

- i) Present tense should be used with 'present continuous' for on-going activities.
- ii) As much as possible, complete sentences should be used.



- iii) It is important that proper names are used. Visually impaired viewers need to be clear with regard to which character the description refers. The use of 'she'/'he' can be confusing for the audience. Any potential for ambiguity when there are several people on screen at once should be clarified with reference to proper nouns.
- iv) Descriptive adjectives are important but must not reflect the personal view of the describer.
- v) 'We see...' 'In front of us...' should generally be avoided.

## **7. Prioritising information**

Setting the scene is an essential part of audio description and without guidance the visually impaired viewer can lose the thread of a story or narrative.

When several people are speaking at the same time, it is important to clarify who is speaking at any given moment. Frequently repeating proper names is helpful so the viewers are left in no doubt as to who is doing or saying what.

Avoid colourful imagery or elegant turns of phrase except where such language complements the style of programme.

Avoid giving too much detail. Minor description details, unless they are the subject of the programme need not be mentioned.

Avoid providing too much description which can dilute the mood of a scene or be exhausting or even irritating.

Personal opinion should not be given or events interpreted, but it is equally important that visually impaired viewers are given key visual clues which may otherwise be missed.

Description should avoid stating the obvious, for example a telephone or doorbell ringing does not need to be described, unless the actual sounds are unfamiliar.

## **8. Soap operas**

Most soap opera does not allow for lengthy descriptions, as dialogues follows rapidly and there are very few purely visual sequences. Visually impaired viewers, who regularly view soap operas, soon become familiar with the character's voices. When a new character is introduced it is helpful to speed up the familiarisation by describing the physical aspects but no need to provide extra biographical information as that can be achieved over the subsequent weeks.

## **9. Current affairs documentaries**

Current affairs programmes offer less scope for description because they tend to be wordy, but each programme should be assessed individually. Subtitles or captions within such programmes should be described.



## **10. Sporting and Live Events**

Combining the description of live programmes with an existing commentary is difficult but can be achieved for some programmes.

Broadcasters can be encouraged to consider the requirements of visually impaired people without the need for audio description (by reducing reliance on on-screen text and tabular data).

## **11. Children's programming**

The BAI has determined that special emphasis should be placed on access services for children. When a description is being written specifically for children's programmes, the vocabulary and sentence construction should be suited to the age group for which the programme is intended. The tone of the narration should also reflect the tone of the programme.

## **12. Apology for breakdown of service**

Where practicable an appropriate verbal apology or explanation is to be transmitted as soon as possible after the loss or breakdown in the audio description service.





# **Broadcasting Authority of Ireland**

## **Appendix 7 Review of Practices in Other Jurisdictions**

Jurisdictional Review of regulations, practice and related legislation in respect of the provision of access services in audio-visual media in a range of jurisdictions.

Prepared on behalf of the Broadcasting Authority of Ireland (BAI)

by Deirdre Kevin, Commsol

July 2017

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# 1. Executive Summary and key findings of research

## 1.1 Purpose of the research

The aim of this report was to provide the Broadcasting Authority of Ireland with an update on developments in the area of regulating accessibility of audiovisual services for people with disabilities. This was achieved by specifically examining developments in 9 jurisdictions (5 Anglo-Saxon, and 4 other European), and by reference to two questionnaires (with feedback from more than 20 other European jurisdictions). A review of developments with regard to obligations at the European and international level was also provided.

Several specific issues were of interest to the BAI and have formed a range of thematic reviews (dealt with below) including: the treatment of different types of broadcasters; developments in the regulation of online and on-demand services; the regulation of access services on minority and foreign language services; and types of funding and support that are available to facilitate the provision of access services. A further thematic focus reports on issues looking at the distribution of access services was also added.

An overall bench-marking of the BAI's rules against the regulatory regimes in this range of countries served to highlight where the rules are in line with other regulatory approaches and also to indicate new trends or approaches that could be considered as useful or necessary in the review process.

## 1.2 The European and international context of accessibility requirements

Chapter three focuses on the overall European and International context of obligations regarding accessibility for people with disabilities, and notes that this is growing and has **expanded to focus on a broader range of issues regarding access to, and use of ICT and digital technology**, which also has direct impact on both linear and non-linear audiovisual services (with the forthcoming European Accessibility Act). Such developments have already taken place in the US with the 21<sup>st</sup> Century Communications and Video Accessibility Act of 2010.

The provision of equal treatment to people with disabilities has been **strengthened as a human right** since the adoption of the Convention on the Rights of People with Disabilities. This Convention has yet to be ratified in Ireland. This will be achieved via the adoption of the Disability (Miscellaneous Provisions) Bill 2016, which appears to still be in a drafting stage and hence the potential provisions here with regard to accessibility of information and communication services is not yet clear.

Regarding the development of legislation at the EU level, both the European Accessibility Act and the updated Audiovisual Media Services (AVMS) Directive are in the negotiating stage. While the European Commission proposal removed accessibility references from the proposed AVMS update stating that these issues would be dealt with under the Accessibility Act, there is now a joint statement from various stakeholders, and several opinions from European Parliament committees advocating the return of access issues to the AVMS (and in many cases also advocating the strengthening of these provisions). It is **not yet clear under which EU legislation the accessibility of audiovisual services will fall**, and whether the AVMS will deal with content, while the Accessibility Act will focus on equipment and functionality issues.

Finally, as is no doubt apparent to the Irish regulator, a significant development at the EU level is that of Brexit, which will (most likely) imply that the UK audiovisual market will no longer be regulated under the AVMS. Several industry briefings on the impact on the UK sector note that the cross-border activities of UK broadcasters will then rely on the European Convention on Transfrontier Television, although this convention does not apply to non-linear services. Ireland is not a party to the Convention, and neither is Denmark (while Sweden has never ratified). It remains to be seen how UK media services will operate in Ireland (and these other significant markets for the UK broadcasters). In general terms, all BAI policies may be ***impacted by this changing relationship and the desire for UK broadcasters to continue their "Ireland targeted" services.***

### 1.3 Obligations on different types of broadcasters

As noted in much of the previous research in this area, public service broadcasters frequently have higher obligations than commercial broadcasters. However, there remains great variety in the approaches throughout the jurisdictions (reviewed in Chapter four). In many cases, public service broadcasters have more strict obligations, or may be the only broadcasters with obligations (as in Denmark).

Public and private may be treated in the same way but with obligations only placed on free to air DTT channels (Bulgaria, Portugal, Spain), or unencrypted channels (the Belgian French Community). In some countries both types of channels may have the same obligations but be distinguished by category on the basis of ***audience shares, or on the basis of turnover*** (their power in the market). Often both free to air and pay TV have obligations. These may be the same and depend on audience share (UK), or there may be a clear distinction between the obligations placed on free and subscription television (Canada).

The placing of specific ***obligations on channels that target other countries*** but are established in the national jurisdiction is a policy most apparent in the UK, the rationale being Ofcom's "*duty to regulate in ways that are transparent and consistent*", and to place obligations on non-domestic broadcasters that are "*consistent with the arrangements for domestic channels.*" The French CSA places the same obligations on all channels regardless of their target country or availability. In theory, this would apply to all channels that fall under a national jurisdiction and qualify under the criteria (public/private, audience share, turnover etc.). What distinguishes in particular the UK system is that the Ofcom, when applying obligations, assesses the position the channels hold in each of the markets they target.

In Ireland, the decision to place obligations on TV channels is carried out on a case-by case basis and assessed according to a range of principles (with regard to serving the audience with high quality access to as broad a range of content as is possible), and according to certain influencing factors (concerning the particular channel and its nature, programming, capacity and financing etc.).

Certain types of programming, and/or niche channels that focus on certain types of programming, may have ***reduced obligations or be exempt from obligations***. Examples include news channels, children's channels, sports channels and music channels. The French regulator has particular arrangements with niche content channels. In the USA, distinctions are also made between programming on the basis of its age. Higher obligations are required for new programmes and those created after the introduction of legislation. The proportion of older programming with accessibility is increased gradually.

Policy approaches differ widely across Europe and in other jurisdictions. These policies are often designed to fit the specific national market and hence it should be borne in mind that no one model is correct

#### 1.4 Accessibility in broadcasters' online services and in on-demand services

There are several areas of relevance in the regulation of the online content of broadcasters, and in the regulation of on-demand services with regard to accessibility that emerged from an examination of various jurisdictions (as outlined in Chapter five). As this is a relatively new area of regulation, the ***soft regulatory approach to "encourage"***, "invite", "recommend" the provision of access services on on-demand content is prevalent throughout Europe.

There also exist ***specific obligations*** on on-demand services with regard to the provision of access services, which may be equal to, or less strict than, those that apply to linear television. These are mainly to be found in the regulations in North America. In Canada, Subscription Video on demand (SVOD) is regulated in the same way as Pay TV, where all content must be captioned.

Regarding the UK, this may change with the passing of the Digital Economy Act. Another European example in this context is Greece where on-demand services must provide 20% of content with Greek subtitling (it is not clear whether this provision emerges from language policy, accessibility policy or both).

An interesting requirement is the inclusion of access services with content on the on-demand or catch-up services of broadcasters when those services were available on that content on a linear service (Canada and the USA). In other words, broadcasters in both of these countries have to ***transfer captioning (subtitling) that appeared in broadcasting when putting the content online***. For the US, this refers to all online content (when previously broadcast with captions), and not just the content on broadcaster websites.

As a way of alleviating some of the burden on broadcasters, and also encouraging accessibility online, in several countries, ***accessible online content can be part of the overall quotas*** in the provision of access services by broadcasters (Belgium, Sweden, Finland), but this may be limited by percentage (usually 30%) or by type of access service (in Sweden it does not apply to subtitling). Finally, as with linear content, on-demand content that includes access services should be promoted and findable (for example in the Slovak Republic).

#### 1.5 Access rules and regulation of translation of content: crossover and impact?

The question as to whether there is any cross-over between language policies and access policies is addressed in Chapter six. Countries where the other significant national (or other official) languages have the same obligations as the first include: in the US (English and Spanish, although Spanish came later); in Canada with regard to English and French (here again French was added later due to the improvements in language recognition technology for French); and in Finland where accessibility rules apply to Finnish and Swedish language content. In general, there is no obligation to provide accessibility on third language or foreign language programmes in these countries.

In Catalonia, the Aranese language is a co-official language and the Catalan PBS offers provides (translation) subtitles in Aranese but not accessibility services. This is the case for all of the co-official languages in Spain and relates to the promotion of minority languages.



Regarding the role that providing translation/subtitles of a minority or foreign language may contribute to accessibility quotas, there are a couple of important examples. The US regulations state ***that subtitling from a foreign language can qualify as part of the captioning*** quota for a television channel. Presumably there is not so much content that is in an additional language (aside from English and Spanish)

In the UK, for the purposes of the quotas enforced by Ofcom, ***hard-of-hearing (HoH) subtitling is treated the same as foreign language subtitling***. Where foreign language subtitling forms an integral part of the picture ('open' subtitles) it is not practicable to include HoH subtitling as well. Despite this, Ofcom encourages broadcasters to include HoH subtitling of domestic language programming when fulfilling their quotas. The Welsh language channel S4C has similar obligations to the other public service broadcasters (aside from the BBC). The channel provides both English and Welsh language subtitling. According to the response from the regulator both count as part of the quotas. In addition, both language subtitling and HOH subtitling are accepted as fulfilling the quotas for hard-of-hearing subtitling.

This question was addressed in the questionnaire prepared for the BAI and distributed via the EPRA, the platform for regulators in Europe, including the BAI. Several respondents to the questionnaire noted that in one sense the "open subtitling" on foreign language may often be a significant source of accessibility. The requirement to provide subtitling (or translation) of foreign content often originates in language legislation and policies (Ukraine, Estonia). The Catalan regulator also recognised that translation has helped reducing the need for accessibility services like subtitling, but only for some content such as film or series. They noted, however, that the accessibility services have to provide access to all sorts of audiovisual content.<sup>1</sup>

Several respondents stressed that language translation or ***language subtitling are not recognised as accessibility services*** (Poland). Although this contributes to the accessibility issue, it is not considered the same as a specific subtitling, which might contain colour codes, positioning on the screen, large fonts, etc. (Belgium). The respondent from the French regulator did not see that such subtitles present a possible improvement for accessibility.

Clearly the question is market related and may be influenced by the amount of subtitled content available in the country. With regard to audiovisual content in a foreign language, this tends to be dubbed in France, Germany, Italy, Spain and Poland. However, subtitling is used in the Netherlands, the Nordic markets, and many Eastern and Southern European countries: Estonia, Latvia, Lithuania, Slovenia, Croatia, Romania etc. Subtitling is also used in Ireland and the UK, but the proportion of content that is not in English is far less than in many other countries.

## 1.6 Costs, funding schemes, and other market factors

A key issue in the obligations for the provision of access services is that of costs. Many approaches are taken to help to mitigate these costs, to provide alternative solutions or to provide support for the provision of access services, and these are outlined in Chapter seven.

In many jurisdictions, there exist systems that allow a media service provider to be completely exempt, to be exempt for a time period, or to have reduced obligations, in particular where the ***provision of such services is causing an undue financial burden*** (for example in the USA, the UK and Australia).

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<sup>1</sup> BAI/EPRA Questionnaire 2017

The examination of a range of jurisdictions revealed that there may be **certain niche channels that have less obligations** (or are exempted) and other niche channels that may have particular obligations adapted to the nature of their content. Examples include news channels, music channels, children's channels and sports channels. Here, the grounds for exemption (or reduction of obligations) might not strictly be financial, but rather relate to other market factors such as the content, how it is produced and for whom. For example, there is a difficulty in subtitling live programming (news, sports, etc.), while for young children's programmes the necessity to use subtitling may be removed due to the inability of the age group to read text

The UK has established **a system of co-operation** via a trust (British Sign Language Broadcasting Trust) allowing broadcasters to contribute to specific projects for the production of accessible content (with sign interpretation) in lieu of certain quota requirements (UK). It is interesting also to note that there are a range of collaborative, co-operative projects developing web portals, aggregating content and sharing content (Greece, Slovenia).

There are several countries where a major effort is being made to **maximise the amount of content that is produced with access tools** built in.

The methods include **obliging content producers to include captioning and audio description** in the production of content supported by any public funds (film and/or TV) (Australia, Canada, Germany) or specific public funds (Ireland, in relation to the Irish Sound and Vision scheme). The Belgian CSA also indicated that a similar legislation was under consideration there. There are also ways in which content producers are **encouraged to include captioning and/or audio description** in the production of content supported by public funds by making this one of the selection criteria (Croatia, Ireland, France).

Countries also **providing specific funding** via public production funding schemes which enable audiovisual works to be produced with both subtitles and audio description (France, Slovenia). In addition, specific funding via public production funding schemes which **support the transfer of the accessible elements of works to digital distribution**: television, video and video on demand (France), or support the development of the appropriate technical infrastructure for dissemination of programmes (Slovenia)

Finally, there are a range of **Government funded or charity funded non-profit organisations** that create subtitling or captioning (New Zealand, the USA), or facilitate the gathering of accessible content (Greece). Some examples of tax credits were identified in the research (Canada, USA). In the case of New Zealand, no obligations exist. However, several studies quote data claiming that around 35% of content in New Zealand is captioned (which is far lower than in those countries with specific obligations).

The research has highlighted the **importance of cooperation between the various actors on the value chain** i.e. the different sectors of the media content industry from production to aggregation to distribution. This is recommended by the Canadian regulator and encouraged by the UK regulator. The Swedish Broadcasting Authority has developed an area on its website in order to disseminate knowledge and best practice to further assist small players with limited resources. Here the broadcasters can find: information about different access technologies; information from players who have experience in promoting access to TV programmes through various techniques; and information on disability organisations for consultation and dialogue purposes.

One issue that was considered important to examine in the course of this report was the extent to which operators in other jurisdictions had problems with there being a limited number of suppliers creating accessibility tools for content. This did not arise in the research of the various jurisdictions. It is worth noting that in its consultation procedure, the Swedish Broadcasting Authority indicated that they had communicated with five companies providing services.

## 1.7 Distribution, delivery, findability, and technical challenges

Chapter eight provides a brief overview on developments related to distribution of accessible content, and other technological changes that have brought both opportunities and challenges to the market.

A key area of the provision of access services concerns the way in which the additional content linked to programming is delivered to the consumer. One way in which the delivery of audiovisual services must take into account the provision of access services for people with disabilities is via ***must-carry rules***. Many countries include alongside the obligation to carry certain channels (for example public, free to air, local, community etc.) the requirement that distribution companies carried complimentary services, in particular accessibility services to enable appropriate access for people with disabilities (Denmark, Malta, France, Greece, Portugal, Switzerland and the UK).

The strongest obligations regarding the delivery and distribution of accessible content are in Canada and the USA. There are very detailed obligations in the USA regarding both the delivery of content to distributors, and the distribution of content by distributors. Distributors (and broadcast networks) must ***both "pass through" the captioning of the broadcasters, and also ensure a certain level of accessibility*** on their services i.e. captioning provided by the broadcaster must be delivered to audiences by the distributors and broadcast networks. Distributors (and broadcast networks) of a certain size must also ensure the delivery of video description (audio description). See more detail in chapter eight (or the USA country report).

Obligations were also found in Belgium (French-speaking community) where there are requirements for distributors (obligations of conduct) to do "everything they can" to route subtitle and audio-description tracks when provided by the broadcasters. Both broadcasters and distributors must have an in-house contact person dedicated to accessibility issues. Requirements are also placed on the main distribution company in Portugal to ensure that services for people with disabilities are received by end-users

While in most countries, there may not be specific obligations on distribution companies to deliver accessibility services, there have been a range of ***agreements, and initiatives*** with regard to particular platforms. This includes: in France (a project to develop a DTT receiver with vocalised (text to speech) in the French language); In Ireland (DTT set-top boxes must be able to receive, decode and display the various access services).

In Canada, distributors must ***make available to its subscribers such equipment, software or other technology*** that will allow any individual to identify and have access to accessible programmes. In the USA, a range of requirements have been put in place for video programming equipment, devices designed to record TV programmes, cables etc., in order to allow accessible content to pass through to the viewer. There are also requirements regarding user controls, remote controls, on-screen menus and programme guides. These issues are likely to be addressed at the EU level with the future European Accessibility Act.

A related issue is the question of “findability” and the **requirements to inform viewers of accessibility functions**. These requirements are present in a wide range of countries (the Belgian French-speaking Community, Canada, Ireland, Slovakia, Portugal, the UK, the USA). In several countries, while there is no requirement to do so, in practice the broadcasters are adding this information to programme descriptions and TV programme guides (Estonia, Finland), and also informing viewers during the accessible programmes (Finland).

It is well accepted that the digitisation of the media and the proliferation of platforms for content should enhance the availability of accessible content. In addition, there are **innovations such as two-screen technologies** that allow users to have content without accessibility elements on the main screen, while the second screen (e.g. a smartphone, a tablet) provides subtitles, audio description, audio subtitles or sign language interpretation, usually via an Internet connection. This is also being used in cinemas to enhance accessibility (see the Swedish country report).

As regards the challenges presented by new technologies, of significance is the **proliferation of technologies and standards for access services, especially when it comes to on-demand services and online platforms**. For media services this presents challenges when delivering content to different platforms, and to platforms in different countries.

Chapter 8 briefly refers to a range of European co-operative initiatives addressing the issues of standardisation. It is clear that co-operation is also necessary at the national level between different actors on the value chain. The UK has had several examples of such co-operation including the eAccessibility Forum, and the development of the ‘Smart Talk’ set top box. Ofcom also supports the Television On Demand Industry Forum, an example of cooperation and dialogue which has established an access services policy working group for content providers and platform operators to share experience and technical know-how with a view to increasing accessibility.

There are also several examples of funding support for distribution, and research into accessible technologies (Slovenia, France, USA).

## **1.8 Assessment of the BAI Rules**

Following the full analysis of the regulatory regimes in other jurisdictions, and the examination of specific themes, a comparison was made with the current BAI rules. The aim of this was to highlight where the code is in line with other regulatory approaches and also indicate new trends or approaches that could be considered as useful or necessary in the review process.

Regarding the overall gradualist approach of the BAI to increasing quotas on an annual basis, this is the approach taken in a significant majority of those jurisdictions where concrete obligations are implemented: Canada, France, the UK, Spain, Sweden, Portugal, the US.

Different types of channels frequently have different obligations with regard to the provision of access services: distinctions made between public and private broadcasters; free to air and pay broadcasters; generalist and niche programming broadcasters; large (regarding audience share) and small broadcasters, and broadcasters that target jurisdictions other than where they are established. It should be noted that these systems often reflect the particular characteristics of the national markets.

In general, public service broadcasters continue to have higher obligations. However, increasingly market share - ***the higher the market share, the greater the obligations*** - appears to be the general approach. A particular market share often serves as a cut-off point, or a point below which obligations are reduced (the UK, France and Sweden). As noted above, in Ireland, the decision to place obligations on TV channels is carried out on a case-by case basis and assessed according to a range of principles (with regard to serving the audience with high quality access to as broad a range of content as is possible), and according to certain influencing factors (concerning the particular channel and its nature, programming, capacity and financing etc.).

One distinction regarding the types of access services in Ireland concerns the fact that only public broadcasters have obligations regarding audio description and sign language. This contrasts with several countries where all the regulated channels have obligations regarding all three types of accessibility (the UK, Sweden); or where they all have obligations regarding subtitling and audio description (France, the USA). On the other hand, the Australian system only places obligations on broadcasters with regard to subtitling (captioning).

The tendency to describe obligations in terms of percentage (or hours) of programming per type (subtitling, audio-description, sign language) as in Ireland, France and the UK is growing. The Swedish authority recently updated their rules to reflect this and be in line with UK policy, as several major players in the Swedish market are licensed in the UK and they wanted the overall regulation to be consistent.

With regard to prioritising different types of content and time blocks, the BAI approach is similar to that of the Ofcom, requiring services to seek advice from disability groups about programming. There are frequent examples of emphasis being placed on the provision of news and information and emergency information. The joint proposal of the EDF, EBU and ACT to amend Article 7 of the AVMS proposes that Member States shall ensure that emergency information be provided, in an accessible manner for persons with disabilities, in more than one sensory channel. This proposal also reflects the opinion of several European Parliament committees, and hence may become an aspect of future regulation at the EU level.

The examination of a range of jurisdictions revealed that there may be ***certain niche channels that have less obligations*** (or are exempted) and other niche channels that may have particular obligations. Examples include news channels, music channels, children's channels and sports channels. In summary, it is quite common that certain types of programming and/or niche channels are either exempt, or have lower, or specifically agreed obligations. As Ireland is a small market with relatively few niche programming channels (aside from sport and children's channels), it may not be necessary to consider a particular treatment for certain content.

Regarding the time blocks of the broadcast of accessible programmes, in several large countries (UK, US, Canada and France) accessibility services are expected to be scheduled during peak viewing times.

In relation to imposing ***obligations on new channels***, the research found that in Australia and the USA, new channels and services may be exempt for a period of time. This aspect did not arise in relation to the regulatory systems in other European countries, including the UK. Presumably this is because of the audience threshold that applies in many European jurisdictions. A new service would have to reach a certain threshold of audience share in order to be included in those channels qualifying for obligations. The case-by case approach of the BAI appears to be a rational approach in assessing the situation of new channels.

As noted above, in relation to specific ***obligations on channels that target other countries*** the rationale of the British regulator Ofcom was its “*duty to regulate in ways that are transparent and consistent*”, and to place obligations on non-domestic broadcasters that are “*consistent with the arrangements for domestic channels*.” Several respondents noted that all channels will be treated equally regarding obligations (and regulated according to the qualifying criteria used for domestic channels – such as audience shares or thresholds). Again, the BAI looks at the relevant principles (with regard to serving the audience with high quality access to as broad a range of content as is possible), and influencing factors (concerning the particular channel and its nature, programming, capacity and financing etc.).

Regarding the requirements to inform viewers of accessibility functions and “findability” of content, the BAI code appear to be in line with the practice in other countries in this regard (Belgium (French-speaking Community), Canada, Hungary, Ireland, Portugal, Spain, Slovakia, UK). It may be worth considering to explicitly mention promotion on the website of the operators, and promotion on EPGs of distribution platforms in the BAI’s rules.

A significant aspect of the regulation of access services is the requirement to have dialogue with users of accessibility services and their representative associations. Such requirements may exist with regard to the media service providers, to the regulator, or to both.

Hence, the BAI approach to consultation appears quite similar to that in other countries, particularly in the UK. An interesting aspect that arose was the requirement in Belgium (French Speaking Community) that media service providers (and distributors) must appoint an internal contact person for issues related to the accessibility of programmes. It could be an option to formalise the dialogue (outside of consultation on programming) and to consider the requirement for “contact people” in broadcasting and distribution organisations.

The BAI like many European regulators does not place any ***obligations on distribution*** platforms to deliver and distribute accessible content. However, many European countries have included this in relevant “must-carry” rules. It would be useful if accessible content was considered as public interest content in all “must-carry” regimes.

The BAI does not (yet) regulate on-demand services. However, some interesting issues emerged with regard to the online content of broadcasters in the review. In the US and Canada, they are obliged to carry captioning (subtitling) from linear to non-linear services. Such obligations may be too much “ahead of their time” for the European markets. However, the possibility for broadcasters to ***include online accessible programming as part of the overall quotas*** (as in Belgium, Finland and Sweden) may encourage the provision of accessible content online and enhance co-operation regarding formats and standards.

In terms of alleviating costs for operators and supporting the availability of content, in comparison to many jurisdictions, Ireland has ***no specific system for applying a complete or temporary exemption*** that allow a media service provider to be completely exempt, to be exempt for a time period, or to have reduced obligations (for example in the USA, the UK and Australia). In addition, in some jurisdictions, particular types of content (as mentioned above) may be exempt or have less obligations. While the BAI’s rules do not provide for such exemptions, its compliance framework is responsive to difficulties that a broadcaster may face when meeting the requirements of the rules and this is examined on a case-by-case basis.

An innovative approach to alleviating burden on smaller operators is the UK system of **co-operation via the British Sign Language Broadcasting Trust** allowing broadcasters to contribute to specific projects for the production of accessible content (with sign interpretation) in lieu of certain quota requirements. It may be useful to consider such co-operations or exchange of content between broadcasters.

Finally, with regard to other areas where the regulatory authority already does, or potentially could enhance the availability of accessible content, it should be noted that Irish production funds, specifically those managed by **the BAI is contributing to a new trend in maximising the amount of content that is produced with access tools built-in.**

Obliging content producers to include captioning and audio description in the production of content supported by any public funds is also happening in Australia, Canada and Germany. As the Canadian regulator noted: *Making accessibility a consideration early in the creative process—not only in post-production— will help create a cultural shift that will result in accessibility becoming just another consideration in the regular course of doing business.*

The availability of funds (public or otherwise) to develop accessibility in content (as in Slovenia and France), or aid in the distribution of accessible content (Slovenia, France), or the inclusion of accessibility as a normal eligible cost (Austria) in a broader range of Irish funding schemes would also be beneficial.

## 2 Note on Methodology

This report was based on desk research of national and international laws, directives, regulations and codes in a range of jurisdictions regarding obligations on audiovisual media services to provide content in accessible formats.

The countries investigated in-depth (at the request of the BAI) included Australia, Austria, Canada, France, Germany, New Zealand, the UK and the USA. In addition, Sweden was added due to a recent change in the regulation and the fact that the regulator carried out a major review in 2015-2016. The country reports are provided in the index. These reports are not homogenous as the content is dependent on the detail of the regulation, and the range of information available.

Resources used included those available via the European Platform of Regulatory Authorities (EPRA) secretariat such as member reports, background working papers and questionnaires. A questionnaire was sent to EPRA members, by the EPRA Secretariat on behalf of the BAI, on several key issues relating to accessibility addressed in this report.

The data from a recent (November 2015) questionnaire on the regulation of accessibility of audiovisual media was kindly supplied for reference by the Swedish Broadcasting Authority.

For information on grants and subsidies to support the production of accessible audiovisual content, a range of television and film funding programmes were reviewed in (the key countries and also in others where relevant funds were identified from questionnaires): Austria, Australia, Canada, Croatia, France, Germany, Ireland, Slovenia, the UK, and the USA.

Several other reports and studies were accessed including: those produced by the regulators in the context of consultations; reports produced for the European Commission in the context of the review of the Audiovisual Media Services Directive; and other reports from a range of organisations, bodies and associations such as the European Regulators Group for Audiovisual Media Services (ERGA), the EU Fundamental Rights Agency, the European Audiovisual Observatory, and the European Broadcasting Union.

Several specific issues were of interest to the BAI and have formed a range of thematic reviews (dealt with below) including: the treatment of different types of broadcasters; developments in the regulation of online and on-demand services; subtitling on foreign and minority language channels; and types of funding and support that are available to facilitate the provision of access services.

Another thematic focus was added which addressed areas of distribution and technological development (regarding both opportunities and challenges) as these issues had arisen in the context of reviewing compliance issues, consultations, and costs and funding etc.



## 3 European and international context of access services obligations

### 3.1 European Union

#### 3.1.1 Disability and human rights

At the EU level, the Charter of Fundamental Rights addresses the issue of disability in its general equality provision (Article 21), and also in a specific article addressing the integration of people with disabilities under Title III Equality (Article 26).

#### EU Charter of Fundamental Rights

##### Article 21

##### Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.

##### Article 26

##### Integration of persons with disabilities

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

In 2011, the EU became a signatory to the UN Convention on the Rights of Persons with Disabilities (CRPD).<sup>2</sup> It was the first time that the EU had become a party to an international human rights treaty.

The Convention sets out minimum standards for protecting and safeguarding a full range of civil, political, social, and economic rights for people with disabilities. The EU has a commitment to building a barrier-free Europe in the EU by 2020, as set out in the European Commission's disability strategy.<sup>3</sup> One of the main areas for action is Accessibility: *Accessibility' is defined as meaning that people with disabilities have access, on an equal basis with others, to the physical environment, transportation, information and communications technologies and systems (ICT), and other facilities and services.*

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<sup>2</sup> EU ratifies UN Convention on disability rights: [http://europa.eu/rapid/press-release\\_IP-11-4\\_en.htm](http://europa.eu/rapid/press-release_IP-11-4_en.htm)

<sup>3</sup> See the European Disability Strategy (2010-2020). <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISSUM:emoo47&from=EN>. And the COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe. <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52010DC0636&from=EN>

### 3.1.2 Disability and audiovisual media

The current Audiovisual Media Services (AVMS) Directive includes an obligation on the provision of access services for people with sensory disabilities: *Article 7: Member States shall encourage media service providers under their jurisdiction to ensure that their services are gradually made accessible to people with a visual or hearing disability.*

According to various studies, the inclusion of this article has provided an impetus for the increase of availability of accessible content on audiovisual services in Europe (EPRA, 2013, Visionary Analytics et al, 2016).

The AVMS Directive is currently under review. The Commission proposal states that *Article 7 of the current Directive is deleted given that the proposed European Accessibility Act already sets stricter common accessibility requirements for media service providers.*<sup>4</sup>

In the course of the AVMS refit and Impact Assessment, it was noted in the Staff Working Document that: *It has also emerged from the REFIT exercise<sup>5</sup> that there are different accessibility requirements of audiovisual media services for people with disabilities. In December 2015, the Commission adopted a proposal for a European Accessibility Act, which sets accessibility requirements for a wide range of products and services including audiovisual media services. As such, this Impact Assessment will not address the issue of accessibility.*<sup>6</sup>

Several European Parliamentary (EP) committees, in their opinions on the Directive, have re-introduced and in some cases added force to article 7 (Committee on Culture and Education, Committee on the Internal Market and Consumer Protection, Committee on Legal Affairs, Committee on the Environment, Public Health and Food Safety, Committee on Civil Liberties, Justice and Home Affairs).

In addition, the main free to air broadcasters via their European Associations have made a commitment to the development of accessible content. With the European Disability Forum (EDF), the European Broadcasting Union (EBU) and the Association of Commercial Television in Europe (ACT) have made a common proposal to improve the accessibility of audiovisual media services for persons with disabilities.<sup>7</sup> This proposal largely reflects the proposals in the opinions of the EP Committees mentioned above.

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<sup>4</sup> Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2010/13/EU.

[http://www.europarl.europa.eu/RegData/docs\\_autres\\_institutions/commission\\_europeenne/com/2016/0287/COM\\_COM\(2016\)0287\\_EN.pdf](http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2016/0287/COM_COM(2016)0287_EN.pdf)

<sup>5</sup> The Commission's Regulatory Fitness and Performance (REFIT) programme aims to ensure that EU legislation delivers results for citizens and businesses effectively, efficiently and at minimum cost. REFIT aims to keep EU law simple, remove unnecessary burdens and adapt existing legislation without compromising on policy objectives. See more detail [here](#)

<sup>6</sup> COMMISSION STAFF WORKING DOCUMENT IMPACT ASSESSMENT. Accompanying the document: Proposal for a Directive of the European Parliament and of the Council amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services in view of changing market realities. <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52016SC0168>

<sup>7</sup> EDF press release (February, 2017). EDF & Broadcasters draw up common proposal to improve access to audiovisual media services. Available here: <http://www.edf-feph.org/newsroom/news/edf-broadcasters-draw-common-proposal-improve-access-audiovisual-media-services>

**Joint proposal EDF, EBU and ACT largely reflecting proposals of several EP Committees (the Committee on the Internal Market and Consumer Protection, and the Committee on Legal Affairs,)**

**Annex - Article 7 AVMS Directive**

Article 7 is replaced by the following:

1. Member States shall develop appropriate and proportionate measures to ensure that services provided by media service providers under their jurisdiction are made progressively accessible to persons with disabilities. These measures shall be developed in consultation with relevant stakeholders, including media service providers and organisations of persons with disabilities.
2. Measures taken should be notified to the European Commission, the contact committee and ERGA without delay. The Commission and the ERGA shall facilitate the exchange of best practices, such as the quality aspects and common pictograms, between audiovisual media service providers.
3. The measures referred to in paragraph 1 shall include a requirement that media service providers report on an annual basis to Member States about the steps taken and progress made in respect of progressively making their services accessible to persons with disabilities. Member States shall ensure that this information is communicated to the national regulatory bodies.
4. The measures referred to in paragraph 1 shall encourage audiovisual media service providers to develop accessibility action plans in respect of progressively making their services accessible to persons with disabilities. Such action plans shall be communicated to national regulatory authorities.
5. Member States shall ensure that emergency information, including public communications and announcements in natural disaster situations, made available to the public through audiovisual media services, be provided, in an accessible manner for persons with disabilities, in more than one sensory channel.
6. Member States shall encourage that audiovisual media service providers aim, through their content production, programming, editorial policies, and training schemes, to deliver access services.

**Recital**

The provisions about accessibility for persons with disabilities referred to in article 7 only apply to audiovisual media services as defined in article 1.a of this Directive, namely programmes. Access services to improve accessibility of audiovisual media services means a service such as audio description, subtitles for the deaf and hard of hearing, spoken subtitles and sign language interpretation.

The next step in the process is the opening of *trilogue* negotiations (between Parliament, the Council and the Commission).

### **3.1.3 European Accessibility Act**

The aforementioned Accessibility Act<sup>8</sup> addresses a range of products and services with regard to accessibility. In relation to the audiovisual sector, it covers a wider scope than just the accessibility of programmes, including a range of ICT equipment: TV equipment related to digital television services; telephony services and related equipment; audiovisual media services such as television broadcasts and related consumer equipment.

The detailed requirements for audiovisual media services are detailed in Section IV of the annexes to the Directive.

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<sup>8</sup> DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the approximation of the laws, regulations and administrative provisions of the Member States as regards the accessibility requirements for products and services  
<http://eur-lex.europa.eu/legalcontent/EN/TXT/HTML/?uri=CELEX:52015PCo615&from=EN>

## SECTION IV

### Audiovisual media services and the related consumer equipment with advance computing capability

#### A. Services:

1. The provision of services in order to maximise their foreseeable use by persons with functional limitations, including persons with disabilities, shall be achieved by:

(a) ensuring the accessibility of the products they use in the provision of the service, in accordance with the rules laid down in point B "Related consumer equipment with advance computing capability"

(b) providing information about the functioning of the service and about its accessibility characteristics and facilities as follows:

(i) the information content shall be available in text formats that can be used to generate alternative assistive formats to be presented in different ways by the users and via more than one sensory channel;

(ii) alternatives to non-text content shall be provided;

(iii) the electronic information, including the related online applications needed in the provision of the service shall be provided in accordance with point (c).

(c) making websites accessible in a consistent and adequate way for users' perception, operation and understanding, including the adaptability of content presentation and interaction, when necessary providing an accessible electronic alternative; and in a way which facilitates interoperability with a variety of user agents and assistive technologies available at Union and international level;

(d) providing accessible information to facilitate complementarities with assistive services;

(e) including functions, practices, policies and procedures and alterations in the operation of the service targeted to address the needs of persons with functional limitations, in accordance with point 2;

(f) the interfacing of the product with assistive devices.

2. User interface and functionality design

In order to make accessible the design of the products and their user interface as referred to in points (d) and (e) of point 1 they must be designed, where applicable, as follows:

(a) provide for communication and orientation via more than one sensory channel;

(b) provide for alternatives to speech for communication and orientation;

(c) provide for flexible magnification and contrast;

(d) provide for an alternative colour to convey information;

(e) provide for flexible ways to separate and control foreground from background including for reducing background noise and improve clarity;

(f) provide for user control of volume;

(g) provide for sequential control and alternatives to fine motor control;

(h) provide for modes of operation with limited reach and strength;

(i) provide avoidance of triggering photosensitive seizures.

Reviewing the provisions above suggest that the obligations of the Disability Act are much more focused on equipment than on content, and hence quite different to the proposed adjustment to Article 7 of the AVMS outlined above (by EP Committees and by the EDF and broadcasting associations).

In its response to the proposed Accessibility Directive, the EDF noted that the proposal needed to determine more clearly where additional accessibility requirements were needed, by rephrasing and adding definitions or examples: *For instance, in the section of audio-visual services, when the requirement reads "the information content shall be available in text formats that can be used to generate alternative assistive formats to be presented in different ways by the users and via more than one sensory channel;" in practical terms we will be referring to closed captions, audio subtitles and audio output when navigating in the TV set. Additionally, this can be complemented by other alternative methods of communication such as translation in easy-to-read, sign language, or pictograms/signage.*<sup>9</sup>

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<sup>9</sup> European Disability Forum (2016): EDF Initial Position on the Proposal for A European Accessibility Act:

In addition, the European parliament committees have presented their opinions.<sup>10</sup> As noted above, several were reflected in the joint proposal of the main stakeholders. These did not include the opinion of the Committee on Culture and Education, who stated that: *For AMS, however, the relevant directive provides a specific set of rules. Its provisions, including those on AMS accessibility, are in keeping with freedom of information and of the media, and with the protection and promotion of media pluralism and cultural diversity, and abide by Member States' policy competence for the media and the arts. The AMS Directive is currently being revised by the Commission; a proposal is very likely to be published on 25 May 2016. With due regard for the fundamental freedoms referred to and to Member State competence, it would seem preferable to promote accessible AMS by means of an incentives model under the AMS Directive itself rather than taking the restrictive and repressive approach that has been opted for in this proposal. That is the only way in which account can be taken of the specific characteristic inherent to all AMS, i.e. the fact that they are vehicles for cultural goods, meaning that it is also warranted to lay down definitive rules in what is the more specific AMS Directive.*

Whereas the Committee on Employment and social affairs introduced an amendment with specific obligations: *–at least 75% of the overall programming shall include subtitles for the deaf and hard of hear (SDH); at least 75% of overall programming subtitled into the national language shall include spoken subtitles; at least 5% of the overall programming shall include audio description; at least 5% of the overall programming shall include sign language interpretation.*

The next step in the process is the opening of *trilogue* negotiations (between Parliament, the Council and the Commission).

#### **3.1.4 Conclusion**

The AVMS Directive and the European Accessibility Act are both at the same stage in the legislative process. It is not yet clear if accessibility for media services will remain extracted from the AVMS Directive, with all issues regulated in the Accessibility Act, or if issues regarding content will return to the AVMS Directive, while questions regarding equipment, functionality etc. will be dealt with in the European Accessibility Act.

### **3.2 Council of Europe**

The European Convention on Human Rights provides the foundation for the Council of Europe work to protect and promote human rights for all, including the rights of persons with disabilities. The European Court of Human Rights has enshrined these rights in its case law and plays an important role by prompting States to undertake legislative changes to safeguard human rights of persons with disabilities. The European Social Charter contains specific rights for persons with disabilities, in particular Article 15 (right of persons with disabilities to independence, social integration and participation in the life of the community) and Article E (providing that the rights of the Charter shall be secured without discrimination on any ground).

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<sup>10</sup> REPORT on the proposal for a Directive of the European Parliament and of the Council on the approximation of the laws, regulations and administrative provisions of the Member States as regards the accessibility requirements for products and services (COM(2015)0615–C8-0387/2015–2015/0278 (COD)) Committee on the Internal Market and Consumer Protection  
Rapporteur: Morten Løkkegaard

The Council of Europe published a “Disability Strategy 2017-2023”<sup>11</sup> in March 2017. The issue of access to information and the use of information and communications technologies is addressed in the strategy.

**Council of Europe “Disability Strategy 2017-2023**

**“Council of Europe bodies, member States and other relevant stakeholders should seek to:**

- a) Promote debate on quality access to information, communications and digital environment for persons with disabilities. Debate should also include media and information literacy as well as inclusion and participation in shaping public policies on the information society.
- b) Promote accessibility and the use of universal design, in addition to assistive devices and with regard to access to goods, services and information to make the services of governments, private entities, media and providers of information via internet, accessible to persons with disabilities.
- c) Promote the use of accessible and user friendly means, modes and formats of communication, including sign languages, braille, easy to read text and other alternative and augmentative communication methods, in all communications, media releases and internet services of the Council of Europe and at the national and local levels, including in parliaments and local and regional authorities and the private sector stakeholders.
- d) Promote information, learning opportunities and protection measures for persons with disabilities in accessible means, modes and formats of communication to enable safe and responsible use of the new information and communication technologies (ICT) and to avoid their harmful side effects. Such side effects include, among others, cyber-bullying, fraud and sexual abuse or exploitation through the social network sites, especially with regard to children and young persons with disabilities.
- e) Encourage the independent Council of Europe monitoring mechanisms to take into consideration in their monitoring work, activities and publications, the use of accessible and user friendly means, modes and formats of communication, including sign languages, braille and easy to read text, etc.
- f) Support efforts to collect adequately age and sex-disaggregated data and targeted statistics to enable States to formulate and develop policies and tools to improve access to human rights by persons with disabilities.
- g) Identify, collect and disseminate existing good practices on accessibility, and in particular on access to information.

The Council of Europe 1989 ‘European Convention on Transfrontier Television’, does not contain any provisions on accessibility of audiovisual media services, and in addition Ireland is not a Party to the Convention.

### 3.3 United Nations

The United Nations Convention on the Rights of Persons with Disabilities (CRPD)<sup>12</sup> was adopted in 2006 and has provided an impetus for improvement in the provision of accessible content. It has, for example been mentioned in a range of regulatory provisions, laws and also in consultation documents produced by regulatory authorities. The Convention has been signed but not yet ratified by Ireland (the only EU country not to have ratified). A draft Disability (Miscellaneous Provisions) Bill 2016 has been referred for discussion and amendments to the select Committee on Justice and Equality of the Dail (parliament).<sup>13</sup>

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<sup>11</sup> Council of Europe, March 2017: Council of Europe Disability Strategy 2017-2023

<sup>12</sup> <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

<sup>13</sup> <http://www.oireachtas.ie/viewdoc.asp?DocID=34322&&CatID=59>

Article 9 of the Convention addresses accessibility (and Article 21 addresses access to information).

#### **Article 9 – Accessibility**

1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:

- a) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;
- b) Information, communications and other services, including electronic services and emergency services.

2. States Parties shall also take appropriate measures:

- a) To develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;
- b) To ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities;
- c) To provide training for stakeholders on accessibility issues facing persons with disabilities;
- d) To provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms;
- e) To provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;
- f) To promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;
- g) To promote access for persons with disabilities to new information and communications technologies and systems, including the Internet;
- h) To promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.

Access to Information (Article 21)

Article 21 says state parties should take measures so that persons with disabilities receive information in a format accessible to them. State parties should urge private entities to make information accessible.

### **3.4 Conclusion**

The overall European and International context of obligations regarding accessibility for people with disabilities is growing and has expanded to focus on a broader range of issues regarding access to, and use of ICT and digital technology, which also has direct impact on both linear and non-linear audiovisual services (with the forthcoming European Accessibility Act). Such developments have already taken place in the US with the 21<sup>st</sup> Century Communications and Video Accessibility Act of 2010.

The provision of equal treatment to people with disabilities has been strengthened as a human right since the adoption of the Convention on the Rights of People with Disabilities. This Convention has yet to be ratified in Ireland. This will be achieved via the adoption of the Disability (Miscellaneous Provisions) Bill 2016, which appears to still be in a drafting stage and hence the potential provisions here with regard to accessibility of information and communication services is not yet clear.

Regarding the development of legislation at the EU level, both the European Accessibility Act and the Audiovisual Media Services Directive are in the negotiating stage. While the European Commission proposal removed accessibility references from the proposed AVMS update stating that these issues would be dealt with under the Accessibility Act, there have been statements by lobbyists, and opinions from European Parliament committees advocating the return of access issues to the AVMS (and in many cases also advocating the strengthening of these provisions). It is not yet clear under which EU legislation the accessibility of audiovisual services will fall, and whether the AVMS will deal with content, while the Accessibility Act will focus on equipment and functionality issues.

On a final note with regard to developments at the EU level, Brexit will (most likely) imply that the UK audiovisual market will no longer be regulated under the AVMS. Several industry briefings<sup>14</sup> on the impact on the UK sector note that the cross-border activities of UK broadcasters will then rely on the European Convention on Transfrontier Television, although this convention does not apply to non-linear services. Ireland is not a party to the Convention, and neither is Denmark (while Sweden has never ratified). It remains to be seen how UK media services will operate in Ireland (and these other significant markets for the UK broadcasters). In general terms, all BAI policies may be impacted by this changing relationship and the desire for UK broadcasters to continue their services that target Ireland and other EU states.

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<sup>14</sup> For example: Reed Smith (2016): [https://www.reedsmith.com/-/media/files/perspectives/2016/07/the-implications-of-brexit-on-the-entertainment-an/files/client-alert-2016186/fileattachment/alert16186thru194\\_compendium.pdf](https://www.reedsmith.com/-/media/files/perspectives/2016/07/the-implications-of-brexit-on-the-entertainment-an/files/client-alert-2016186/fileattachment/alert16186thru194_compendium.pdf)



## 4 Thematic focus: obligations on different types of broadcasters

The following provides an overview of the extent to which different types of channels have different obligations with regard to the provision of access services. This includes distinctions made between public and private broadcasters, free to air and pay broadcasters, generalist and niche programming broadcasters, large (regarding audience share) and small broadcasters, and broadcasters that target jurisdictions other than where they are established. Policy approaches differ widely across Europe and in other jurisdictions. It should be noted that these are often designed to fit the specific national market and hence no one model is correct.<sup>15</sup>

### 4.1 Public service and private broadcasters

A range of studies confirm the fact that public service broadcasters, in general, have a higher obligation to provide access services for their content.<sup>16</sup> This may be due both to their remits, and to their public funding. In the EPRA report of 2013 it was noted that stronger obligations were imposed on public broadcasters in Belgium, the Czech Republic, Switzerland, Spain, Ireland, Finland, the UK, Moldova, the Netherlands, Norway, Romania, Serbia and Slovakia.

There was no difference in the obligations placed on both types of broadcaster in Cyprus, France, Poland, Macedonia, Greece, Israel or Malta. The current research outlined here can also note that no distinction is made between public and private broadcasters in Canada. On the other hand, in both Slovenia and Austria, while the public broadcasters have detailed obligations, all other audiovisual media services have very “vague” obligations.

There are also examples where only public channels have any obligations. In Denmark, only the channels with public service obligations (public service and commercial public service) are required to provide access services. In the case of Ireland, while all channels have obligations regarding subtitling, only the public service channels of RTÉ have obligations with regard to audio description and translation via sign language. This contrasts with a number of jurisdictions, for example the UK and France. In general, there is a growing trend towards treating public and private in the same way and focusing on market power (usually measured in terms of audience share), as outlined in the next section.

### 4.2 Market power and audience share

There is an obvious tendency to consider that public broadcasters have a stronger public interest obligation to provide access services. At the same time, another measurement is increasingly used, which is to consider the overall audience shares of television channels. This adds to the public interest criterion the idea that people with disabilities are not just a niche audience to be served, but also require equal treatment to other audiences. The extent to which a TV channel is viewed by a large audience (and hence has a stronger market power and more resources) influences the level of obligations it has to provide access services. This also explains why in many countries (as noted above), there may be no distinction between the rules for public and private.

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<sup>15</sup> Perhaps the exception being that range of countries where very little is being done to promote accessibility of services for people with disabilities.

<sup>16</sup> See for example: EPRA/2013/05: Working Group 3: Round Table on Access to Audiovisual Media Services for persons with disabilities. Comparative background document

In Hungary, the media law states that audiovisual public service media and commercial media service providers with over 15% percent of market share must provide access services to people with hearing difficulties for almost all (for example, accept advertisements) programmes. The audience share approach is used to distinguish the two sets of channels in the UK with regard to obligations: those with larger audience shares and those with smaller audience shares.

Similarly, in Sweden, general obligations are applied to channels with audience shares of less than 1%, while special obligations are applied to those with audiences greater than 1%. It should be noted that many regulatory approaches combine both. For example, in the UK public broadcasters have stronger obligations, but at the same time obligations for private broadcasters are imposed according to audience shares.

As another measure of market power, obligations in the French community of Belgium are based on the turnover of the broadcasters. For example, a turnover greater than €100 million implies an obligation of a minimum 1000 hours per year of subtitled programmes, interpreted sign language or audio description. At the lower end of the scale those with a turnover of less than €10 million, should make every effort to achieve the objective of disseminating 50 hours per year of programmes that are subtitled, interpreted in sign language or accompanied by audio description.

The use of turnover as a threshold is also significant for ensuring that too great a burden is not placed on smaller broadcasters. The French system reduces sign language obligations for broadcasters with a turnover of between 3 and 7 million euros, while channels with a turnover of less than 3 million euros are completely exempt. In fact, the turnover threshold can also be used across the board to limit the expenditure on access services or to completely exempt broadcasters from obligations.

In Sweden,<sup>17</sup> the costs of implementing audio-subtitling and subtitling incurred by an operator other than a public service television broadcaster shall not exceed 1% of the operator's prior financial period.<sup>18</sup> In the UK, channels are not expected to spend more than 1% of their relevant turnover.<sup>19</sup> In the USA, the cost of captioning should not exceed 2% of gross revenues, and media operators producing revenues of less than \$3M are exempt.

#### 4.3 Free to air and pay television

It is regularly the case that free to air channels have larger audiences than pay TV channels. In some countries obligations only apply to free channels. In others pay TV are also included, but often with less obligations. From the questionnaire commissioned by the Swedish authority, the Bulgarian response highlighted that in the law there are only *"recommendatory texts that apply to all broadcasters"* in the law encouraging operators to *"guarantee that their services gradually become accessible for people with vision and hearing problems"*. However, in the licensing agreements for broadcasters with licenses for digital terrestrial broadcasting, they are required to *"make sure their content becomes accessible"*. (it is not clear how this is achieved but the response notes that *"the best examples for compliance in this respect are probably the public broadcaster's channels"*).

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<sup>17</sup> According to Information Society Code (917/2014) section 211.

<http://www.finlex.fi/sv/laki/ajantasa/2014/20140917>

Data from Swedish questionnaire

<sup>18</sup> Decree on Television and Radio Operations (1245/2014) section 9, 10 and 11. <http://www.finlex.fi/sv/laki/ajantasa/2014/20141245>

<sup>19</sup> Ofcom (May 2017): Television access services report 2016. Available here:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0009/102015/Access-Report-2016-17.5-NEW.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0009/102015/Access-Report-2016-17.5-NEW.pdf)

The Finnish legislation applies to the public service broadcaster YLE, and commercial channels that are known as “public interest programmes”. These have been defined<sup>20</sup> as being: 1) freely available; 2) available throughout Finland; 3) containing daily Finnish or Swedish programmes; 4) containing daily news and current affair programmes. According to the decision of the Ministry of Transport and Communications these programmes are: MTV 3 (a channel of commercial broadcaster MTV Oy) and Nelonen (a channel of commercial broadcaster Sanoma Media Finland Oy). Hence, just the top four channels in terms of audience share are included.<sup>21</sup>

In Canada, a certain range of obligations exists for pay TV, pay per view and on-demand services. These obligations concern only captioning but are the same as for the free channels: 100% of all English and French language content should be captioned. Australia has two sets of obligations for captioning: those for free to air channels, and those for subscription television.

#### 4.4 Generalist and “niche programming” broadcasters

The examination of a range of jurisdictions revealed that there may be certain niche channels that have less obligations (or are exempted) and other niche channels that may have particular obligations. Examples include news channels, music channels, children’s channels and sports channels. In many cases this is due to the difficulty of subtitling live programming (news, sports, etc.), while for young children’s programmes the necessity to use subtitling may be removed due to the inability of the age group to read text.

In Australia, subscription television music services have the lowest obligations with regard to captioning. In the Polish legislation<sup>22</sup> specialised music programmes also have reduced subtitling obligations. In the US, non-vocal music programming is exempt.

In France, the CSA introduced some innovative solutions for a range of niche channels that were having difficulties in meeting subtitling quota requirements, often due to the types of content that they show:

- News channels on the DTT service are instead required to provide a specified number of accessible programmes per week;
- Children’s television (ages 3-6): subtitling requirements were removed and they are instead obliged to provide a specific number of signed programmes (by type);
- Sports channels: a number of hours or a number of matches (in competitions) where subtitles must be provided is determined, and the number of hours of magazine information programmes where translation into French sign language should be provided is also determined;
- Channels whose turnover is between 3 and 7 M€ have the percentage of subtitling reduced to 10 %.

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<sup>20</sup> Under Government Decree on Television and Radio Operations (1245/2014) section 8.

<http://www.finlex.fi/sv/laki/ajantasa/2014/20141245>. Data from Swedish questionnaire

<sup>21</sup> With reference to audience shares of the Yearbook of the European Audiovisual Observatory 2016

<sup>22</sup> According to the Regulation of KRRiT of 28 May 2013. Data from the Swedish questionnaire

Other derogations in the French system include the following: references to product placement; live music; self-promotion; live sports between midnight and 6am; pay per view channels; temporary channels; teleshopping channels; channels with a turnover of less than 3 million euros. In Belgium (Flanders), obligations do not apply on teleshopping programmes or programmes for children younger than 8 years. In Finland, audio-subtitling<sup>23</sup> and subtitling services do not need to be added to music presentations or sports programmes.<sup>24</sup>

#### 4.5 Broadcasters targeting other jurisdictions

There is considerable cross-border availability of audiovisual services in Europe regarding both services that are available in other countries, and also services that specifically target other countries. According to a press release of the European Audiovisual Observatory from June 2017: “one third of all television channels and on-demand services established in the EU specifically target foreign markets”.<sup>25</sup> The main countries of origin of such channels are the UK, the Czech Republic, France, the Netherlands, Luxembourg, Sweden and Bulgaria.

It appears that the UK is the only country with a developed policy of requiring broadcasters that target other countries to include accessibility options in programming. This policy of applying obligations to non-domestic broadcasters has been in place since 2014. The rationale for the policy is Ofcom’s “*duty to regulate in ways that are transparent and consistent*”, and to place obligations on non-domestic broadcasters that are “*consistent with the arrangements for domestic channels*”.<sup>26</sup> Of course, many non-domestic broadcasters are niche channels with very insignificant audience shares, while some represent important players on the market in other member states (such as in Sweden, Denmark etc.). Ofcom have developed a detailed policy, distinguishing between channels with larger audience shares and channels with smaller audience shares. In relation to assessing the large and small, both an ‘audience share threshold’ and a ‘signing threshold’ have been established for each EU member state (see the UK chapter for details).

Several other countries can be identified as those hubs where a significant number of channels that are licensed are targeting other countries. Examples include: the Czech Republic (where according to research and the Swedish questionnaire, the obligations on private TV are not very specific); Sweden, where only general obligations (without quotas) would apply to channels with less than 1% share; Bulgaria, where obligations apply only to free to air television; the Netherlands, where obligations apply only to channels that reach at least 75% of Dutch households; and France, where cable and satellite channels must make at least 20% of their programming accessible to those who are deaf or hard of hearing.

The French response to the BAI questionnaire noted that services established in France and broadcast abroad are issued a license on the same basis as other services, meaning that they comprise subtitling obligations. However, the main distinction in the regulation of the Ofcom is that they specifically assess the role that these broadcasters play in the various markets that they target.

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<sup>23</sup> Audio-subtitling (or spoken subtitling) is a system for automatic reading and broadcasting of subtitles. They can be used for TV films or broadcasts in foreign languages that are provided with subtitles. In such systems, a speech signal synchronised with TV subtitles is generated through a separate audio channel.

<sup>24</sup> Data from Swedish questionnaire

<sup>25</sup> European Audiovisual Observatory press release (26/02/2017): One third of all television channels and on-demand services established in the EU specifically target foreign markets. <http://www.obs.coe.int/>

<sup>26</sup> Ofcom (2015): Non-domestic TV channels: proposals to modify access service obligations [https://www.ofcom.org.uk/data/assets/pdf\\_file/0018/68103/non-doms\\_signing\\_consultation.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0018/68103/non-doms_signing_consultation.pdf)

In the case of the BAI, obligations are not automatically placed on such services, but they are assessed on a case-by-case basis in relation to the factors and principles applied in the setting of obligations and targets for all channels.<sup>27</sup>

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<sup>27</sup> See more detail in chapter 9.

## 5 Thematic focus: accessibility in the on-demand world

There are several areas of relevance in the regulation of on-demand services with regard to accessibility that emerged from an examination of various jurisdictions. The following outlines the mainly vague nature of obligations, but also some specific obligations in several countries.

Reference is made in this section to both the obligations that may apply to video on demand services, and the obligations that may apply to broadcasters placing their accessible content online.

### 5.1 A general lack of obligations for on-demand services

On-demand services are frequently included in the general legal requirement to make audio-visual content more accessible, but often this is the case in those countries with very vague obligations as regards access services for all AVMS (for example Lithuania and Luxembourg). In Croatia, all media service providers are *invited* to ensure accessibility for persons with disabilities.

In many cases, while linear services have obligations, non-linear services are *encouraged* to provide access, or should aim at providing access. For example, in Poland providers of on-demand audiovisual media services shall aim at gradually ensuring the availability of such programmes through the introduction of appropriate tools such as audio description, subtitles and translation into sign language.<sup>28</sup>

In the Czech Republic the obligation is also vague: *"An on-demand audiovisual media service provider shall, where appropriate, provide a programme with open or closed captioning or with interpreting into Czech sign language for persons with hearing impairments, and with a sound track for persons with visual impairments, if available, or shall otherwise ensure that certain programmes provided via an on-demand audiovisual media service are accessible to persons with hearing impairments and persons with visual impairments."*

Some jurisdictions apply regulation only to free services and not to pay services (such as Pay-TV or SVOD) and hence the major SVOD services are not subject to such a regulation (for example in the Belgian French Speaking Community).

In Portugal, the regulator has issued a decree<sup>29</sup> with *recommendations* regarding accessibility (including for on-demand operators) which: encourages on-demand services to adapt new techniques, in particular those rendered available both by technological innovations and by the exploitation of digital platforms' capacities (§ 11); suggests that subtitles for people with hearing impairments should be extended to all TV programmes dubbed into Portuguese language, as well as to audiovisual content provided on-demand (§ 11.3); and notes that broadcasters and on-demand audiovisual media providers shall adapt their websites to the specific needs of persons with a visual or hearing disability, in accordance with the Web Content W3C Accessibility Guidelines (§ 11.8).

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<sup>28</sup> Art 47g of the Broadcasting Act (from Swedish research)

<sup>29</sup> Portugal ERC/11/2015/970 (from Swedish research)

### 5.1.1 Self-regulation, co-regulation and self-reporting

Modes of encouragement include dialogue, required reporting on accessibility, and self-regulatory codes. In Ireland, the on-demand sector is self-regulated and operates under a code of practice.<sup>30</sup> Section 3 of Part 2 of the Code deals with accessibility and states: "*Media service providers of on-demand audiovisual media services shall endeavour to ensure that their services are gradually made accessible to people with a visual or hearing disability*".

In the UK, the regulator, as part of its duties, must encourage providers of on-demand programme services to ensure that their services are progressively made more accessible to people with disabilities affecting their sight or hearing or both.<sup>31</sup> Between 2010 and 2015 ATVOD (Authority for Television on Demand) was the designated body as the co-regulator of VOD in the UK.

Since 1 January 2016, Ofcom has been the sole regulator for editorial content (programming) on UK video-on-demand services. Currently the Ofcom is required only to 'encourage' providers to ensure that their services are progressively made more accessible to people with disabilities affecting their sight or hearing, or both. Their approach to this is outlined in the Ofcom Statement on accessibility of on-demand programme services<sup>32</sup>, and mainly concerns the gathering of data on which ODPS (on Demand Service Providers) – and what proportion of programmes on those services – carry subtitles, signing and audio description.

Since April 2017, this data will be collected on a twice-yearly basis, and operators are required to submit data about each branded service they offer to consumers. Data for each branded service will still be required for each platform on which it appears. The Ofcom also requests that providers (voluntarily) differentiate figures relating sign-presented and sign-interpreted content where they can.

An example of dialogue includes the **Television On Demand Industry Forum** in the UK, which the Ofcom supports in its establishment of an access services policy working group (to provide an effective means for content providers and platform operators to share experience and technical know-how with a view to increasing accessibility).

## 5.2 Where obligations exist for on on-demand services regarding access services

In Greece, a very specific obligation is placed on on-demand services. Non-linear AVMS providers should provide at least 20% of the content offered in their catalogues with Greek subtitles (art. 8 par. 4, Law 3592/2007). It is not clear whether this obligation emerges from language policy, or accessibility policy, or is a cross-over of the two. If the on-demand service catalogues include news, it is subject to the same rules for providing sign language as the linear TV services (these are the requirement to provide news programmes in sign language for a duration of seven minutes between 17:00 and 23:00).<sup>33</sup>

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<sup>30</sup> Code of Conduct On-Demand Audiovisual Media Services. Available here:

<http://www.bai.ie/en/download/128548/>

<sup>31</sup> 368 C of the Communications Act 2003 as amended by The Audiovisual Media Services Regulations 2009

<sup>32</sup> Ofcom (April, 2017): Accessibility of on demand programme services.

[https://www.ofcom.org.uk/data/assets/pdf\\_file/0011/100226/accessibility-on-demand-programme-services-statement.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0011/100226/accessibility-on-demand-programme-services-statement.pdf)

<sup>33</sup> Data according to Swedish survey

In Canada, for the licensees of VOD services, the closed captioning requirement applies to all English- and French-language programming in their inventories, as well as to all original licensee-produced community programming. Hence on-demand services have the same obligations as broadcasters with regard to captioning, but have no obligations regarding audio description or sign language.

In the USA, the Twenty-First Century Communications and Video Accessibility Act<sup>34</sup>, Title II requires that all programmes broadcast with captioning must also include the captioning when they are re-shown on the Internet (see more detail in the USA chapter). This implies that VOD providers should also include the captioning on content where the original broadcasts had captioning. Content that is original and produced for the VOD provider (for example Netflix own content) does not fall under the obligations. However, a suit filed in 2011, by the National Association of the Deaf (NAD v Netflix) claiming that their lack of closed captioning for streaming video was a violation of the (American Disability Act) ADA led to a finding that Netflix should caption its streaming video library by 2014. As a result, the majority of content on Netflix is provided with captioning, and apparently, this has also influenced other on-demand providers in the USA to also provide captioning (see the USA chapter for more detail).

### 5.3 Obligations regarding the online content of broadcasters

In a number of jurisdictions, the provision of content on the on-demand or catch-up services of broadcasters must include access services. The major examples in this case are from North American: Canada and the USA.

Prior to the most recent update of the Canadian broadcasting regulatory policy with regard to accessibility of television services in 2015, the Canadian Commission carried out a major consultation process. One of the decisions emerging from this was that: *the Commission considered that online availability of closed captioning should be increased. Therefore, the Commission "expects that when programming with closed captioning for traditional television is made available on non-linear online platforms, the closed captioning should be included."*<sup>35</sup>

The 2015 policy hence added the following: *in light of the above-noted efforts by broadcasters as well as the concerns expressed by individuals and user groups, the Commission will expect broadcasters, at the time of their next licence renewals, to ensure that when programming with closed captioning on traditional platforms is made available on non-linear online platforms, the closed captioning is included.*

In the USA, a similar obligation applies. The Twenty-First Century Communications and Video Accessibility Act<sup>36</sup> was passed by Congress to update the protection for people with disabilities regarding telecommunications and audiovisual services. Title II of the Accessibility Act aims to make it easier for people with disabilities to view video programming on television and the Internet. Programmes shown on television with captioning are required to include the captioning when they are re-shown on the Internet.

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<sup>34</sup> United States Congress: Twenty-First Century Communications and Video Accessibility Act 2010 <https://www.fcc.gov/consumers/guides/21st-century-communications-and-video-accessibility-act-cvaa>

<sup>35</sup> Broadcasting Regulatory Policy CRTC 2015-104. Available : <http://www.crtc.gc.ca/eng/archive/2015/2015-104.htm>

<sup>36</sup> United States Congress: Twenty-First Century Communications and Video Accessibility Act 2010



From the questionnaire developed for this report, two examples emerged from European jurisdictions. According to the response from the Catalan regulatory authority to the BAI questionnaire, the broadcasters have to make their content accessible, including that provided online in accordance with the technological possibilities.<sup>37</sup>

In Slovenia, only the public broadcaster has specific obligations to provide accessibility services and this includes on their Internet and mobile portals with on-demand services.<sup>38</sup>

#### 5.4 Online content as part of the accessibility quotas for broadcasters

Online content can be part of the overall quotas in the provision of access services by broadcasters. In Belgium (French Community), pay on-demand services do not come under the regulatory regime regarding access services. However, free on-demand services while not subject to quotas, can be included as part of the quotas of the broadcasters. The content is *"subtracted from the quota of broadcasting obligations for subtitled programmes, audio description or interpreted into sign language that are provided for in the regulation"*.<sup>39</sup>

Similarly, in Finland, there is no requirement for broadcasters to add subtitling or audio-subtitling services to their video-on-demand services. However, one third of the quota obligations can be transmitted in a television broadcaster's on-demand service. The Finnish have therefore introduced a 30% limit on the possibility to count non-linear content as part of the quotas.<sup>40</sup>

As Sweden developed their new policies, they also imposed this 30% limit. In the context of the quotas required by broadcasters, it is possible to obtain partial credit by including programming provided on their on-demand services. However, this 'credit' should not exceed 30% of the expected air time in the quotas. In addition, this is only relevant for the programming with audio description, sign language interpretation, and spoken text.<sup>41</sup> Programming with subtitles that are made additionally available via on-demand do not count as part of the overall quotas.

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<sup>37</sup> Article 8 of the general instruction from the CAC on the accessibility to the audiovisual contents

[http://www.cac.cat/pfw\\_files/cma/normativa\\_sa/Instruccio\\_accessibilitat\\_.pdf](http://www.cac.cat/pfw_files/cma/normativa_sa/Instruccio_accessibilitat_.pdf)

Information from the BAI/EPRA QUESTIONNAIRE 2017 Questionnaire

<sup>38</sup> Art. 4 of Radiotelevizija Slovenia Act (ZRTVS-1) [http://www.rtv slo.si/files/RTV\\_Slovenija/zrtvs\\_1.pdf](http://www.rtv slo.si/files/RTV_Slovenija/zrtvs_1.pdf)

Information from the BAI/EPRA Questionnaire

<sup>39</sup> According to the regulator response to the Swedish questionnaire

<sup>40</sup> According to the regulator response to the Swedish questionnaire

<sup>41</sup> Audio-subtitling (or spoken subtitling) is a system for automatic reading and broadcasting of subtitles. They can be used for TV films or broadcasts in foreign languages that are provided with subtitles. In such systems, a speech signal synchronised with TV subtitles is generated through a separate audio channel.

According to the Swedish policy document,<sup>42</sup> the rationale for allowing online content to be part of the quotas was to help broadcasters to fulfil requirements. On the other hand, there was a desire that accessible content would not migrate completely to the Internet. During the consultation with disability organisations, these groups *“emphasized that it is very important for users that programmes be available on all platforms.... the entire population does not have access to adequate internet, some users have difficulty to use a computer, tablet or mobile and many are older and not used to the new technology.”*<sup>43</sup>

## 5.5 Labelling and findability of online content with accessibility

The regulation in the Slovak Republic does not place specific obligations on on-demand services regarding the provision of accessibility. However, the provider of an on-demand audiovisual media service is obliged to clearly identify all programmes that are accompanied by hidden subtitles, displayed subtitles, voice commentary for the blind or that are translated into sign language for the deaf or broadcast or provided in sign language for the deaf. The provider of an on-demand audiovisual media service is also obliged to apply labelling in its programme catalogue.

In Canada, the licensee for an on-demand service (the same as for a broadcast service) is expected to display a standard described video logo and air an audio announcement indicating the presence of described video before the broadcast of each described programme; and make information available regarding the described programmes that it will broadcast.

## 5.6 Issues in relation to the delivery of access services online

As noted above, prior to January 2016 ATVOD was the co-regulatory body for on-demand services in the UK. ATVOD developed Access services best practice guidelines<sup>44</sup>, and between 2011 and 2015 produced reports on the accessibility of on/demand services. The reports raised some interesting issues regarding the provision of accessibility tools online. In the 2015 report, they noted that providers continue to point to barriers to accessibility on VOD, including technical issues in converting subtitles for multiple platforms, and the associated costs.

*Content providers (e.g. Fox) continue to disagree with platform operators (e.g. Virgin) over whose responsibility it is to make content accessible, and there is a lack of clarity over platform requirements and/or capabilities. However, more platforms appear to now support access services, and more content providers are working with platforms to get accessible content through to consumers.*<sup>45</sup>

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<sup>42</sup> Swedish Press and Broadcasting Authority (2016): Requirements for access to television broadcasts by persons with disabilities, 1 July 2016.

[http://www.mprt.se/documents/tillg%C3%A4nglighet/krav%20p%C3%A5%20tillg%C3%A4nglighet%20tv-s%C3%A4ndningar%202016\\_tillg%C3%A4nglig.pdf](http://www.mprt.se/documents/tillg%C3%A4nglighet/krav%20p%C3%A5%20tillg%C3%A4nglighet%20tv-s%C3%A4ndningar%202016_tillg%C3%A4nglig.pdf)

<sup>43</sup> unofficial translation

<sup>44</sup> ATVOD (2012): Access services: best practice Guidelines:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0018/82242/access\\_services\\_best\\_practice\\_guidelines\\_final\\_120912.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0018/82242/access_services_best_practice_guidelines_final_120912.pdf)

<sup>45</sup> ATVOD (2015): Provision of Video on Demand Access Services -2015 Report

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0023/58811/as\\_survey\\_report\\_2015.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0023/58811/as_survey_report_2015.pdf)

## 5.7 Recent developments and potential future obligations for on-demand

The Belgian CSA (French speaking community) is currently (2017) planning to update the co-regulatory agreement- the "Règlement accessibilité" in order to define more specific obligations regarding the type of broadcasters (linear, non-linear, pure player, free to air, premium, etc.) and regarding the type of accessibility service (subtitling, audio-description or sign language interpretation).

In April 2017, the Digital Economy Act<sup>46</sup> became law in the UK and amended the Communications Act 2003. This has paved the way for the introduction of obligations on providers of on-demand services to include subtitles, sign language and audio description when providing video-on-demand. Before the development of any regulation, a consultation with all interested parties will be carried out. According to Ofcom, the Act provides for the Secretary of State to make regulations that will mandate access services on video on-demand, after consulting with Ofcom.<sup>47</sup> Such a regulation will also require the Ofcom to draw up a code on accessibility for guidance to the on-demand providers.

## 5.8 Providing specific on-demand services or web portals with accessible content

In Slovenia, the public broadcaster RTV Slovenija has a special web portal<sup>48</sup> for people with disabilities that provides the archive of RTV Slovenija's in-house production with subtitles, sign language and audio description. They also provide subtitling via teletext and live streaming of news and other programmes with sign language on their web portal or their third channel TVS3.

In Greece, the Hellenic Centre for Social Solidarity, funded by the EU (80%) and the Greek state (20%) manages the collection, production, enrichment and exploitation of existing multimedia content that is accessible. The content is collected from different sources and made available to persons with disabilities.<sup>49</sup>

There is also a dedicated video on-demand service, called "signtime.tv", which falls under Austrian jurisdiction and offers news and reports in sign language.<sup>50</sup> The ownership or funding of this service is not clear.

The on-demand service of the Catalan Public broadcaster TV3 a la carta<sup>51</sup> offers all the content on-demand with subtitles, and some with audio description and with sign language.

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<sup>46</sup> Digital Economy Act, April 2017. Available here:

<http://www.legislation.gov.uk/ukpga/2017/30/contents/enacted/data.htm>

<sup>47</sup> Ofcom (March, 2017): Access and Inclusion in 2016 - Outcomes for consumers in vulnerable circumstances.

[https://www.ofcom.org.uk/data/assets/pdf\\_file/0030/98508/access-inclusion-report-2016.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0030/98508/access-inclusion-report-2016.pdf)

<sup>48</sup> Data from BAI/EPRA Questionnaire. Slovenian PSB portal: <http://www.rtvlo.si/dostopno/>

<sup>49</sup> Data from Swedish questionnaire

<sup>50</sup> Data from the Swedish questionnaire. <http://signtime.tv/>

<sup>51</sup> <http://www.ccma.cat/tv3/alacarta/>

## 6 Thematic focus: access rules and of translation: crossover and impact?

This section looks at whether translation of content in a minority or foreign language and the overlaps with, or has an impact upon regulation on subtitling.

### 6.1 Second national languages and minority languages

Countries where the second significant national languages have the same obligations as the first include: in the US (English and Spanish, although Spanish came later); in Canada with regard to English and French (here again French was added later due to the improvements in language recognition technology for French); and in Finland where accessibility rules apply to Finnish and Swedish language content. In general, there is no obligation to provide accessibility on third language programmes.

In Catalonia, the Aranese language ("aranés"), has been declared a co-official language since 2006. The Catalan PBS offers radio and television contents in Aranese: mainly daily news programmes that offer subtitles in Aranese when the person appearing on the news speaks in English, French, German, etc. Currently, this is the closest service that would have some kind of resemblance to the accessibility subtitling,<sup>52</sup>

In the UK, for the purposes of the quotas enforced by Ofcom, foreign language subtitling is treated the same as hard-of-hearing (HoH) subtitling. Ofcom recognises that foreign language subtitles do not convey the full range of information provided by HoH subtitles (e.g. sound effects). However, where foreign language subtitling forms an integral part of the picture ('open' subtitles) it is not practicable to include HoH subtitling as well. Ofcom encourages broadcasters to include HoH subtitling of domestic language programming when fulfilling their quotas.<sup>53</sup>

In the UK, the Welsh language channel S4C has similar obligations to other public service channels (aside from the BBC). For subtitling S4C and Five should have 80% of programming subtitled (in comparison to ITV and Channel 4 with 90%). All four channels have the same obligations with regard to audio description (5%) and sign language (10%). According to the S4C Annual Report 2016, the Welsh subtitles and English subtitles are described as below:

*Welsh subtitles: These subtitles are provided primarily for the deaf and hard of hearing who understand Welsh as well as for people learning to speak Welsh. Welsh language subtitles were provided on 13 hours of programmes a week on average. Welsh language and English language subtitles are also available on the S4C Arlein service.*

*English subtitles: The aim of this service is to enhance the appeal of programmes to non-Welsh speaking, and deaf and hard of hearing viewers. By pressing the "subtitle" button on the remote control, subtitles can be accessed on all kinds of programmes, including live programmes. Some programmes were broadcast with automatic on-screen subtitles. These were usually repeats of popular programmes. During the year, subtitles were available on 80.51% of programmes (Ofcom's Target is 53%).*

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<sup>52</sup> Data from BAI/EPRA Questionnaire. Reference from the Catalan regulator:

<http://www.ccma.cat/tv3/alacarta/324-en-aranes/324-en-aranes-20062017/video/5674567/Tran>

<sup>53</sup> Data from the BAI/EPRA Questionnaire.

S4C can meet its quotas using both English language and Welsh language subtitling. The regulator has recognised that the costs for producing Welsh language subtitling are higher than those for producing English language subtitling. In addition, both language translation subtitles and what they term “hard of hearing” subtitles are equally acceptable for meeting the quotas for accessibility.<sup>54</sup>

The US regulations state that subtitling from a foreign language can qualify as part of the captioning quota for a television channel. Presumably, there is not so much content that is in an additional language (aside for English and Spanish): (2) Open captioning or subtitles in the language of the target audience may be used in lieu of closed captioning;

Regarding Technical difficulties, the Ofcom code also notes that: television access services need not be provided if Ofcom is satisfied that this would be impracticable on grounds of technical difficulty, including the following cases: c) provision of access services where a service is broadcast with several different language feeds, making the choice of language for access services problematic.<sup>55</sup>

Several respondents to the BAI/EPRA questionnaire noted that in one sense the “open subtitling” on foreign language may often be a significant source of accessibility. This was the case for the Ukraine, where requirements originate from the laws related to cinema and to language policy.<sup>56</sup> According to the legislation, the copies of films of foreign production that are disseminated for featuring in cinemas, via public commercial video and via home video in Ukraine shall be produced either in the original language or with dubbing or with sound-on-film, or with subtitling in the state language, or in regional languages, or in languages of minorities as requested/ordered by distributors and film providers considering the language needs of consumers. Although there is some provision of access subtitling the foreign language subtitling places an important role.<sup>57</sup>

A similar requirement exists in Estonia, where the Language Act (§18) requires that with public performance and transmission of audio visual works, including programmes and advertisements, the provider of the audiovisual media service shall ensure that a foreign language text shall be accompanied by an adequate translation into Estonian in form and content. The Estonian regulator pointed out that as the audio-visual market is very small, then mostly the programming, rather than advertisements, is subtitled. The main reason for this is to provide language translation but media service providers are also aware of the need to pay attention to accessibility tools at the same time.

The Catalan regulator also recognized that translation has helped reducing the need for accessibility services like subtitling, but only for some contents, such as film or series. However, the accessibility services have to provide access to all sort of audiovisual content.<sup>58</sup>

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<sup>54</sup> Data from the BAI/EPRA Questionnaire.

<sup>55</sup> Ofcom Code on Television Access Services:

[https://www.ofcom.org.uk/data/assets/pdf\\_file/0020/97040/Access-service-code-Jan-2017.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0020/97040/Access-service-code-Jan-2017.pdf)

<sup>56</sup> Law of Ukraine “On Cinematography” with reference to the Law of Ukraine “On Basic Principles of the State Language Policy” (paragraph 4 of Article 23)

<sup>57</sup> From BAI/EPRA Questionnaire

<sup>58</sup> From BAI/EPRA Questionnaire

Several respondents to the questionnaire stressed that subtitling of foreign or minority languages is not recognised as being the equivalent of accessibility services (Poland). In the case of Belgium, although such subtitling contributes to the accessibility issue, it is not considered the same as a specific subtitling for the deaf and hearing impaired, which might contain colour codes, positioning on the screen, large fonts, etc. The respondent from the French regulator did not see the possibility to access these subtitles a possible improvement for accessibility.<sup>59</sup>

In Greece, a very specific obligation is placed on on-demand services. Non-linear AVMS providers should provide at least 20% of the content offered in their catalogues with Greek subtitles (art. 8 par. 4, Law 3592/2007).<sup>60</sup> It is not completely clear whether this obligation emerges from a language policy or an accessibility policy, or is a cross-over of both.

Clearly the question is market related and may be influenced by the amount of subtitled content in the country. With regard to audiovisual content in a foreign/minority language, this tends to be dubbed in France, Germany, Italy, Spain and Poland. However, subtitling is used in the Netherlands, the Nordic markets, and many Eastern and Southern European countries: Estonia, Latvia, Lithuania, Slovenia, Croatia, Romania etc. Subtitling is also used in Ireland and the UK, but the proportion of content that is not in English is far less than in many other countries.

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<sup>59</sup> From BAI/EPRA Questionnaire

<sup>60</sup> Data according to Swedish survey

## 7 Costs, funding schemes, and other market factors

The following section looks at the issue of costs in the provision of access services and addresses systems of exemption, subsidies and funding, and complementary measures for the encouragement of increasing accessible content.

### 7.1 Costs for the production of accessible content

As part of the European Commission DG CONNECT Impact Assessment exercise regarding the AVMS Directive; a study was completed which examined, among other issues, the question of accessibility.<sup>61</sup> Below is a table detailing some data they gathered in a small range of countries regarding the cost per hour for providing subtitling, sign language and audio description for linear service providers. The data was mainly gleaned from interviews with service providers and stakeholders.

**Table 7.1. Costs of providing subtitling, sign language and audio description for linear services**

MS	Subtitling costs (1 hour)	Sign language cost (1 hour)	Audio descriptions (1 hour)
BG	€50-114	No information	No information
IE	€100-200 for pre-recorded content €300-500 for live content	No information	No information
ES	€60 for live subtitling using automatic live captioning €80-100 for pre-recorded content	€300	€220
LT	€80-120	No information	No information
UK	€70-360	€150-860 (€585)	€660 (€483)

Source: Study to support Impact Assessment of AVMSD /Visionary Analytics et al, 2015.<sup>62</sup>

Although the sample is small and there is limited information available on the costs of audio description or sign language interpretation, it is still apparent that there are significant differences in the costs between Ireland and Spain, and the UK for subtitling. For example, the Spanish costs for live subtitling using automatic live captioning, are considerably lower.

In the USA, the use of ENT (Electronic Newsroom Technique, a technique that can convert the dialogue included on a teleprompter script into captions) for producing captioning (on a range of programming) is allowed for smaller broadcasters.<sup>63</sup>

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<sup>61</sup> Study to support Impact Assessment of AVMSD

<sup>62</sup> According to the study, this is "based on data from interviews with service providers and other stakeholders. Data in brackets for the UK came from the OFCOM Review of Television Access Services, 2009. Note: value of €50 (in Bulgaria) was removed since it is an outlier in an otherwise quite homogenous sample. According to information on accessibility cost for Spanish broadcasters and the 2009 OFCOM review of Television Access Services, the cost for audio descriptions is around 80% of sign language costs."

<sup>63</sup>[https://apps.fcc.gov/edocs\\_public/attachmatch/DA-15-208A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DA-15-208A1.pdf)

## 7.2 Exemptions and reductions of obligations

### 7.2.1 Exemptions and reductions due to costs and financial conditions

As outlined in chapter 4, regarding the different obligations placed on different types of broadcasters, in several countries the turnover of the broadcasting company is a decisive factor in deciding the level of obligations, or whether to exempt a company from obligations. The use of turnover as a threshold is significant for ensuring that the regulation does not place too great a burden on smaller broadcasters. In fact, the turnover threshold can also be used across the board to limit the expenditure on access service or to completely exempt broadcasters from obligations. This is the case in the French system and the system in the French speaking Community of Belgium, in Sweden and in the UK (see chapter 4).

In the Polish legislation<sup>64</sup> there are several examples where TV services have lower requirements than outlined in the Broadcasting Act. Requirements are reduced to making accessible 1% of quarterly transmission time of the programme services, with the exception of advertising and teleshopping in case of: a) Programme services with an audience of 200 000 people or less; b) Programme services disseminated in telecommunication networks reaching 50 000 people or less; c) Programme services broadcast daily not more than 2 hours (excluding reply programmes) in quarterly broadcasting time; d) Specialized music programme services. Requirements are reduced to making accessible 5% of quarterly transmission time of the programme services, with the exception of advertising and teleshopping in case of: a) Programme services with audience 500 000 or less; b) Programme services broadcast daily not more than 5 hours (excluding reply programmes) in quarterly broadcasting time.

In Australia, the regulator has the power to make an exemption order or a target reduction order for a commercial or national television broadcaster if it is satisfied that refusing to do so would cause unjustifiable hardship to the broadcaster. An exemption order exempts a specified commercial or national television service provided by the broadcaster from the requirements of the basic rules for a specified period (one to five financial years). A target reduction order specifies a new reduced annual captioning target for the specified commercial or national television service provided by the broadcaster for a specified period. If a target reduction order is made, the basic rule does not apply during the specified period of the target reduction order.

In the UK, there exists a system for exempting or reducing the obligations of non-public service channels. In the recent Access Report<sup>65</sup> the process for exempting or reducing obligations is detailed: *If the assessed cost of compliance for a channel with all the targets (Level One) would be more than 1% of the relevant turnover, its subtitling obligations (but not those for signing and audio description) are reduced by one third (Level Two). If that fails to bring estimated expenditure below 1% of relevant turnover, the channel's subtitling obligations may be reduced by two thirds (Level Three). If, despite this, Ofcom's assessment shows that it could not afford the reduced obligations by spending no more than 1% of relevant turnover, the channel will be exempted from providing access services altogether.*

There also exists a system under the law in the USA for filing an application for an exemption. In this regard, a video programming provider, video programming producer or video programming owner may petition the Commission for a full or partial exemption from the closed captioning requirements.

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<sup>64</sup> According to the Regulation of KRRiT of 28 May 2013. Data from the Swedish questionnaire

<sup>65</sup> Ofcom (May 2017): Television access services report 2016. Available here:

[https://www.ofcom.org.uk/data/assets/pdf\\_file/0009/102015/Access-Report-2016-17.5-NEW.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0009/102015/Access-Report-2016-17.5-NEW.pdf)



Exemptions may be granted, in whole or in part, for a channel of video programming, a category or type of video programming, an individual video service, a specific video program or a video programming provider upon a finding that the closed captioning requirements will be economically burdensome.

The petition for an exemption must be supported by sufficient evidence: the nature and cost of the closed captions for the programming; the impact on the operation of the provider or program owner; the financial resources of the provider or programme owner; and the type of operations of the provider or programme owner.

### **7.2.2 Exemptions and solutions for niche programming channels**

In France, the CSA introduced some innovative solutions for a range of channels that were having difficulties in meeting quota requirements, often due to the types of content that they show:

- For the news channels on the DTT service, the CSA has required that they provide three news programmes with subtitles and one news programmes translated with sign language between Monday and Friday. In addition, they should provide four news programmes with subtitles on weekends and holidays. The CSA also requires that the three broadcasters co-operate to ensure that the broadcasts are at different times on the channels.
- For children's television (ages 3-6) distributed over cable, they are no longer required to provide subtitling, but are required to provide one educational programme with French sign language (starting from 2010) and one other scheduled programme translated into French sign language (from 2011).
- For sports channels, the CSA has determined either a number of hours or a number of matches (in competitions) where subtitles must be provided, and the number of hours of magazine information programmes where translation into French sign language should be provided.
- For channels whose turnover is between 3 and 7 M€, the percentage of subtitling is reduced to 10 %.

In the USA, a range of other types of programmes are exempt (summarised here): programming subject to contractual captioning restrictions; video programming or video programming provider for which the captioning requirement has been waived; programming other than English or Spanish language (except that scripted programming that can be captioned using the "electronic news room" technique is not exempt); primarily textual programming (e.g., program schedule channels or community bulletin boards); programming distributed in the late night hours (between 2 a.m. and 6 a.m. local time); interstitials, promotional announcements and public service announcements that are 10 minutes or less in duration; EBS programming (Educational Broadband Service licensee programming); locally produced and distributed non-news programming with no repeat value; programming on new networks (for the first four years after it begins operation); primarily non-vocal musical programming; locally produced educational programming.

### **7.2.3 Other exemptions relating to content and technical issues**

In the UK, the Ofcom are also empowered to exempt certain types of content or services, having regard to a range of criteria including: the benefit for the audience regarding the programmes; the size of the intended audience for the programmes; the number of persons who may benefit; whether the intended audience for the programmes are resident outside the United Kingdom; the technical difficulty of providing the assistance; and the costs.

Regarding technical difficulties, the Ofcom code also notes that:

television access services need not be provided if Ofcom is satisfied that this would be impracticable on grounds of technical difficulty, including the following cases: a) audio description of music and news programmes and services, where there is little space within the dialogue/sound track to provide audio description, and less need. However, broadcasters are required to ensure that producers, editors and presenters are trained in techniques to describe the significance of images for the benefit of the blind and partially-sighted audience. Broadcasters are required to provide a statement of the training they are providing within 12 months of becoming subject to the code; b) provision of subtitling that is not supported by commercially- available set top boxes (e.g. Chinese or Urdu); and c) provision of access services where a service is broadcast with several different language feeds, making the choice of language for access services problematic.<sup>66</sup>

### 7.3 Funds, grants and subsidies for the production of accessible content

Many systems are employed to support the funding of the provision of access services. This section first looks at the promotion of the creation of accessible content.

#### 7.3.1 Maximising the amount of content produced with access services

Several policy and regulatory approaches emerged in the research in terms of grants and subsidies to support the provision of access services for audiovisual content. Included in these were an approach that aims to maximise the amount of content produced with access services built in. This is achieved either via obligation or by encouragement and relates to the criteria for the granting of public funds for film and/or television creation.

##### 7.3.1.1 Public funding requires the inclusion of access services

There are a number of funding options encouraging the development of accessibility via funding and grants in Canada. In its policy on Broadcasting and Telecom Regulatory Policy<sup>67</sup> ('Described video and audio description' 111.), the Commission: *recommended that the Canada Media Fund make the production of described video a criterion for funding television programmes and that other production funds do likewise.*

The main public funding body for the cinema sector is Telefilm Canada. This body funds both film and television productions. In the application for the film fund Budgets and Production Financing Requirements<sup>68</sup> it is required that (inter alia): a closed-captioned version for the hearing impaired is required unless guaranteed by the producer's contract with the distributor. If the project is financed in whole or in part by the Talent Fund, the project must also be provided with described video. The abovementioned Talent Fund for micro budget projects includes requirements regarding accessibility.<sup>69</sup>

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<sup>66</sup> Ofcom Code on Television Access Services:

[https://www.ofcom.org.uk/data/assets/pdf\\_file/0020/97040/Access-service-code-Jan-2017.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0020/97040/Access-service-code-Jan-2017.pdf)

<sup>67</sup> Broadcasting and Telecom Regulatory Policy CRTC 2009-430.

<http://www.crtc.gc.ca/eng/archive/2009/2009-430.htm>

<sup>68</sup> Telefilm Canada budget and production requirements: <https://telefilm.ca/wp-content/uploads/budget-and-production-financing-requirements.pdf>

<sup>69</sup> The Micro-Budget Production Program –Funding of Micro-Budget Projects from Emerging Filmmakers aims to stimulate the use of new digital distribution platforms by emerging filmmakers and to allow these filmmakers to develop an expertise in digital marketing and promotion of audiovisual projects

Under the terms of funding the following is included: *Please note that all projects supported through this Program must be closed-captioned and available in described video, regardless of the distribution platform. Sufficient funds must be reserved for these elements in the project's production budget.*<sup>70</sup>

In addition, the CRTC adapted its policy framework for Certified Independent Production Funds (CIPFs) in 2016. It included the following: *Requiring that all programming supported by CIPFs, regardless of the platform on which it is distributed, be closed captioned and provided with described video. Making accessibility a consideration early in the creative process—not only in post-production—will help create a cultural shift that will result in accessibility becoming just another consideration in the regular course of doing business.*<sup>71</sup>

In Australia, the main film funding body is Screen Australia (formerly the Australian Film Commission, the Film Finance Corporation Australia, and Film Australia Limited). Since 1st July, 2007, Screen Australia has required all the films which it finances to be captioned through its Terms of Trade. As of 10th January, 2011, Screen Australia requires that feature films it finances be captioned and audio described to provide access for the hearing and/or visually impaired, for cinemas and DVD. The producer will need to budget for these requirements. Feature film producers are also required by Screen Australia to use reasonable endeavours to ensure that all Australian distribution agreements include access for the hearing and/or visually impaired via captioned and audio-described theatrical screenings and DVDs.

Screen Australia also encourages producers of all non-feature film content to budget for captioning and audio description, and for accessible web or game design to provide access to their projects for both hearing and visually impaired audiences.<sup>72</sup>

A similar regime exists in Germany with regard to federal film funding. According to guidelines for the granting of film funds: *(4) At least one final version of the film must be produced with German subtitles for the hard of hearing and with a German audio description for the visually impaired of a quality which meets market requirements and is suitable for screening in a theatre. Derogations from this requirement are possible in justified exceptional cases and upon application by the producer. Such decision is taken by the FFA managing director. The barrier-free final version must be submitted to the FFA before disbursement of the final instalment of the approved grant and at the latest after completion of the first release print and prior to its theatre release (§ 5 Film-Related Requirements).*<sup>73</sup>

The Irish Sound and Vision broadcast funding scheme (which is managed by the regulator, BAI) also includes requirements for TV productions to include accessibility services. Below is an extract from the guidelines (third call, May 2017): *In order to facilitate the understanding and enjoyment of television programmes by people who are deaf or with hearing difficulties, all funded programmes must make provision for subtitling.*

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<sup>70</sup> Telefilm (2016) MICRO-BUDGET PRODUCTION PROGRAM FUNDING –GUIDELINES:

<https://telefilm.ca/wp-content/uploads/guidelinesmicro-budget-2017eng.pdf>

<sup>71</sup> Broadcasting Regulatory Policy CRTC 2016-343 : Policy framework for Certified Independent Production Funds: <http://www.crtc.gc.ca/eng/archive/2016/2016-343.pdf>

<sup>72</sup> Screen Australia, Terms of Trade: <https://www.screenaustralia.gov.au/getmedia/2e7f34c9-1f1c-420e-a8d6-66e984ea3c92/Terms-of-trade.pdf?ext=.pdf>

<sup>73</sup> Guideline Issued by the Federal Government Commissioner for Culture and the Media "Incentive to Strengthen the Film Industry in Germany" (German Federal Film Fund). Available here: <http://dfff-ffa.de/index.php?current-guidelines>

*The subtitling provided should conform to the BAI Subtitling Guidelines and accompanying subtitles must be available/accessible to viewers each time the funded programme is broadcast in the State.<sup>74</sup>*

Similarly, in order to facilitate access to programmes for people who are deaf, with hearing difficulties, blind or with visual impairments, some funded programming must make provision for Irish Sign Language (ISL) for deaf or hearing impaired and/or Audio Description (AD) for blind or visually impaired. With that in mind, TV Drama and children's TV applications MUST have at least one broadcast with AD and/or ISL, with the cost deemed an eligible cost. Drama and Children's programming applicants are free to choose which element suits their project best. This is deemed as an eligible cost and provision for these costs should be made in the budget.

Funding is also available to applicants who wish to provide Irish Sign Language (ISL) and/or audio description (AD) services in other formats (Education, Documentary, Entertainment). The BAI strongly encourages such applications, either with ISL or AD or both, with the cost also deemed an eligible cost.

In response to the BAI/EPRA questionnaire of June 2017, the Belgian CSA also outlined that a similar proposal is being developed. New legislation was (June 2017) under preparation with the aim of linking the obtaining of public subsidies for production to the obligation of making the content accessible by specific subtitling and audio-description. The respondent noted that costs might be shared in that specific case but the regulation was not yet clear.

#### *7.3.1.2 Awarding public funds: the inclusion of access services is a positive criterion*

In Croatia there is a Fund for Promotion of Pluralism and Diversity of Electronic Media (Electronic Media Act, Article 63), managed by the Electronic Media Agency with the aim of stimulating the production and broadcasting of audiovisual and radio programmes and content of television and/or radio broadcasters at the local and regional levels, of non-profit television and/or radio broadcaster as well as non-profit media service providers, non-profit electronic publications providers, of non-profit producers of audiovisual and/or radio programmes which are of public interest. The fund has a list of criteria for awarding financing to production projects which includes the accessibility of programmes and content for people with disabilities.

In France, several of the production funds of the CNC consider plans to make an audiovisual work accessible as an important criterion in the decision to award funding in the support for digitisation of heritage films, the support for the creation of a physical video and the support in the distribution of the work via video on demand.<sup>75</sup>

#### *7.3.1.3 Specific funds for the creation of accessible content*

The Slovenian Mass Media Act (Art. 4) provides support for the creation and dissemination of programmes intended for persons with sensory disabilities using techniques adapted for these persons. The Ministry of Culture issues an annual public call for applications for co-funding production of media programme content. Included in this call for programme content (covering a range of production areas) is a specific section on programming intended for persons with sensory disabilities using relevant techniques.

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<sup>74</sup> Broadcasting Authority of Ireland (2017): Sound and Vision 3. A Broadcasting Funding Scheme: Guide for Applicants: <http://www.bai.ie/en/download/128489/>

<sup>75</sup> CNC website on accessibility: <http://www.cnc.fr/web/fr/accessibilite>

Also included are projects which develop the appropriate technical infrastructure for dissemination of programmes intended for persons with sensory disabilities. In this funding scheme, the Ministry provides 50% of the funding for the projects selected.<sup>76</sup>

The French CNC is the major funding source for the production of audiovisual content in France. It has a range of schemes for promoting the accessibility of audiovisual works.<sup>77</sup> The CNC proposes different support mechanisms. Some have been outlined above regarding the provision of access services being a criterion in the selection of projects for funding. They also directly fund the creation of audio description and subtitling for audiovisual works (on feature films). Eligible costs include both the creation of the subtitles and of the audio description, *and* the transfer of the data to all digital distribution platforms: television, video and video on demand.<sup>78</sup>

The Fernsehfonds Austria (i.e. Austrian Television Fund) was established within the Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR) and provides funding for the production of versions of programming for people with hearing or visual impairments. This is outlined under the Guidelines for funds (Exploitation grants (section 8.1 (1)): *In addition to the overall production costs as referred to in Section 7.1, the following measures may also be funded: production of versions for people with hearing or visual impairments, where grants may cover 80% of the actual costs incurred and documented or a maximum of EUR 10,000.*<sup>79</sup>

The Vienna Film funds<sup>80</sup> will also include costs for the production of accessibility options in films. Under their guidelines for feature films (regarding utilization costs): *costs incurred with regard to the planned exploitation of the film and already in the course of the production may be recognized as part of the production costs.* One of these potential costs is: *aids for hearing-impaired people (subtitling) and for visually impaired people (audio-description).*<sup>81</sup>

The Austrian Film Institute (OFI) have similar guidelines (section 6.2.7): *Costs for German subtitles for hearing impaired and German audio description for visually impaired people ("Accessibility for people with disabilities") for DVDs or comparable data carriers will be acknowledged within the frame of the production calculation and shall be listed accordingly.*<sup>82</sup>

## 7.4 Other approaches

Currently, in Belgium (French speaking community) there are no specific funds but some broadcasters are directly negotiating with several government sub-departments (media, health, equality of opportunity) in order to raise funding, mainly for sign language interpretation.<sup>83</sup>

In Catalonia, audiovisual media service providers may use sponsorship to help with the costs of the accessibility services.<sup>84</sup>

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<sup>76</sup> Details can be found here: [http://www.mk.gov.si/en/legislation\\_and\\_documents/](http://www.mk.gov.si/en/legislation_and_documents/)

<sup>77</sup> <http://www.cnc.fr/web/fr/accessibilite>

<sup>78</sup> CNC website on accessibility: <http://www.cnc.fr/web/fr/accessibilite>

<sup>79</sup> Home page of Austrian Television Funds. <https://www.rtr.at/en/ffat/Fernsehfonds>

<sup>80</sup> <http://www.filmfonds-wien.at/foerderung/ueberblick>

<sup>81</sup> [http://www.filmfonds-wien.at/files/ffw\\_f\\_\\_rderrichtlinien\\_teil-c\\_herstellung-von-kinofilmen.pdf](http://www.filmfonds-wien.at/files/ffw_f__rderrichtlinien_teil-c_herstellung-von-kinofilmen.pdf)

<sup>82</sup> <https://www.filminstitut.at/en/>

<sup>83</sup> Data from the BAI/EPRA Questionnaire

<sup>84</sup> art. 8.4 of the Law 7/2010 <http://www.boe.es/buscar/pdf/2010/BOE-A-2010-5292-consolidado.pdf>

## 7.5 Specific bodies that promote, fund or facilitate accessibility

### 7.5.1 Canadian Broadcasting Accessibility Fund (CA)

In 2012, the CRTC approved the proposal of BTE (Bell Canada Enterprises) Canada to establish the Canadian Broadcasting Accessibility Fund.<sup>85</sup> The Broadcasting Accessibility Fund Inc.: *is an independent and impartial funding body supporting innovative projects that provide solutions to promote the accessibility of all broadcasting content in Canada. The Fund will support projects that provide practical solutions to increase accessibility to broadcasting content and that, whenever possible, make use of inclusive design principles to promote accessibility at the earliest stages and in the most cost-effective manner for new technologies and applications in Canada.*<sup>86</sup>

### 7.5.2 British Sign Language Broadcasting Trust (GB)

The British Sign Language Broadcasting Trust (BSLBT) commissions television programmes made in British Sign Language by Deaf people for Deaf people. BSLBT was set up in 2008, with Ofcom's approval, to offer an alternative way for commercial broadcasters to meet their regulatory requirements to provide sign language on their qualifying channels.<sup>87</sup> According to the BSLBT website, *'independent broadcasters with between 0.5% and 1% of audience share can choose either to source and broadcast programmes presented in sign-language themselves or to pay an annual subscription fee, set by Ofcom, to BSLBT to make programmes in sign language.'* In 2015, 61 channels from 13 broadcasters contributed to the BSLBT providing an income of 1.2 million GBP. In the same year 18 programmes were commissioned or acquired from six different companies. In addition, the organisation has broadcasting slots (BSL Zone) on two Freeview channels (four 30 minute weekly slots).<sup>88</sup> Programming is also made available on the BSLBT website.

### 7.5.3 The Hellenic Centre for Social Solidarity (GR)

In Greece, the Hellenic Centre for Social Solidarity, funded by the EU (80%) and the Greek state (20%) manages the collection, production, enrichment and exploitation of existing multimedia content. The content is collected from different sources and made available to persons with disabilities.<sup>89</sup>

### 7.5.4 Media Access Charitable Trust (NZ)

In New Zealand, the Media Access Charitable Trust manages Able, which provides access services for New Zealand's leading broadcasters TVNZ (public broadcaster), Mediaworks and SKY. Able fully funds access services to provide captioning and audio description services for hearing or vision-impaired people for TVNZ and TV3 audiences. They also work with a range of commercial clients on film and media projects, including captioning for television commercials and captioning and audio description for online videos and DVDs.

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<sup>85</sup> The establishment of this fund was part of a much larger commitment required by the CRTC in the process of the take-over of CTVglobemedia, which involved BCE investing 245 million Canadian dollars in the Canadian Broadcasting industry. See CRTC approves BCE's purchase of CTVglobemedia:

<http://www.ctvnews.ca/crtc-approves-bce-s-purchase-of-ctvglobemedia-1.615461>

<sup>86</sup> Broadcasting Accessibility Fund homepage: <http://www.baf-far.ca/en/home>

<sup>87</sup> Home page of British Sign Language Broadcasting Trust: <http://www.bslzone.co.uk/about/>

<sup>88</sup> Data according to the 'Report of the Trustees of the BSLBT, December 2015':

[http://www.bslzone.co.uk/files/1514/7584/2307/BSLBT\\_2015\\_accounts.pdf](http://www.bslzone.co.uk/files/1514/7584/2307/BSLBT_2015_accounts.pdf)

<sup>89</sup> Data from Swedish questionnaire



### 7.5.5 The Media Access Group (USA)

The Media Access Group at WGBH (the Boston public broadcaster) provides captioned and described media to people in their homes, classrooms, at work and in the community. It also focuses on developing new solutions to access challenges. The organisation is part of the WGBH Foundation, and is funded via a variety of donations, sponsorships and the commercial provision of access services to clients.

The Media Access Group offers corporations “a variety of opportunities to enhance their exposure to the communities of people who are deaf, hard of hearing, blind, and visually impaired. These include sponsoring captioning and/or description on television programs; outreach and promotion campaigns, special events, or the installation of technology at movie theaters”.<sup>90</sup>

### 7.5.6 Carl and Ruth Shapiro Family National Center for Accessible Media (NCAM)

Also part of the WGBH Foundation, NCAM is a research, development, and advocacy entity that works to make existing and emerging technologies in a broad range of media more accessible to all audiences. NCAM's innovative Strategic Partners Program engages the nation's leading technology and telecommunications companies in the development, implementation, and promotion of universal design to benefit all users. NCAM runs a range of projects that include enhancing access to digital television.

## 7.6 Fiscal and tax incentives

The Canadian policy on Broadcasting and Telecom Regulatory Policy<sup>91</sup> notes that the production of described video is eligible for federal and provincial tax credits. In the USA, there is also a federal tax credit for smaller business to enhance accessibility, and hence includes the provision of access services on content.

## 7.7 Other forms of cooperation

### 7.7.1 Specific channels, portals, websites

In Slovenia, there is a TV channel - TIPK TV - dedicated to persons with hearing disabilities. The channel collaborates with the major commercial TV service POP TV to provide access to POP TV's evening news with sign language. The news broadcast is available on TIPK TV at the same time, and also available the next day on POP TV's on-demand service VOYO (+30-day archive). In the future, they plan to make even more content available to persons with hearing disabilities.

### 7.7.2 Cooperation between the various actors on the value chain

In its policy on Broadcasting and Telecom Regulatory Policy<sup>92</sup> ('Described video and audio description' 111.), the Canadian Commission expressed the view that other means of increasing amounts of described video are available: *Accordingly, the Commission recommends that producers and broadcasters work together to incorporate described video into the production process.*

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<sup>90</sup> The Media Access Group at WGBH: <http://main.wgbh.org/wgbh/pages/mag/getinvolved/funding-opps.html>

<sup>91</sup> Broadcasting and Telecom Regulatory Policy CRTC 2009-430.  
<http://www.crtc.gc.ca/eng/archive/2009/2009-430.htm>

<sup>92</sup> Broadcasting and Telecom Regulatory Policy CRTC 2009-430.  
<http://www.crtc.gc.ca/eng/archive/2009/2009-430.htm>

The Swedish Broadcasting Authority has developed an area on its website in order to disseminate knowledge and best practice to further assist small players with limited resources. Here the broadcasters can find: information about different access technologies; information from players who have experience in promoting access to TV programmes through various techniques; and information on disability organizations for consultation and dialogue purposes.

In the UK, the Television On Demand Industry Forum, provides an example of cooperation and dialogue. It has established an access services policy working group, whose role is to provide an effective means for content providers and platform operators to share experience and technical know-how with a view to increasing accessibility. Further European co-operation initiatives in relation to technological developments are outlined in chapter 8.

## **7.8 Issues regarding the providers of accessibility services**

One issue that was considered important to examine in the course of this report was the extent to which operators in other jurisdictions had problems with there being a limited number of suppliers creating accessibility tools for content. This issue did not arise in the research of the various jurisdictions. It is worth noting that in its consultation procedure, the Swedish Broadcasting Authority indicated that they had communicated with five companies providing services regarding adding accessibility to programming: these were Br. Ström, Westreamu, Svensk medietext, SyntolkningNu and TSP-AB.

The Belgian regulator responding to the BAI questionnaire (CSA, Belgium) also commented that as the volume of accessible programmes is raising due to regulation, more and more companies are specialising in producing accessibility tracks, and this competition decreases costs and prices. It was also highlighted at the beginning of this chapter that in an assessment of costs (carried out for the European Commission) in several countries, Ireland appears to have higher costs for captioning than either the UK or Spain.



## 8 Thematic focus: delivery, distribution, findability and technological challenges

The following section provides a brief overview on developments related to distribution of accessible content, and other technological changes that may bring both opportunities and challenges. Have regulatory approaches addressed these issues?

A key area of the provision of access services concerns the way in which the additional content linked to programming is delivered to the consumer.

### 8.1 Must-carry rules: complimentary services including access services

One significant area where the delivery of audiovisual services must take into account the provision of access services for people with disabilities is via must-carry rules. Must-carry rules must be in line with the Universal Services Directive which requires that such obligations should be applied only to *"networks that have a significant number of end users using the service as their main means of accessing television broadcasts. Such obligations shall only be imposed where they are necessary to meet clearly defined general interest objectives and shall be proportionate and transparent."* (Article 31)<sup>93</sup>

According to research carried out in 2015,<sup>94</sup> there were several European countries where alongside the obligation to carry certain channels (for example public, free to air, local, community etc.) it was also required that distribution companies carried complimentary services, in particular accessibility services to enable appropriate access for disabled end-users. The following includes details on Denmark, Malta, France, Greece, Portugal, Switzerland and the UK.

In Malta, the carriage of specified radio and television broadcast channels includes *"complementary services, particularly accessibility services to enable appropriate access for disabled end-users."*<sup>95</sup> In Portugal, the Portuguese regulator (ERC) conducted an exhaustive consultation in May 2011 on must-carry rules concluding that they should apply to all platforms. A similar procedure was adopted with regard to the must carry of a set of complementary services adequate to enable accessibility for disabled end-users.<sup>96</sup>

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<sup>93</sup> Universal Services Directive

<http://eurlex.europa.eu/legalcontent/EN/TXT/HTML/?uri=CELEX:32002L0022&from=EN>

<sup>94</sup> Kevin, D. and A. Schneeberger (2016): Access to TV platforms: must-carry rules, and access to free-DTT. European Audiovisual Observatory. Available here:

<http://www.obs.coe.int/industry/tv.jsessionid=688732077AF6185BA69E73C94823522F>

<sup>95</sup> Electronic Communications Networks and Services (General) Regulations, 2011, as amended by Legal Notices 335 and 485 of 2011, 60 of 2012 and 298 of 2014, 49.

<sup>96</sup> At a first stage, the ERC should specify the services to be subjected to must carry obligations, which should be further imposed by ANACOM on 'eligible' providers and electronic communications networks.

In France, the Law 86-1067 (as modified by Law 2004-669) details services that are must-carry, and include '*services for disabled people associated with the channels to be carried (art 34-2)*'.<sup>97</sup> Such laws apply specifically to the services of the public service broadcasters in Denmark: *Owners of communal antenna systems must ensure the distribution of sign language interpreted newscasts from DR and TV 2 / DENMARK A / S, programmes from DR1 and DR2 with audio description, and the TV channel FOLKETINGET*.<sup>98</sup>

Similarly, in Greece, (Law 407/ 2012) the relevant ministry may impose on network providers, used for the distribution of radio and television broadcasts to the public reasonable, must-carry obligations for the transmission of special broadcasting channels and additional services *and in particular services to enable appropriate access of disabled end-users*. In the UK, access services are one example of specific content/ services which must be carried and included on specific programmes and services for disabled people. In Switzerland, services for the visually and hearing impaired which are coupled with must-carry television programmes must also be delivered.

### **8.1.1 Specific obligations regarding distribution of access services**

In Belgium (French-speaking), there are requirements for distributors (obligations of conduct) to do "everything they can" to route subtitle and audio-description tracks when provided by the broadcasters. Both broadcasters and distributors must have an in-house contact person dedicated to accessibility issues.<sup>99</sup>

### **8.1.2 Other actions to enhance delivery of access services**

While in most countries, there may not be specific obligations on distribution companies to deliver accessibility services, there have been a range of agreements, and initiatives with regard to particular platforms.

As outlined in the French country report in this study, the French CSA carried out a study the aim of which is to develop a DTT receiver with vocalised (text to speech) in the French language. The regulator noted that such systems exist in the UK and in Spain.<sup>100</sup>

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<sup>97</sup> Loi n° 86-1067 du 30 septembre 1986 relative à la liberté de communication (consolidated version of 29 November 2013, in French only):

<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006068930>

<sup>98</sup> Executive Order on the distribution of television programmes in communal antenna systems Pursuant to § 6 paragraph. 2 and § 93 paragraph. 2 of the Law on Radio and Television Broadcasting, see. Legislative Decree no. 255 of 20 March 2014

<sup>99</sup> Response from the BAI/EPRA Questionnaire, 2017

<sup>100</sup> Rapport 1 : Etat du développement des récepteurs TNT vocalisants.

<http://www.csa.fr/Media/Files/Television/Rapport-1-Etat-du-developpement-des-recepteurs-TNT-vocalisants>

Some other examples were provided in the EPRA report of 2013:

*In Portugal, PT Comunicações (Portugal Telecom) is required to ensure that services for people with disabilities are received by end-users. PTC should also ensure additional capacity for features that provide access for people with visual and hearing impairments to television PTC is also required to subsidize the purchase of DTT reception equipment for seriously disabled persons. In Turkey, the RTÜK published specifications of the set-top-boxes. Special audio streaming for the visually disabled, and subtitle choices for the audio disabled have been included to the set-top-boxes.*<sup>101</sup>

In the ERGA working paper,<sup>102</sup> it was reported that in Ireland, television sets and set top boxes which are sold with Saorview approval (and hence guaranteed to work with the Irish DTT system) must be able to receive, decode and display the various access services.

## 8.2 Obligations in non-European jurisdictions: carry through, and provision of technology

In Canada, the CRTC also places obligations on BDUs (broadcasting distribution undertaking as defined by the CRTC, for example a cable, satellite or microwave distributor) to deliver the captioning on programming to their subscribers.

There are very detailed obligations in the USA regarding both the delivery of content to distributors, and the distribution of content by distributors (emphasis below added by author).

There are obligations on the “video programming owners” regarding the delivery of content to distributors. They must (i) **send program files to video programming distributors and providers with captions** ... with at least the **same quality as the television captions** provided for the same programming. A **specific standard** has been developed for the format of captioning and where this standard is used, they have fulfilled the obligation to deliver captions to the video programming distributor or provider in an acceptable format. **A video programming owner and a video programming distributor or provider may agree upon an alternative technical format** for the delivery of captions to the video programming distributor or provider. They must also with the distributor **agree upon a mechanism to inform such distributors and providers on an ongoing basis whether video programming is subject to the requirements of this section.**

Obligations are also placed on distributors (and broadcast networks). These are known as multichannel video programming distributors (MVPD). They must both “pass through” the captioning of the broadcasters, and also ensure a certain level of accessibility on their services.<sup>103</sup>

With regard to video description (audio description): multichannel video programming distributor (MVPD) systems that serve 50,000 or more subscribers **must provide 50 hours of video description** per calendar quarter during prime time or children's programming, on each channel on which they carry one of the top five national non-broadcast networks.

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<sup>101</sup> EPRA/2013/05: Working Group 3: Round Table on Access to Audiovisual Media Services for persons with disabilities. Comparative background document. <https://www.epra.org/attachments/krakow-wg3-accessibility-comparative-document-final-version>

<sup>102</sup> European Regulators Group for Audiovisual Media Services (2016): ERGA Special Task Report on the provision of greater accessibility to audiovisual media services for persons with disabilities – Pilot study: preparing for a possible European benchmarking and bench-learning initiative in the television field. ERGA 2016/12. [http://erga-online.eu/wp-content/uploads/2016/10/report\\_accessibility\\_2016.pdf](http://erga-online.eu/wp-content/uploads/2016/10/report_accessibility_2016.pdf)

<sup>103</sup> television broadcasters (including digital multicast channels, Class A television stations, low power television stations and television translator stations), cable and direct broadcast satellite operators and other multichannel video programming distributors (MVPDs)

MVPD systems of any size have (i) ***obligations to "pass through" video description provided*** by broadcast stations and non-broadcast networks, and the channel on which the MVPD distributes the programming has the technical capability necessary to pass through the video description, unless it is using the technology used to provide video description for another purpose related to the programming that would conflict with providing the video description; They must maintain the quality of the captions provided by the video programming owner and transmitting captions in a format reasonably designed to reach the end user in that quality. A video programming distributor or provider that provides applications, plug-ins, or devices in order to deliver video programming must comply with additional requirements. They must also (ii) with each video programming owner agree upon a mechanism to inform such distributor or provider on an ongoing basis whether video programming is subject to the requirements in the regulation (some programming is exempt, see USA report for more details).

### **8.2.1 Provision of technology and "usability"**

In Canada, the CRTC recently amended the Broadcasting Distribution regulations with regard to equipment software and other technology: *7.3 Except as otherwise provided under a condition of its licence, a licensee shall make available to its subscribers such equipment, software or other technology that will allow any individual who is blind, visually impaired or who has fine motor skills disabilities to identify and have access to its programming services — including programmes with described video — if that equipment, software or other technology is available for purchase by the licensee and is compatible with its distribution system.*<sup>104</sup>

In the US, in 2010, the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) was passed. Title III deals with video programming and made the following changes to the law concerning requirements for:

- video programming equipment (to be capable of displaying closed captions, to devices with screens smaller than 13 inches (e.g., portable TVs, laptops, smart phones);
- devices designed to record TV programs to pass through closed captions, video description, and emergency information so viewers are able to turn on/off the closed captions and video description;
- interconnection mechanisms (cables) to carry (from the source device to the consumer equipment – e.g., TV set) the information necessary to permit the display of closed captions and make video description and emergency information audible;
- user controls for TVs and other video programming devices to be accessible to people who are blind or visually impaired, and TVs and other video programming devices to have a button, key, icon, or comparable mechanism designated for activating closed captioning and video description;
- on-screen text menus and program guides displayed on TV by set-top boxes to be accessible to people who are blind or visually impaired and set-top boxes to have a button, key, icon, or comparable mechanism designated for activating closed captioning (when built-in to the set-top box).<sup>105</sup>

### **8.3 "Findability" and the requirements to inform viewers of accessibility functions**

The EPRA research of 2013 examined this issue and provided several examples of obligations to assist users in finding accessible content: *Broadcasters are often required to promote access services by*

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<sup>104</sup> Broadcasting Distribution Regulations (SOR/97-555) <http://laws-lois.justice.gc.ca/eng/regulations/SOR-97-555/page-2.html#docCont>

<sup>105</sup> <https://www.fcc.gov/consumers/guides/21st-century-communications-and-video-accessibility-act-cvaa>

*indicating through the use of a symbol or standard acronyms those programmes for which access provision is available (Belgium, French-speaking Community, Ireland, Slovakia, UK). Ofcom also requires television service providers "to promote awareness of the availability of their television access services to potential users of the services by making available accurate and timely information to electronic programme guide (EPG) operators listing their services, and by providing similar information on their website". In Slovakia, broadcasters have the duty to identify access services during programmes, in trailers, EPGs and in the schedule of programmes that it provides for publication in the periodical press and other mass media.*

As noted in chapter 5 (above), with regard to on-demand services, the regulation in the Slovak Republic also obliges the provider of an on-demand audiovisual media service to clearly identify all programmes that are accompanied by hidden subtitles, displayed subtitles, voice commentary for the blind or that are translated into sign language for the deaf or broadcast or provided in sign language for the deaf. The provider of an on-demand audiovisual media service is also obliged to apply labelling in its programme catalogue.

Further detail was provided in the Swedish questionnaire of 2015.<sup>106</sup> In Belgium (French speaking Community), all broadcasters must inform viewers of accessibility programmes using the appropriate pictogram and an audible indication at the beginning of the program and in the trailers. Also, when communicating their programmes on their own or through third-party media, publishers (and distributors) they should also include information for accessibility using pictograms.

In Ireland, the rules require that broadcasters promote the availability of the relevant access service provision. Programmes with subtitles are either highlighted with a special symbol on the EPG, or a list is provided on a specific web page. In Hungary, broadcasters must inform their viewers before the programmes are broadcast, indicating the number of the relevant teletext page.

In Poland, this is taken care of in the self-regulation agreement of the DTT broadcasters. The information on the type of access services (audio description, subtitles for the hearing-impaired persons and interpretations into the sign language), the nature of the program, its duration and the date and time for the broadcast should be placed: on the website of the broadcaster; on the Teletext if the broadcaster provides it; in announcements made by the broadcasters; in the electronic program guide (EPG); and in the press, if possible.

In Portugal, media service providers shall render available "*easily understandable navigation menus*", namely in EPG's and teletext; programming made accessible by subtitling, sign language or audio-description should be properly identified as such in EPG's linked to a given distribution platform; the adoption of a common identification system of programmes with accessibility measures is a recommendation addressed to all TV broadcasters; as well as raising awareness of accessibility functionalities through teletext, websites and other public announcements regarding the channel's programming.<sup>107</sup>

In several countries, while there is no requirement to do so, in practice the broadcasters are adding this information to programme descriptions and TV programme guides (Estonia, Finland), and also inform viewers during the accessible programmes (Finland).

In Spain, the law requires that information on television programming and scheduling which is included in websites, electronic programming guides or other media of the audiovisual

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<sup>106</sup> Data provided by the Swedish regulator. The issue of requirement to inform was a specific question.

<sup>107</sup> in line with Article 34 (3) of the Media Services Act and with Recital 46 of the AVMS Directive

communication service provider, and which serves to guarantee the right to transparency established in this section, *must be accessible to persons with disabilities*.<sup>108</sup>

In Canada, the licensee (for an on-demand service or for a broadcast service) is expected to display a standard described video logo and air an audio announcement indicating the presence of described video before the broadcast of each described programme; and make information available regarding the described programmes that it will broadcast.

In the US, the law requires that:

- user controls for TVs and other video programming devices are accessible to people who are blind or visually impaired, and requires TVs and other video programming devices to have a button, key, icon, or comparable mechanism designated for activating closed captioning and video description.
- on-screen text menus and program guides displayed on TV by set-top boxes are accessible to people who are blind or visually impaired and requires set-top boxes to have a button, key, icon, or comparable mechanism designated for activating closed captioning (when built-in to the set-top box).<sup>109</sup>

#### 8.4 Challenges presented by new technologies, and the need for cooperation

It is well accepted that the digitisation of the media and the proliferation of platforms for content should enhance the availability of accessible content. The study produced by the European Commission in the context of the Impact Assessment<sup>110</sup> noted several important issues with regard to increasing accessibility:

***Increasing standardization and reducing fragmentation:*** Currently, there are many technologies and standards for access services, especially when it comes to on-demand services and online platforms. This boosts the costs for service providers operating in more than one MS due to: a) an absence of economies of scale; and b) the need to adapt services to different standards and technologies.

***Development of new services:*** There are two prominent innovations that have already evolved from efforts aimed at increasing accessibility. The first focuses on enhancing two-screen technologies to enable users to have content without accessibility elements on the main screen, while the second screen (e.g. a smartphone, a tablet) provides subtitles, audio description, audio subtitles or sign language interpretation. The second innovation enables search within audiovisual material through subtitles. Searching for specific phrases in subtitles could help users to find specific points in the audiovisual material.

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<sup>108</sup> Act 7/2010 (article 6). Data from: Fundamental Rights Agency (2014)

<sup>109</sup> <https://www.fcc.gov/consumers/guides/21st-century-communications-and-video-accessibility-act-cvaa>

<sup>110</sup> Visionary Analytics/ SQW Limited/ Ramboll Management Consulting (2016): Survey and data gathering to support the Impact Assessment of a possible new legislative proposal concerning Directive 2010/13/EU (AVMSD) and in particular the provisions on media freedom, public interest and access for disabled people

A wide range of European initiatives exist to address the issues of standardisation as outlined in the 2013 Working Group Paper from the EPRA,<sup>111</sup> and the 2016 report of the ERGA.<sup>112</sup> These are not examined in detail here as they go beyond the scope of activities of national regulators. A couple of those outlined are worth mentioning. These include the Eurovision Access Services Experts Group of the EBU, which brings together access service experts with responsibilities covering subtitling, signed programmes, audio description and audio subtitling which enable access to public broadcasters' programming all over Europe. The Group's aim is to stimulate and support the exchange of technologies, products and services, and to achieve standardisation in order to develop common formats, guidelines, processes and legislation for authorities and stakeholders.<sup>113</sup>

NorDig is a cooperative organisation consisting of Nordic and Irish television companies and telecom companies. It includes a subgroup on accessibility to investigate needs and solutions in the field of accessibility services and develop relevant parts of the Nordig specification. The subgroup has made detailed specifications for audio description and spoken subtitles, which are now mandatory receiver requirements in the NorDig Unified TV receiver specification for future coming TV receivers.<sup>114</sup>

There are also various other initiatives and networks where broadcasters participate such as the HBB4all-project (funded by the EU), and the NEM-ACCESS. The NEM (New European Media) is a European technology platform grouping of media-related organisations. NEM-ACCESS is a subgroup that has collated a list of policies they believe would improve the access situation in Europe. Members include, among others, EBU, BBC, Orange and Sony Europe.<sup>115</sup>

Some examples of national cooperation were outlined in the EPRA working paper from 2013: *In the UK, the eAccessibility Forum brought Government together with industry and the voluntary sector to explore issues of e-accessibility, and to develop and share best practice across all sectors. The eAccessibility forum is led by the UK department for Business, Innovation and Skills (BIS). One example of voluntary co-operation was the 'Smart Talk' set top box, which is a result of a collaboration between the electronics company Goodmans and the Royal National Institute of Blind People (RNIB). The 'Smart Talk' box is available for the Freeview platform and the technology enables screen information, such as programme information from the EPG, to be spoken aloud.*<sup>116</sup>

As noted in the UK country report in this study, between 2011 and 2015 ATVOD (the former co-regulatory body for on-demand) produced reports on the accessibility of on-demand services. The reports raised some interesting issues regarding the provision of accessibility tools online. In the 2015 report, they noted that: *Providers continue to point to barriers to accessibility on VOD, including technical issues in converting subtitles for multiple platforms, and the associated costs. Content providers (e.g. Fox) continue to disagree with platform operators (e.g. Virgin) over whose responsibility it is to make content accessible, and there is a lack of clarity over platform requirements and/or capabilities.*

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<sup>111</sup> EPRA/2013/05: Working Group 3: Round Table on Access to Audiovisual Media Services for persons with disabilities. Comparative background document

<sup>112</sup> European Regulators Group for Audiovisual Media Services (2016): ERGA Special Task Report on the provision of greater accessibility to audiovisual media services for persons with disabilities – Pilot study: preparing for a possible European benchmarking and bench- learning initiative in the television field. ERGA 2016/12. [http://erga-online.eu/wp-content/uploads/2016/10/report\\_accessibility\\_2016.pdf](http://erga-online.eu/wp-content/uploads/2016/10/report_accessibility_2016.pdf)

<sup>113</sup> Eurovision Access Services Group: <https://www.ebu.ch/groups/tv/eurovision-access-services-experts.html>

<sup>114</sup> Nordig: <https://nordig.org/>

<sup>115</sup> New European Media: <https://nem-initiative.org/>

<sup>116</sup> EPRA/2013/05: Working Group 3: Round Table on Access to Audiovisual Media Services for persons with disabilities. Comparative background document



*However, more platforms appear to now support access services, and more content providers are working with platforms to get accessible content through to consumers.<sup>117</sup>*

The Ofcom also supports the **Television On Demand Industry Forum**, an example of cooperation and dialogue which has established an access services policy working group. The role of the working group is to provide an effective means for content providers and platform operators to share experience and technical know-how with a view to increasing accessibility.

#### **8.4.1 Examples of funding support for distribution, and research into accessible technologies**

As noted in chapter 7, the Slovenian Ministry of Culture annually funds projects which develop the appropriate technical infrastructure for dissemination of accessible programmes. In this funding scheme, the Ministry provides 50% of the funding for the projects selected.<sup>118</sup>

In France, the CNC (funding source for the production of audiovisual content) has a range of schemes for promoting the accessibility of audiovisual works. This includes aid in the distribution of the works via video on demand wherein the plan to make the work accessible will be a criterion in the decision to award funds, and adding of accessible features are included in eligible costs.<sup>119</sup>

In the USA; the Carl and Ruth Shapiro Family National Center for Accessible Media (NCAM) (part of the WGBH Foundation) is a research, development, and advocacy entity that works to make existing and emerging technologies in a broad range of media more accessible to all audiences. NCAM's innovative Strategic Partners Program engages the nation's leading technology and telecommunications companies in the development, implementation, and promotion of universal design to benefit all users. NCAM runs a range of projects that include enhancing access to digital television.

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<sup>117</sup> ATVOD (2015): Provision of Video on Demand Access Services -2015 Report  
[https://www.ofcom.org.uk/data/assets/pdf\\_file/0023/58811/as\\_survey\\_report\\_2015.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0023/58811/as_survey_report_2015.pdf)

<sup>118</sup> Details can be found here: [http://www.mk.gov.si/en/legislation\\_and\\_documents/](http://www.mk.gov.si/en/legislation_and_documents/)

<sup>119</sup> CNC : Aide sélective à l'édition vidéo physique et à la diffusion en vidéo à la demande (VàD). Dossier de demande d'aide au programme éditorial 2016. <http://www.cnc.fr/web/fr/aide-a-l-exploitation-d-oeuvres-francaises-et-europeennes-en-video-a-la-demande>



## 9 Assessment of the current BAI Rules in the context of other regulatory regimes

Following the full analysis of the regulatory regime in other jurisdictions, and the examination of specific themes, a comparison is made here with the current BAI rules. This aims to highlight where the rules are in line with other regulatory approaches and also indicate new trends or approaches that could be considered as useful or necessary in the review process.

### 9.1 Methodologies for implementing access rules

#### 9.1.1 Gradualist approach

The most common approach for introducing access rules on channels has been the progressive approach of gradually increasing quotas on an annual basis. As noted by the EPRA paper (2013): progressive targets seem the most effective way to implement obligations in practice. It has served to gradually allow existent channels to reach a critical mass of accessible programming, while also providing a framework for newly established channels to gradually reach such a critical mass.<sup>120</sup>

In the BAI's rules, *Specific targets have been identified for each broadcast service and broadcasters shall comply with the targets and timeframes applying to their service(s). All targets are based on a five-year timeframe.*

This is the approach taken in a significant majority of those jurisdictions where concrete obligations are implemented: for example, in Canada, France, the UK, Spain, Portugal, the US.

Table 9.1, 9.2 and 9.3 outline the targets in a range of jurisdictions.

### 9.2 Different obligations for different types of broadcasters

Different types of channels frequently have different obligations with regard to the provision of access services: distinctions made between public and private broadcasters; free to air and pay broadcasters; generalist and niche programming broadcasters; large (regarding audience share) and small broadcasters, and broadcasters that target jurisdictions other than where they are established.

A range of studies confirm the fact that public service broadcasters are in general under higher obligation to provide access services for their content.<sup>121</sup> This is due both to their remits, and to their public funding. In Denmark, only the public service channel, and commercial public service have obligations to provide access services.

Often, there is no difference in the obligations placed on both types of broadcaster (see chapter 4 above). In many countries, regulations apply only to free to air broadcasters (Bulgaria, Belgium (French speaking community). In Australia, a set of obligations exists for pay TV and another for subscription TV. In France, there are also lower obligations for cable and satellite channels.

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<sup>120</sup> EPRA/2013/05: Working Group 3: Round Table on Access to Audiovisual Media Services for persons with disabilities. Comparative background document

<sup>121</sup> See for example: EPRA/2013/05

**Table 9.1: Targets for providing subtitling (captioning in AUS, CA and US) in a range of countries**

Country	Public service	Other public	Community	Private	Free to air TV	Pay TV	audience share large	audience share small
<b>Ireland (2018 targets)</b>	RTÉ One: 87-92%; RTÉ Two: 73-79%; RTÉ Jr: 48-52%; RTÉ News Now: 24-27%	Oireachtas TV: 16-18% UTV Ireland: 56-60%	CCTV and DCTV: 11%	TV3: 51-55%; 3e: 28-32%		Setanta Ireland: 12-14%; Irish TV: 6%.		
<b>Targets for countries examined in this report</b>								
<b>Australia</b>	Since July 2014: 100% captioning from 6am to 12am, and on all news and current affairs.			100% captioning from 6am to 12am and on all news and current affairs.		By 2020: movie channels 100% music channels 35%		
<b>Austria</b>	By 2012, subtitling			Only general obligations: "Audio-visual media services shall gradually be made accessible to people with a vision or hearing disability"				
<b>Canada</b>	100% captioning			100% captioning				
<b>France</b>	France Televisions channels 100% subtitled			see under audience share			>2,5%: by 2010 should have 100% subtitled	<2,5%: DTT: 40%; cable / satellite :20%
<b>Sweden</b>				see under audience share			>1%: By mid 2017, 100% of pre/recorded programmes; By 2020, 55% of live	< 1%: channels should promote accessibility
<b>United Kingdom</b>	All channels 100% subtitled (except BBC Parliament)	ITV1 (including regional) and Channel 4: 90%; S4C and Five: 80%		see under audience share			For all channels (>0,05% audience share): 80% subtitling over 10 years (starting at 10%). Non-domestic channels have same obligations.	
<b>USA</b>	100% of new, non-exempt video programming is closed captioned. 75% of pre-rule, non-exempt video programming is closed captioned			100% of new, non-exempt video programming is closed captioned. 75% of pre-rule, non-exempt video programming is closed captioned				
<b>Targets for other countries (based on questionnaire data and other reports)</b>								
<b>Finland</b>	100% programming in Finnish and Swedish with subtitling by 2016.			50% of programming in Finnish and Swedish with subtitling by 2016 (for MTV3 and Nelonen).				
<b>Portugal (targets to 2018)</b>	RTP1 and RTP2: 20 hours per week of subtitling.			FTA generalist channels: <b>8 hours per week</b> of fiction programmes, documentaries or cultural magazines with subtitling specifically devoted to persons with hearing disabilities				
<b>Spain</b>	90% of programming subtitled on national and regional TV.			For DTT commercial channels: 75% of programming to be subtitled on national and regional TV.				

Sources: national laws and regulations; BAI/EPRA questionnaire 2017; questionnaire of the Swedish Regulator 2015; European Union Agency for Fundamental Rights (FRA) 2014; e-accessibility Report, 2013.

**Table 9.2: Targets for providing audio-description (video description in CA and US) in a range of countries**

Country	Public service	Other public service	Private	Free to air TV	Pay TV	audience share large	audience share small
Ireland	By 2018: RTÉ One and RTÉ Two: 2,5%; RTÉ Jr: 5%						
Targets in countries examined in this report							
Austria	By 2012, 550 hours of programmes per year						
Canada	From September 2019: described video for all suitable programming broadcast between 7 PM and 11 PM (prime time). These rules apply to public and private and also apply to some pay TV services						
France	France Télévisions objectives: 2 programmes per day.		By 2016, number of programmes per year: 80 for: TF1, M6 and Canal+ ; 20 for: TMC, W9, D8: 12 for : HD1, 6TER, Chérie 25, Numéro 23, RMC Découverte and L'Equipe 21				
Sweden			see under audience share			2017 to 2020 the AD increase from 3 to 4%	Channels should promote accessibility
United Kingdom	All channels: 10% audio description (except BBC News)	S4C, ITV1, Channel 4, Five: 5% AD	see under audience share			Channels must reach 10% of programming with audio description over 10 years (starting at 2%). Same obligations for non-domestic channels	
USA			Local affiliates of ABC, CBS, FOX and NBC and also the networks of Disney Channel, History Channel, TBS, TNT and USA must provide 50 hours per quarter during prime time and/or children's programming.				
Targets in other countries (based on questionnaire data and other reports or research)							
Portugal (targets to 2018)	RTP1: Seventy hours a year of fiction programmes or documentaries with audio description.		SIC and TVI guarantee 12 hours per year of fictional and documentary programmes with audio description.				
Spain	On PSB, 10 hours per week of AD on national and regional TV		For DTT channels, at least 2 hours per week with audio-description on national and regional TV.				

Sources: national laws and regulations; BAI/EPRA questionnaire 2017; Questionnaire of the Swedish Regulator 2015; European Union Agency for Fundamental Rights (FRA) 2014; e-accessibility Report, 2013.

**Table 9.3: Targets for providing programming with sign language interpretation in a range of countries**

Country	Public service	Other public service	private	Free to air	Large audience share	Small audience share
<b>Ireland (2018 target)</b>	RTÉ One and RTÉ Two: 2,5%; RTÉ Jr: 1.5%	Oireachtas TV: 3%				
<b>Targets for countries examined in this report</b>						
<b>Austria</b>	a proportion of the overall programmes to be broadcast with sign language interpretation (including the main news programmes)					
<b>France</b>	Regarding French sign language, the public broadcaster is committed to making available its news editions on digital and to set up a French sign language system for the important moments of democratic life.		No obligations on French services. However, for certain channels, the overall obligations regarding access rules have been reduced and agreements were made with regard to providing some sign language interpretation: news channels, some children's channels, some sports channels.			
<b>Sweden</b>					more than 1%: between 2017 and 2020 signed programmes should increase from 3% <b>to 4%</b>	
<b>United Kingdom</b>	All channels (except BBC Parliament) should provide: sign language on <b>5% of content</b>	S4C, ITV1, Channel 4, Five: should provide signing on <b>10%</b> of content			Over 1% of audience share. Signing on 5% (starting with 1% after first year)	share 0,05% to 1%: Signing on 75 mins per month (starting with 30 mins after first year)
<b>Targets for other countries (from questionnaire data)</b>						
<b>Portugal (to 2017)</b>	RTP1: <b>twelve hours per week</b> including the interpretation of one complete news programme per day during the night-time period RTP2: <b>twenty hours per week</b> RTP Informação: <b>four hours per week</b> and the full interpretation of one of the news programmes Regional channels RTP Madeira and RTP Açores <b>four hours per week</b>		SIC Notícias, TVI 24 and Correio da Manhã TV: shall broadcast <b>two hours per week</b> of programmes of an informative nature with interpretation by Portuguese sign language, including the full interpretation of one of the news programmes on a weekly basis			
<b>Spain</b>	<b>10 hours a week</b> of sign language interpretation on national and regional public TV channels		For DTT channels: <b>2 hours a week</b> of sign language interpretation on national and regional TV.			

Sources: national laws and regulations; BAI/EPRA questionnaire 2017; Questionnaire of the Swedish Regulator 2015; European Union Agency for Fundamental Rights (FRA) 2014; e-accessibility Report, 2013.

### 9.2.1 Market power and audience share

The higher the market share, the greater the obligations, appears to be the general approach. A particular market share often serves as a cut-off point, or a point below which obligations are reduced: for example, 1% in the UK, 2,5% in France, 1% in Sweden (see also in the tables above).

It is not really useful to compare what these audience share bench-marks are across various countries as a 1% audience share of the UK market may have significantly more value than a 10% audience share in Hungary. Indeed, they are adapted to the relevant markets.

In the UK, a cut-off point distinguishes between “channels with larger audience shares” and “channels with smaller audience shares”. The Swedish system also follows this approach using an audience share bench-mark below which channels have “general obligations” and above which channels have “special obligations”. For larger countries with many licensed channels (such as the UK, Sweden, USA, France etc.) having such bench-marks is necessary.

With regard to the BAI approach, the rules state that: *Specific targets have been identified for each broadcast service and broadcasters shall comply with the targets and timeframes applying to their service(s). All targets are based on a five-year timeframe.*

The BAI bases decisions on four access principles. These aim to: ensure that citizens for whom the Access Rules are designed should have the fullest possible access to the broadcast media and to its capacity to educate, inform and entertain; ensure that access services are of high quality; that (as mentioned above) this is developed incrementally over a period of time, so that broadcasters develop their capacity and expertise to deliver this service; and the development of services should be in response to the needs and priorities as expressed by the user groups as well as standards laid down by the BAI, in consultation with the broadcast provider. In addition, (in relation to the broadcasters - concerning the particular channel and its nature, programming, capacity and financing etc.).

### 9.2.2 Distinctions regarding types of access services

The main distinction in Ireland concerns the fact that only public broadcasters have obligations regarding audio description and sign language. The BAI's rules state that: *There are no Irish Sign Language or audio description requirements in respect of other broadcast services at this time. Requirements in this regard will be reviewed periodically. However, other services may choose to provide audio description and/or Irish Sign Language.*

This contrasts with several countries where all the regulated channels have obligations regarding all three types of accessibility (the UK, Sweden); or where they all have obligations regarding subtitling and audio description (France, the USA). On the other hand, the Australian system only places obligations on broadcasters with regard to subtitling (captioning).

The tendency to specify amounts of programming per accessibility type (subtitling, or audio description, or sign language) is growing. In 2016, the Swedish regulator updated the rules and introduced this system in order to be compatible with the UK system where several channels with importance in the Swedish market are licensed.

### 9.2.3 Generalist and niche channels, different types of content and time blocks

The BAI's rules state that: *The rules do not, at this time, prioritise any programme genres/types or time-blocks. However, broadcasters shall consult periodically and not less than once annually, with user groups, as to their viewing preferences.*

In the UK, the Code on Television Access Services requires that, in selecting and scheduling signed programmes, broadcasters should seek advice from disability groups about how best to maximise the benefits to those with hearing impairments.<sup>122</sup>

There are frequent examples of emphasis being placed on the provision of news and information (Greece, Portugal), and emergency information (Australia, the US) in the regulation. In fact, the joint proposal of the EDF, EBU and ACT to amend Article 7 of the AVMS proposes that *Member States shall ensure that emergency information, including public communications and announcements in natural disaster situations, made available to the public through audiovisual media services, be provided, in an accessible manner for persons with disabilities, in more than one sensory channel*. As noted earlier, this proposal also reflects the opinion of several EP committees.

The examination of a range of jurisdictions revealed that there may be certain niche channels that have less obligations (or are exempted) and other niche channels that may have particular obligations. Examples include news channels, of music channels, children's channels and sports channels. In many cases this is due to the difficulty of subtitling live programming (news, sports, etc.), while for young children's programmes the necessity to use subtitling may be removed due to the inability of the age group to read text.

In Australia, subscription television music services have the lowest obligations with regard to captioning. In the Polish legislation<sup>123</sup> specialised music programmes also have reduced subtitling obligations. In the US, non-vocal music programming is exempt. Also, in Finland audio-subtitling<sup>124</sup> and subtitling services do not need to be added to music presentations or sports programmes. In France, a specific set of obligations was established with news channels, with children's channels and with sports programmes.

Regarding the time blocks of the broadcast of accessible programmes, in the UK, the Ofcom expects that broadcasters will normally schedule programming with subtitling and audio description at peak viewing times for each channel. However, as signing is currently only provided in open format, it is accepted that signed programmes may need to be shown outside peak viewing hours and recorded by viewers with hearing impairments.

In Canada, the audio description rules will be required (from September 2019) for all suitable programming broadcast between 7 PM and 11 PM (prime time) seven days a week (for the main broadcasters). In the USA, the FCC rules specify that audio-description for the main channels (about 4 hours per week) should be broadcast during prime time and/or children's programming. In France, the CSA determined that the proportion of programmes that should be accessible is 40% for channels with DTT licences (particularly during peak viewing times while ensuring diversity in the programming thus covered), Cable and satellite channels must make at least 20% of programming accessible to those who are deaf or hard of hearing (particularly during peak viewing times while also ensuring diversity in the programming thus covered).

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<sup>122</sup> Ofcom Code on Television Access Services:

[http://stakeholders.ofcom.org.uk/broadcasting/guidance/other-guidance/tv\\_access\\_serv/guidelines/](http://stakeholders.ofcom.org.uk/broadcasting/guidance/other-guidance/tv_access_serv/guidelines/)

<sup>123</sup> According to the Regulation of KRRiT of 28 May 2013. Data from the Swedish questionnaire

<sup>124</sup> Audio-subtitling (or spoken subtitling) is a system for automatic reading and broadcasting of subtitles. They can be used for TV films or broadcasts in foreign languages that are provided with subtitles. In such systems, a speech signal synchronised with TV subtitles is generated through a separate audio channel.

In summary, it is quite common that certain types of programming and/or niche channels are either exempt, or have lower, or specifically agreed obligations. As Ireland is a small market with relatively few niche programming channels, it may not be necessary to consider a particular treatment for certain content. Exceptions may include the sports and children's channels licensed in Ireland. Regarding the time slots, in several large countries (UK, US, Canada and France) accessibility services are expected to be scheduled during peak viewing times.

#### **9.2.4 New channels and services**

The BAI's rules state: *The BAI reserves the right to extend the Rules and their applicability to new services licensed by the BAI under the Broadcasting Act 2009, from time-to-time. The BAI will make this assessment on a case-by-case basis.*

In the Australian regulatory regime, new subscription television services are exempt from the annual captioning targets for one to almost two years depending on when the services commence. To qualify for the exemption, the subscription television service must predominantly consist of programmes not previously transmitted in Australia before the service commenced. The exemption from captioning obligations applies from service commencement until the financial year beginning on the first 1 July that is at least one year after the service commenced.

In the USA, alongside the differentiation between older (pre-rule) programming and newer programming, there are also a range of other types of programmes that are exempt: (g) *Programming on new networks* (for the first four years after it begins operation).<sup>125</sup>

This aspect did not arise in relation to the regulatory systems in other countries, including the UK. Presumably this is because of the audience threshold that applies in many European jurisdictions. A new service would have to reach a certain threshold of audience share in order to be included in those channels qualifying for obligations. The case-by case approach of the BAI appears to be a rational approach in assessing the situation of new channels.

#### **9.2.5 Channels that target other countries**

The placing of specific obligations on channels that target other countries but are established in the national jurisdiction appears to occur only in the UK, the rationale being Ofcom's "duty to regulate in ways that are transparent and consistent", and to place obligations on non-domestic broadcasters that are "consistent with the arrangements for domestic channels." The French CSA places the same obligations on all channels regardless of their target country or availability. In theory, this would apply to all channels that fall under a national jurisdiction and qualify under the criteria (public/private, audience share, turnover etc.). What distinguishes in particular the UK system is that the Ofcom, when applying obligations, assesses the position the channels in each of the markets they target.

### **9.3 "Findability" and the requirements to inform viewers of accessibility functions**

The BAI's rules state with regard to the promotion of access services: *Broadcasters are required to indicate through the use of a standard symbol those programmes for which access provision (subtitling, sign language or audio description) is available. Insofar as possible, broadcasters should ensure that any programme listings also indicate those programmes for which access provision is available. Broadcasters shall promote regularly the existence and usage of the form(s) of access provision available on their services.*

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<sup>125</sup> 47 CFR 79.1 - Closed captioning of televised video programming.



Programmes with subtitles are either highlighted with a special symbol on the EPG, or a list is provided on a specific web page.<sup>126</sup>

The EPRA research of 2013 examined this issue and provided several examples of obligations to assist users in finding accessible content: broadcasters are often required to promote access services by indicating through the use of a symbol or standard acronyms those programmes for which access provision is available (Belgium, French-speaking Community, Ireland, Slovakia, UK). Ofcom also requires television service providers “to promote awareness of the availability of their television access services to potential users of the services by making available accurate and timely information to electronic programme guide (EPG) operators listing their services, and by providing similar information on their website”. In Slovakia, broadcasters have the duty to identify access services during programmes, in trailers, EPGs and in the schedule of programmes that it provides for publication in the periodical press and other mass media.

From the Swedish questionnaire of 2015<sup>127</sup>, further detail is provided on this issue. In Belgium (French speaking Community), all broadcasters must inform viewers of accessibility programmes using the appropriate pictogram and an audible indication (at the beginning of the programmes) when it comes to programmes specifically tailored to the blind or visually impaired. Moreover, when communicating their programmes on their own or through third-party media, publishers (and distributors) they should indicate accessibility using pictograms. In Hungary, broadcasters must inform their viewers before the programmes are broadcast, indicating the number of the relevant teletext page. In Portugal, media service providers: shall render available “easily understandable navigation menus”, namely in EPG’s and teletext; properly identify all programming made accessible by subtitling, sign language or audio-description in EPG’s linked to a given distribution platform; a common identification system of programmes with accessibility measures is a recommendation addressed to all TV broadcasters; awareness raising is carried out with regard to accessibility functionalities through teletext, websites and other public announcements regarding the channel’s programming.

Also in Spain, the law requires that that information about TV programmes and schedules which are included in websites, electronic programming guides or other media of the audiovisual communication service provider, *must be accessible to persons with disabilities*. In Canada, the licensee (for an on-demand service or for a broadcast service) is expected to display a standard described video logo and air an audio announcement indicating the presence of described video before the broadcast of each described programme; and make information available regarding the described programmes that it will broadcast.

In Poland, this is taken care of in the self-regulation agreement of the DTT broadcasters. According to this the information on the type of access services (audio description, subtitles and interpretations into the sign language), the nature of the programme, its duration and the date and time for the broadcast should be placed: on the website of the broadcaster; on the Teletext if the broadcaster provides it; in announcements made by the broadcasters; in the electronic program guide (EPG); and in the press, if possible.

In several countries, while there is no requirement to do so, in practice the broadcasters are adding this information to programme descriptions, TV programme guides (Estonia, Finland), and during the accessible programmes (Finland).

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<sup>126</sup> From Swedish questionnaire

<sup>127</sup> Data provided by the Swedish regulator. The issue of requirement to inform was a specific question.



As noted in chapter 5, with regard to on-demand services, the regulation in the Slovak Republic also obliges the provider of an on-demand audiovisual media service to clearly identify all programmes that are accompanied by hidden subtitles, displayed subtitles, voice commentary for the blind or that are translated into sign language for the deaf or broadcast or provided in sign language for the deaf. The provider of an on-demand audiovisual media service is also obliged to apply labelling in its programme catalogue.

**Table 9.4 Obligation to inform audiences**

<b>Modes of informing and raising awareness</b>	<b>Countries</b>
Inserting logo, pictogram, symbol	BE (FR), CA, IE, PT
Air an audio announcement	BE (FR), CA
Information on EPGs	ES, IE, UK,
Information on programme listings	IE, PT, SK
Information on website	
Information on teletext	
Developing a common identification system for accessibility features for use by all broadcasters	PT,
On-demand services should clearly identify and label all programming with access features	SK
All accessible programming should be properly identified on the EPGs of distribution platforms	PT
Making available accurate and timely information to electronic programme guide (EPG) operators listing their services	UK
Render available “easily understandable navigation menus”, namely in EPG’s and teletext	PT

The BAI’s rules appear to be in line with the practice in other countries in this regard. Perhaps it would be useful to explicitly mention promotion on the website of the operators, and promotion on EPGs of distribution platforms in the rules.

#### **9.4 Requirements to have a dialogue with users of accessible broadcasting services**

Such requirements may exist with regard to the media service providers, to the regulator, or to both. In Ireland, the BAI meets with users of access services on a quarterly basis to discuss the quantity, quality and reliability of access provision. Any issues raised are fed back to the broadcasters.

In addition, with regard to programme types, the BAI’s rules state: *The rules do not, at this time, prioritise any programme genres/types or time-blocks. However, broadcasters shall consult periodically and not less than once annually, with user groups, as to their viewing preferences.*

This is similar to the approach in the UK, where the Code on Television Access Services requires that, in selecting and scheduling signed programmes, broadcasters should seek advice from disability groups about how best to maximise the benefits to those with hearing impairments.<sup>128</sup>

In Belgium (French Speaking Community), media service providers (and distributors) must appoint an internal contact person for issues related to the accessibility of programmes. That person plays

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<sup>128</sup> Ofcom Code on Television Access Services:  
[http://stakeholders.ofcom.org.uk/broadcasting/guidance/other-guidance/tv\\_access\\_serv/guidelines/](http://stakeholders.ofcom.org.uk/broadcasting/guidance/other-guidance/tv_access_serv/guidelines/)

the role of interface between the providers, the representative bodies of people with disabilities and all stakeholders. The regulatory authority (CSA) meets once a year with this internal contact person and the representative to assess accessibility features.

Article 81 requires the French CSA to consult annually with the national *Conseil consultatif des personnes handicapées* (CNCPH) regarding the measures it is taking. The CSA sends an annual report to the CNCPH.

In Finland, there are no such requirements but broadcasters tend to have regular dialogue with relevant associations anyway. There are also no such requirements in Malta, but such meetings tend to take place in the context of consultations. In Poland, there are also no such as requirements but in the self-regulation agreement established with DTT broadcasters, was developed in close cooperation with the interest groups representing persons with disabilities.

In the course of reviewing or updating regulation, it is general practice to consult with all relevant stakeholders (Canada, Sweden, the USA, Ireland, the UK, France etc.).

Hence, the BAI approach to consultation appears quite similar to that in other countries, particularly in the UK. An interesting aspect that arose was the requirement in Belgium (French Speaking Community) that media service providers (and distributors) must appoint an internal contact person for issues related to the accessibility of programmes. That person plays the role of interface between the providers, the representative bodies of people with disabilities and all stakeholders.

## **9.5 Reporting requirements**

In Ireland, all broadcasters are requested, twice per year, to submit details of the quantity of access services that they have provided for the previous 6-month period. The BAI monitors a selection of the output of each broadcaster and assesses this for the quantity, quality and reliability of the access provision. The BAI meets with the broadcaster annually to discuss their performance for the previous year, the results of BAI monitoring, their plans for the coming year and any issues raised by users.

In Poland, the broadcasters are obliged (art 10, p.2 of the Broadcasting Act) to send reports every three months to the regulatory authority, and this reporting scheme is respected. The regulatory authority may decide to monitor a sample of the programme in order to compare the data (but this rarely happens).

In Germany, where there are no obligations on audiovisual media services to make their content accessible, as a first step the regulators have expressed the expectation that the public broadcasters to intensify their dialogue with the disabled people's associations, strengthen the accessibility of their programmes and report on this subject frequently. Likewise, the private broadcasters are also expected to expand their program's accessibility.

In Sweden, the media service providers should report annually regarding how these requirements have been met, which contacts have been made including with representatives of the user groups, how the supplier intends to strengthen accessibility of TV shows, and what are the future plans for developing accessibility.

## **9.6 Costs and supporting and encouraging the availability of accessible content**

As outlined in detail in chapter seven, there are many approaches to supporting the availability of accessible content and to alleviating costs for operators.

In comparison to many jurisdictions, Ireland has no specific system for applying a complete or temporary exemption that allow a media service provider to be completely exempt, to be exempt for a time period, or to have reduced obligations, in particular where the provision of such services is causing an undue financial burden (for example in the USA, the UK and Australia). In addition, in some jurisdictions, particular types of content (as mentioned above) may be exempt or have less obligations. However, as noted above, the BAI makes decisions on obligations based on a range of issues including the channel and its nature, programming, capacity and financing etc.).

The Irish production funds, specifically that managed by the BAI is contributing to a new trend in **maximising the amount of content that is produced with access tools** built in. Obliging content producers to include captioning and audio description in the production of content supported by any public funds is also happening in Australia, Canada and Germany. As the Canadian regulator noted: *Making accessibility a consideration early in the creative process—not only in post-production— will help create a cultural shift that will result in accessibility becoming just another consideration in the regular course of doing business*

The availability of funds (public or otherwise) to develop accessibility in content (as in Slovenia and France), or aid in the distribution of accessible content (Slovenia, France), or the inclusion of accessibility as a normal eligible cost (Austria) in a broader range of Irish funding schemes would be beneficial.

Finally, an innovative approach to alleviating burden on smaller operators is the UK **system of co-operation** via the British Sign Language Broadcasting Trust allowing broadcasters to contribute to specific projects for the production of accessible content (with sign interpretation) in lieu of certain quota requirements.

## 9.7 Other relevant areas regulated in other jurisdictions

### 9.7.1 The role of distributors in making accessible content available

Chapter 8 looked at distribution and delivery of accessible content. In the USA and Canada, distribution companies also tend to have obligations with regard to accessibility. The BAI is not empowered by legislation to place any obligations on distribution platforms to deliver and distribute accessible content. However, many European countries have included this in relevant “must-carry” rules. It would be useful if accessible content was considered as public interest content in all “must-carry” regimes.

### 9.7.2 Online content of broadcasters and on-demand services

The BAI does not (yet) regulate on-demand services. However, some interesting issues emerged with regard to the online content of broadcasters in the review. In the US and Canada, they are obliged to carry captioning (subtitling) from linear to non-linear services. Such obligations may be too much “ahead of their time” for the European markets. However, the possibility for broadcasters to include online accessible programming as part of the overall quotas (as in Belgium, Finland and Sweden) may encourage the provision of accessible content online and enhance co-operation regarding formats and standards.

## Annexe 1. Overview of Access Rules in European jurisdictions

These overviews cover the national law, regulatory codes and voluntary initiatives relevant to providing accessible audiovisual content. Where available, any consultation documents, reports or strategy documents have been reviewed in order to assess the following:

- any issues related to the implementation of regulation, or the monitoring and evaluation of the policy
- relevant voluntary or industry codes or self- or co-regulatory systems
- any available information relating to subsidies, issues of cost, or co-operation between broadcasters
- the treatment of different kinds of broadcasters
- trends in the on-demand world
- overlap of approaches to access rules and rules on translation of content.

## 10 AT – Austria

Austria was included in the analysis as an example of a country with a similar market structure to that of Ireland, in particular with regard to the high level of content viewed in Austria that originates from a neighbouring country (in this case Germany). Austrian channels command around 40% daily share (increasing to 50% prime time) of the audience share in Austria, with the rest going to foreign, mainly German channels. In Ireland, the Irish channels command around 39% daily share (increasing to 45% in prime time), with the rest going to British channels.<sup>129</sup>

However, as can be seen in the report on Germany (chapter 11, below), there exist no regulations on the provision of accessible content on German television, and any activity in this area is on a voluntary basis, and mainly carried out by the public service broadcasters. Hence, the German channels received in Austria have no obligations to provide access services whereas many of the UK channels received in Ireland, or specifically targeting Ireland, do have obligations regarding access services.

### 10.1 Regulator and regulatory base

In Austria, the regulatory Authority KommAustria, the Austrian Communications Authority regulates the audiovisual market. It is supported in its work by the RTR, the Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR).

The main legislative acts relevant to audiovisual media in Austria are the Federal Act on Audiovisual Media Services (consolidated version 2015)<sup>130</sup> and the Federal Act on the Austrian Broadcasting Corporation (ORF Act). In addition, the Federal Act on the establishment of an Austrian Communications Authority ("KommAustria") and a Federal Communications Board (KommAustria Act - KOG)<sup>131</sup> established the regulatory authority.

### 10.2 Specific obligations for broadcasters

Requirements are specific for the public broadcaster in comparison to the commercial broadcasters. For the public broadcaster, the ORF, the requirement was to successively achieve the following quantitative targets by 2012: 60% of the overall programmes to be broadcast with subtitles in accordance with the ORF quality standards, a proportion of the overall programmes to be broadcast with sign language interpretation (including the main news programmes) and up to 550 hours of programmes to be broadcast with audio description.

All other audiovisual media services fall under the very general obligations in the Federal Act on Audiovisual Media Services:<sup>131</sup> §30 General Requirements Regarding Audio-visual Media Services: *(3) Audio-visual media services shall gradually be made accessible barrier-free to people with a vision or hearing disability.*

There are no specific obligations or quantitative targets concerning provision of access services by commercial broadcasters, which is similar to the situation in Germany. According to the regulator, there are some commercial television broadcasters who voluntarily offer this kind of services, for example by displaying subtitles to assorted programmes via teletext.

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<sup>129</sup> Based on audience data in the Yearbook of the European Audiovisual Observatory 2016

<sup>130</sup> Audiovisual Media Services (consolidated version 2015)

[http://www.ris.bka.gv.at/Dokumente/ErV/ERV\\_2001\\_1\\_84/ERV\\_2001\\_1\\_84.pdf](http://www.ris.bka.gv.at/Dokumente/ErV/ERV_2001_1_84/ERV_2001_1_84.pdf)

<sup>131</sup> Federal Act on Audio-visual Media Services (Audio-visual Media Services Act –AMD-G)

[http://www.ris.bka.gv.at/Dokumente/ErV/ERV\\_2001\\_1\\_84/ERV\\_2001\\_1\\_84.pdf](http://www.ris.bka.gv.at/Dokumente/ErV/ERV_2001_1_84/ERV_2001_1_84.pdf)

There is also a dedicated video on demand service, called "signtime.tv", which falls under Austrian jurisdiction and offers news/reports in sign language.<sup>132</sup> The ownership or funding of this service is not clear.

### 10.3 Recent developments

There appears to be no recent update on the situation in Austria with regard to imposing any obligations on commercial media to provide accessible content. The regulator recently co-financed a study with the Ministry for Work, Social and Consumer Protection. This was carried out by a consultancy and the conclusions and recommendations included that: Journalistic information should be more easily accessible for people with disabilities (via subtitling, offers in "easier speech", audio description, sign language etc. It also reported that in comparison to other broadcasters, the ORF provided a good deal of content with subtitles and audio description. On the four channels (ORF eins, ORF 2, ORF III Kultur und Information, ORF SPORT +) there is a relative variety of programme offers and diverse formats.<sup>133</sup> According to the ORF's Public Value Report (2015/16), in 2015 more than 11.800 programmes had subtitling (equivalent to 67,5% of programmes). On average the broadcaster provided 173 minutes per day of audio-description.

### 10.4 Costs, grants, subsidies and co/cooperation

A range of funding support exists for the production of accessible audiovisual content.

#### 10.4.1 Funds for television production

The Fernsehfonds Austria (i.e. Austrian Television Fund)<sup>134</sup> was established within the Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR) by an amendment to the KommAustria Act (KOG) as of January 1, 2004. According to their website: *"The purpose of the grants is to contribute towards improving the quality of television production and the continued performance of the Austrian film industry, and to ensure diversity within the cultural landscape. Another purpose of the grants is to contribute to strengthening the audiovisual sector in Europe."*

In this context, funding is also provided for the production of versions of programming for people with hearing or visual impairments. This is outlined under the Guidelines for funds (Exploitation grants (section 8.1 (1)): In addition to the overall production costs as referred to in Section 7.1, the following measures may also be funded:

- Production of versions for people with hearing or visual impairments, where grants may cover 80% of the actual costs incurred and documented or a maximum of EUR 10,000
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#### 10.4.2 Film funding

A review of a sample of the film funding bodies in Austria revealed that the Vienna Film funds<sup>135</sup> will also include costs for the production of accessibility options in films. Under their guidelines for feature films (regarding utilization costs):<sup>136</sup>

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<sup>132</sup> Data from the Swedish questionnaire. <http://signtime.tv/>

<sup>133</sup> Menschen mit Behinderung in Österreichischen Massenmedien Jahresstudie 2015/16. [https://www.rtr.at/de/inf/Studie\\_Menschen\\_mit\\_Behinderung/Menschen\\_mit\\_Behinderungen\\_in\\_Massenmedien\\_Studie\\_2015\\_16.pdf](https://www.rtr.at/de/inf/Studie_Menschen_mit_Behinderung/Menschen_mit_Behinderungen_in_Massenmedien_Studie_2015_16.pdf)

<sup>134</sup> Home page of Austrian Television Funds. <https://www.rtr.at/en/ffat/Fernsehfonds>

<sup>135</sup> <http://www.filmfonds-wien.at/foerderung/ueberblick>

<sup>136</sup> [http://www.filmfonds-wien.at/files/ffw\\_ff\\_\\_rderrichtlinien\\_teil-c\\_herstellung-von-kinofilmen.pdf](http://www.filmfonds-wien.at/files/ffw_ff__rderrichtlinien_teil-c_herstellung-von-kinofilmen.pdf)

Costs incurred with regard to the planned exploitation of the film and already in the course of the production may be recognized as part of the production costs. In particular, these are costs for

- Teaser, Trailer, DVD- and Digital-Distribution Master, Series Copies / DCP;
- Accompanying marketing activities (including advertising materials, website and social media);
- Eligible distribution costs pursuant to Part F of the Funding Guidelines;
- Aids for hearing-impaired people (subtitling) and for visually impaired people (audio-description).

There are similar funding possibilities for TV production from the Vienna film funds.<sup>137</sup> The Austrian Film Institute (OFI) have similar funding possibilities as outlined under their film funding guidelines (section 6.2.7): *Costs for German subtitles for hearing impaired and German audio description for visually impaired people ("Accessibility for disabled ") for DVDs or comparable data carriers will be acknowledged within the frame of the production calculation and shall be listed accordingly.*<sup>138</sup>

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<sup>137</sup> [http://www.filmfonds-wien.at/files/ffw\\_f\\_\\_rderrichtlinien\\_teil-d\\_herstellung-von-fernsehproduktionen.pdf](http://www.filmfonds-wien.at/files/ffw_f__rderrichtlinien_teil-d_herstellung-von-fernsehproduktionen.pdf)

<sup>138</sup> <https://www.filminstitut.at/en/>

## 11 DE – Germany

### 11.1 Regulator and regulatory base

In Germany, there are still no binding obligations on broadcasters to provide accessible audiovisual content. Section 3 (2) of the State Broadcasting Treaty (*Rundfunkstaatsvertrag*, RStV)<sup>139</sup> states that all private and public broadcasting services are supposed to increase their offer of accessible programmes and broadcasts within their frame of technical and financial possibilities. There is no definition of accessibility nor any timeline envisaged in the law.

A statement added by the legislative bodies (the Länder) to the protocol of the negotiation of the 15<sup>th</sup> amendment of the State Broadcasting Treaty expressed the expectation that the public broadcasters to intensify their dialogue with the disabled people's associations, strengthen the accessibility of their programmes and report on this subject frequently. Likewise, the private broadcasters are also expected to expand their program's accessibility.<sup>140</sup>

The current approach of the regulators is to regularly commission research reports on media consumption and general requirements for accessibility. For this purpose, the State Media Authorities – in cooperation with "Aktion Mensch" (registered association for the interest of disabled persons) – conduct research on media usage of people with disabilities. The aim of these studies is to generate reliable and representative data on media consumption patterns of people with disabilities. The results of the latest study were published in November 2016. One of the key conclusions was that broadcasters should have obligations to provide subtitling and audio-description (p 112).<sup>141</sup>

### 11.2 Film funding

In Germany, a regime has been introduced with a similar approach to Australia, Canada and the USA regarding the maximisation of content that is produced in an accessible form. With regard to federal film funding, according to guidelines for the granting of film funds (§ 5 Film-Related Requirements, paragraph 4)<sup>142</sup>:

At least one final version of the film **must be produced with German subtitles for the hard of hearing and with a German audio description** for the visually impaired of a quality which meets market requirements and is suitable for screening in a theatre. Derogations from this requirement are possible in justified exceptional cases and upon application by the producer. Such decision is taken by the FFA managing director. The barrier-free final version must be submitted to the FFA before disbursement of the final instalment of the approved grant and at the latest after completion of the first release print and prior to its theatre release

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<sup>139</sup>Germany, State Broadcasting Treaty (*Rundfunkstaatsvertrag*, RStV), available at: [www.die-medienanstalten.de/fileadmin/Download/Rechtsgrundlagen/Gesetze\\_aktuell/15\\_RStV\\_01-01-2013.pdf](http://www.die-medienanstalten.de/fileadmin/Download/Rechtsgrundlagen/Gesetze_aktuell/15_RStV_01-01-2013.pdf)

<sup>140</sup> Response to the Swedish questionnaire

<sup>141</sup> Report in German (accessible PDF):

[http://www.diemedienanstalten.de/fileadmin/Download/Publikationen/2016\\_Studie-Mediennutzung\\_Menschen\\_mit\\_Behinderungen\\_Langfassung\\_bf\\_final.pdf](http://www.diemedienanstalten.de/fileadmin/Download/Publikationen/2016_Studie-Mediennutzung_Menschen_mit_Behinderungen_Langfassung_bf_final.pdf)

<sup>142</sup> Guideline Issued by the Federal Government Commissioner for Culture and the Media "Incentive to Strengthen the Film Industry in Germany" (German Federal Film Fund). Available here: <http://dfff-ffa.de/index.php?current-guidelines>



## 12 FR - France

### 12.1 Regulator and regulatory base

The French audiovisual sector is regulated by the Conseil supérieur de l'audiovisuel (CSA). There are a range of relevant provisions dealing with access to AVMS for disabled people. These include: the law n°2005-102 of 11 February 2005<sup>143</sup> on the equality of rights and opportunities, the participation and citizenship of disabled persons, which introduced measures for the access of deaf or hard of hearing persons; the broadcasting law of 5 March 2009<sup>144</sup> which transposes the AVMS Directive; and the law n° 86-1067 of 30 September 1986 regarding freedom of communication (Loi Léotard).<sup>145</sup> Further to a Conseil Superior de l'Audiovisuel (CSA) Decision 26 June 2009 amendments were added to the licensing conventions of commercial channels implementing these provisions.

For the public service broadcasters, their contracts with the government (contrats d'objectifs et de moyens) and PSB terms of reference (cahiers des missions et des charges des chaînes publiques) contain provisions for the access of deaf or hard of hearing persons.

### 12.2 Current requirements for subtitling for different categories of channels

According to law n° 86-1067 regarding digital terrestrial channels (Le 5° bis de l'article 28) and other television services (l'article 33-1), the CSA should integrate provisions regarding the accessibility of programmes into the conventions of the private channels.

The French regulations hence distinguish between categories of channels according to their transmission and according to their audience shares. The law provides that channels with an average annual audience **greater than 2.5% share of the total audience should make all of their programming accessible with subtitling** (from 12 February 2010), with the exception of advertising. This was achieved over a 5-year period from 2005 using increasing annual quotas.

For channels with an average annual audience **less than 2.5% share** of the total audience, the CSA established with each via their conventions) which proportion of programming would be accessible.

The CSA determined that the proportion of programmes that should be accessible is **40% for channels with DTT licences** (particularly during peak viewing times while ensuring diversity in the programming thus covered), **Cable and satellite channels must make at least 20% of programming accessible** to those who are deaf or hard of hearing, particularly during peak viewing times while also ensuring diversity in the programming thus covered.

Other factors are also taken into consideration aside from audience such as the nature of the channel, the mode of distribution, financial details etc.

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<sup>143</sup><https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000809647&fastPos=1&fastReqId=2066533154&categorieLien=cid&oldAction=rechTexte>

<sup>144</sup><https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000020352071&fastPos=1&fastReqId=1252180105&categorieLien=cid&oldAction=rechTexte>

<sup>145</sup> n° 86-1067 du 30 septembre 1986 relative à la liberté de communication (Loi Léotard)  
<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000512205&fastPos=1&fastReqId=1797747611&categorieLien=cid&oldAction=rechTexte>

Article 81 requires the CSA to consult annually with the national Conseil consultatif des personnes handicapées (CNCPH) regarding the measures it is taking. The CSA sends an annual report to the CNCPH. In addition, the broadcasting law of 5 March 2009 under article 54 required that the CSA provide a report to the parliament (at the end of 2011) summarising the efforts made by editors of AVMS regarding audio description and subtitles of their programmes as well as all measures adopted to improve the accessibility. The CSA also focuses on ensuring the quality of subtitling.

#### **12.2.1 Public service and channels with public service obligations**

For public service channels, article 53 (law n° 86-1067) outlines that the requirements are specified in their contrat d'objectifs et de moyens (COM).<sup>146</sup> The opinion regarding the contract for 2016-2020 from the CSA is summarised here:

- Regarding audio description, France Télévisions continues with the objectives of the previous COM, that is 2 programmes with audio description per day. In 2015 France Télévisions offered 1171 programmes with audio description, a higher number than the objective fixed in the COM (730) programmes.
- Regarding French sign language, the public broadcaster is committed to making available its news editions on digital and to set up a French sign language system for the important moments of democratic life. It would also be appropriate to increase the number of programmes to be translated into LSF, or at least to renew the commitment made in the previous COM.
- Regarding subtitling, although the five national channels are now fully subtitled, greater efforts should be made with regard to the quality of closed captioning.
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#### **12.2.2 Summary of availability**

According to the CSA website, the current situation is that the public channels France2, France 3, France 4, France 5 France Ô and the private channels TF1, M6, TMC and W9 must subtitle all of their programming.

Other free to air DTT channels (less than 2,5% audience share) have lower % obligations (ranging from goals for 2016 of between 40% and 60 %). Cable and satellite must subtitle at least 20% of content. Pay DTT channels also have obligations (ranging from goals for 2016 of between 40% and 100%).<sup>147</sup> There are further details regarding niche channels and their specific obligations under the section on exemptions (below under 12.7).

### **12.3 Current requirements for audio-description for different categories of channels**

The use of audio description (law of 30 September 1986, as amended by the law of 5 March 2009) is covered under Article 28 (5) (for DTT television services), and Article 33 (1) (for other television services), and Article 53 (for public service channels).

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<sup>146</sup> Overview of the contract : <http://www.csa.fr/Espace-juridique/Avis-du-CSA-au-Gouvernement/Avis-n-2016-14-du-28-septembre-2016-relatif-au-projet-de-Contrat-d-objectifs-et-de-moyens-de-la-societe-nationale-de-programme-France-Televisions-pour-la-periode-2016-2020>

<sup>147</sup> See more details here on the website of the French CSA : <http://www.csa.fr/Television/Le-suivi-des-programmes/L-accessibilite-des-programmes/Pour-les-personnes-sourdes-ou-malentendantes-le-sous-titrage/Obligations-des-chaines>

Again, the distinctions are made with reference to audience shares. For channels whose average annual audience is **greater than 2.5% of the total television audience they must offer programmes** accessible for people with vision difficulties. In December 2008, the CSA signed a charter on audio description the objective of which was to establish a framework of reference for professionals regarding rules and issues of quality.

France Télévisions launched an audio description service in 2009. Its COM required in 2012 at least one programme per day on each of the channels. In 2010, the CSA also held consultations with commercial channels and with representatives of associations of blind or visually impaired organisations. Following this, the CSA negotiated with the main private channels (TF1, M6, Canal+ et TMC) agreements in their conventions regarding the provision of audio description. In 2012, the six new DTT channels also entered agreements regarding audio description.

The growth of obligations for the private channels on DTT concerning audio-description are outlined in the table below. The obligation unit is the “number of programmes” per year.

**Table 12.1: Obligations to provide audio-description for free to air private channels**

Obligation minimale de programmes audiodécrits des chaînes de la TNT privées						
	2011	2012	2013	2014	2015	2016
TF1	12	12	52	60	70	80
M6	12	12	52	60	70	80
Canal+	4	12	52	60	70	80
TMC	1	6	12	14	17	20
W9	1	12	12	14	17	20
D8	0	0	1	6	17	20
HD1	0	0	1	6	12	12
6TER	0	0	1	6	12	12
Chérie 25	0	0	1	6	12	12
Numéro 23	0	0	1	6	12	12
RMC Découverte	0	0	1	6	12	12
L'Equipe 21	0	0	1	6	12	12

Source: CSA Website

## 12.4 French sign language

There is no obligation on TV channels to translate programmes into the French sign language (LSF). However, a wide range of channels are providing this: France 2 with morning news programmes; France 3 with weekly parliamentary questions; France 5 with a dedicated programme twice per week. Also, as outlined below (12.7), the CSA has agreed on alternative solutions with a range of niche channels regarding their obligations (news channels on DTT, sports channels, children’s channels).

## 12.5 On-demand services and online content of broadcasters

Currently the French regulation places no obligations on providers of on-demand services.

## 12.6 Distribution of content with access services

In France, the Law 86-1067 (as modified by Law 2004-669) details services that are must-carry, and include '*services for disabled people associated with the channels to be carried (art 34-2)*'.<sup>148</sup> The distributors are responsible for the necessary technical requirements.

Following statements from associations for people with hearing and visual disabilities claiming that the DTT receivers in France were not adapted to the carrying of the access services of broadcasters, the CSA carried out a study on this issue with Mediatvcom. The aim is to develop a DTT receiver with vocalized (text to speech) in the French language. The regulator noted that such systems exist in the UK and in Spain. It allows the vocalization of all information that appears on the screen including menus, names and numbers of channels, the data in the electronic guides etc. The study was carried out in three parts: 1) To examine the development of vocalized TV receptors in the UK, Spain, the US and Ireland (and also the relevant legislation)<sup>149</sup>; 2) to define the technical specifications and functionalities of such a DTT reception device; 3) to carry out an economic feasibility study on the development of such a device for the French market.

There are also national funds for media production that support the distribution of accessible content (see below, 12.8).

## 12.7 Exemptions and solutions

The CSA has tried to reconcile the legitimate demands of people with disabilities with the difficulties that broadcasters were having in meeting obligations, by proposing some innovative solutions for certain channels:

- For the news channels on the DTT service, the CSA has required that they provide three news programmes with subtitles and one news programmes translated with sign language between Monday and Friday. In addition, they should provide four news programmes with subtitles on weekends and holidays. The CSA also requires that the three broadcasters co-operate to ensure that the broadcasts are at different times on the channels.
- For children's television (ages 3-6) distributed over cable, they are no longer required to provide sub-titling, but are required to provide one educational programme with French sign language (starting from 2010) and one other scheduled programme translated into French sign language (from 2011). Such programmes will also be broadcast on the channels Gulli and Canal J.
- For sports channels, the CSA has determined either a number of hours or a number of matches (in competitions) where subtitles must be provided, and the number of hours of magazine information programmes where translation into French sign language should be provided.
- For channels whose turnover is between 3 and 7 M€, the percentage of subtitling is reduced to 10 %.

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<sup>148</sup> Loi n° 86-1067 du 30 septembre 1986 relative à la liberté de communication (consolidated version of 29 November 2013, in French only):

<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000512205&fastPos=1&fastReqId=1797747611&categorieLien=cid&oldAction=rechTexte>

<sup>149</sup> Rapport 1 : Etat du développement des récepteurs TNT vocalisants.

<http://www.csa.fr/Media/Files/Television/Rapport-1-Etat-du-developpement-des-recepteurs-TNT-vocalisants>

Other derogations are: references to product placement; live music; self-promotion; live sports between midnight and 6am; pay per view channels; temporary channels; tele shopping channels; and channels with a turnover of less than 3 million euros.

## 12.8 Film funding

The French CNC is the major funding source for the production of audiovisual content in France. It has a range of schemes for promoting the accessibility of audiovisual works.<sup>150</sup> The CNC defines an accessible film as one that offers subtitles for the deaf and hard of hearing, and offers audio description.

The CNC proposes different support mechanisms:

- Support for the creation of the audio description and subtitling for the work (on feature films). Eligible costs include both the creation of the subtitles and of the audio description AND the transfer of the data to all digital distribution platforms: television, video and video on demand.
- Aid towards the digitisation of heritage films (the plan to make the work accessible will be a criterion in the decision to award funds, and adding of accessible features are included in eligible costs)<sup>151</sup>
- Aid towards creation of a physical video (the plan to make the work accessible will be a criterion in the decision to award funds, and adding of accessible features are included in eligible costs)<sup>152</sup>
- Aid in the distribution of the work via video on demand (the plan to make the work accessible will be a criterion in the decision to award funds, and adding of accessible features are included in eligible costs)<sup>153</sup>
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The CNC also refer applicants to the charters regarding quality of subtitling and of audio description.<sup>154</sup>

According to the regulatory authority (responding to the BAI/EPRA Questionnaire): Each year, an average of 50 movies benefit from this funding during the creation phase, in order to edit subtitling or audio description files, of which the CNC covers up to 50% of the cost. Regarding those benefitting from help in distribution, there were 200 projects in 2015.

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<sup>150</sup> CNC website on accessibility: <http://www.cnc.fr/web/fr/accessibilite>

<sup>151</sup> CNC : présentation du dispositif d'aide à la numérisation des films de patrimoine du CNC.

<http://www.cnc.fr/web/fr/publications/-/ressources/5139891;jsessionid=oFEC5D3586F546955B67E94F1DEE236B.liferay>

<sup>152</sup> CNC : Aide sélective à l'édition vidéo physique (aide unitaire et aide au programme éditorial annuel).

Descriptif complet 2016. <http://www.cnc.fr/web/fr/aide-a-l-edition-en-video-physique>

<sup>153</sup> CNC : Aide sélective à l'édition vidéo physique et à la diffusion en vidéo à la demande (VàD). Dossier de demande d'aide au programme éditorial 2016. <http://www.cnc.fr/web/fr/aide-a-l-exploitation-d-oeuvres-francaises-et-europeennes-en-video-a-la-demande>

<sup>154</sup> [Charte relative à la qualité du sous-titrage à destination des personnes sourdes ou malentendantes du 12 décembre 2011](#) et de la [Charte de l'audiodescription du 10 décembre 2008](#).

## 13 GB - United Kingdom

### 13.1 Regulator and regulatory base

In the UK, the Office for Communications (Ofcom) regulates the audiovisual and telecommunications sectors. The legal basis for Ofcom's regulatory role is the Communications Act 2003. The Act states under Sections 303 to 305<sup>155</sup> that Ofcom is required to '*draw up, and from time to time review and revise, a code giving guidance as to*

*(a) the extent to which television services should promote the understanding and enjoyment by — (i) persons who are deaf or hard of hearing, (ii) persons who are blind or partially-sighted, and (iii) persons with a dual sensory impairment, of the programmes to be included in such services; and*  
*(b) the means by which such understanding and enjoyment should be promoted.'*

Before describing the accessibility obligations, it is useful to note the definitions of terms used in the UK.

**Table 13.1: Definitions of terms used by the Ofcom**

Term	Definition
Subtitling	Subtitling is text on screen representing speech and sound effects that may not be audible to people with hearing impairments, synchronised as closely as possible to the sound.
Audio description	Audio description is a service primarily aimed at blind or visually-impaired people. It comprises a commentary woven around the soundtrack, exploiting pauses to explain on screen action, describe characters, locations, costumes, body language and facial expressions to enhance meaning and enjoyment for blind or visually- impaired viewers.
Sign language	Sign language comprises the use of manual gestures, facial expression and body language to convey meaning. British Sign Language (BSL) is the most popular sign language in the United Kingdom. This is a distinct language (recognised as such by the Government) with different syntax and vocabulary from English. In addition to different forms of sign language in other countries, Sign Supported English (which tends to follow the syntax and vocabulary of English) and Makaton (a simplified form of sign language sometimes used with deaf children) are also used in the UK.

Source: Ofcom Access Code January 2017

### 13.2 Current requirements for different categories of channels regarding access

In the UK, different categories of channels are required to fulfil different obligations as regards the provision of access. The following outlines these obligations from Ofcom's Code on Television Access Services.<sup>156</sup>

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<sup>155</sup> Communications Act 2003:

<http://www.legislation.gov.uk/ukpga/2003/21/part/3/chapter/4/crossheading/television-services-for-the-deaf-and-visually-impaired>

<sup>156</sup> Ofcom's Code on Television Access Services. Available here: <https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-codes/tv-access-services>

### 13.2.1 Public service and channels with public service obligations

The BBC channels<sup>157</sup>

With the exception of BBC Parliament, all channels should provide:

- Subtitling on 100% of programming and should;
- Audio describe 10% (except for BBC News), and they should;
- Sign language 5% of content

For ITV1 (including regional and national), and Channel 4 they should provide:

- Subtitling on 90% of programming.

Five and S4C should provide:

- Subtitling on 80% of programming.

ITV1 (including regional and national), Channel 4, Five and S4C should provide:

- Audio description on 5%;
- and Signing on 10%<sup>158</sup>

### 13.2.2 Private channels (domestic broadcasters)

In relation to private channels, the most recent Access Report<sup>159</sup> (paragraph 1.8) explains that: *Channels are selected on the basis of the benefits they would deliver to the audience, subject to being able to afford to provide access services. For those purposes, domestic channels with an audience share (all UK households, all times) of **0.05% are required to provide access services**, unless there are technical reasons why this would not be practicable, and subject to their **ability to afford the assessed cost by paying up to 1% of their relevant turnover**.*

The following applies to **channels with 'larger audience shares'**, defined as having an average audience share higher than the 'signing threshold'.<sup>160</sup> For domestic channels the signing threshold is 1% of audience share.

Progressive targets (to be reached over 10 years)

- Subtitling on 80% of programming (starting with 10% after first year)
- Audio description on 10% (starting with 2% after first year)
- Signing on 5% (starting with 1% after first year)

The targets for Ofcom licensees were introduced on a gradual basis, i.e. they needed to grow progressively over 10 years.

*In setting targets for audio description, Ofcom used its powers to accelerate implementation of the maximum statutory target (10%) so that it was reached on the fifth anniversary or the relevant date, rather than the tenth anniversary*

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<sup>157</sup> The BBC's obligations derive from the Broadcasting Agreement with the State. Broadcasting - Agreement Between Her Majesty's Secretary of State for Culture, Media and Sport and the British Broadcasting Corporation December 2016:

[http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/about/how\\_we\\_govern/2016/agreement.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_govern/2016/agreement.pdf)

<sup>158</sup> Ofcom's code on Television Access Services, Jan 2017:

[https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0020/97040/Access-service-code-Jan-2017.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0020/97040/Access-service-code-Jan-2017.pdf)

<sup>159</sup> Ofcom (May 2017): Television access services report 2016. Available here:

[https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0009/102015/Access-Report-2016-17.5-NEW.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0009/102015/Access-Report-2016-17.5-NEW.pdf)

<sup>160</sup> The main distinction between the obligations of channels with larger shares and those with smaller shares concerns the extent to which they have to provide signing on programmes. Hence this cut off point of 1% audience share is the 'signing threshold' above which the obligations are greater.



The following applies to **channels with 'smaller audience shares'**, defined as having an average audience share higher than 0,05% than but lower than the 'signing threshold'. For domestic channels the signing threshold is 1% of audience share. Progressive targets (to be reached over 10 years):

- Subtitling on 80% of programming (starting with 10% after first year)
- Audio description on 10% (starting with 2% after first year)
- Signing on 75 mins per month (starting with 30 mins per month after first year)

The **main difference between the two groups is the obligation regarding signing**. In addition, as concerns the provision of programmes in sign language, an alternative way has been introduced to allow commercial broadcasters to meet their requirements. This is achieved via contributions (subscription fee) from the broadcasters to the British Sign Language Broadcasting Trust (see below under 13.6) rather than those broadcasters producing or commissioning sign language programming. This decision arose as a result of research that suggested that very few sign language users were watching low audience channels. However, as it is not possible to completely remove their obligations, this alternative mode of contribution was developed from 2008.

### 13.2.3 Non-domestic channels

Ofcom also applies obligations to non-domestic broadcasters. According to the Access service code: 2. c) *'non-domestic broadcaster' means the provider of a television programme service which is primarily intended for reception by members of the public in Member States of the European Union other than the United Kingdom, and of member states of the European Economic Area to which the Audiovisual Media Services ("AVMS") Directive has been extended.*

Therefore, this is not about imposing obligations on foreign channels broadcast in the UK but rather on the **range of channels licensed by the Ofcom that broadcast in other markets**. This policy has been in place since 2014. The rationale for the policy is Ofcom's duty to regulate in ways that are transparent and consistent, and consistent with the arrangements for domestic channels<sup>161</sup>

There are currently a large number of channels licensed in the UK which target other EU member states (680 according to the MAVISE database, May 2017).<sup>162</sup> Of course many of these are niche channels with very insignificant audience shares, while some represent important players on the markets in other member states (such as in Sweden, Denmark etc.).

As with domestic broadcasters, Ofcom distinguishes between channels with larger audience shares and channels with smaller audience shares. Note that in relation to assessing the large and small, both an 'audience share threshold' and a 'signing threshold' have been established for each EU member state (see table 13.2 below).

The following applies to **'non-domestic channels with larger audience shares'** defined as having an average audience share higher than the 'signing threshold' (different for each country).

Progressive targets (to be reached over 10 years)

- Subtitling on 80% of programming (starting with 10% after first year)
- Audio description on 10% (starting with 2% after first year)
- Signing on 5% (starting with 1% after first year)

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<sup>161</sup> Ofcom (2015): Non-domestic TV channels: proposals to modify access service obligations  
[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0018/68103/non-doms\\_signing\\_consultation.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0018/68103/non-doms_signing_consultation.pdf)

<sup>162</sup> Home page of the MAVISE database: <http://mavise.obs.coe.int/welcome>



The following applies to '*non-domestic channels with smaller audience shares*' defined as having an average audience share higher than the threshold (different for each country) but lower than the 'signing threshold' (different for each country).

Progressive targets (to be reached over 10 years)

- Subtitling on 80% of programming (starting with 10% after first year)
- Audio description on 10% (starting with 2% after first year)
- Signing on 75 mins per month (starting with 30 mins per month after first year)
- A possibility to substitute signing requirements with sign interpretation Or with additional subtitling (beyond the 80%).

**Table 13.2: Audience share thresholds and 'signing thresholds'**

EU MS	Audience share threshold	Signing threshold	EU MS	Audience share threshold	Signing threshold
AT	0.56%	11.28%	IT	0.05%	0.93%
BE	0.36%	7.15%	LV	1.32%	26.45%
BG	0.40%	8.00%	LT	0.96%	19.16%
CY	5.00%	*	LU	4.83%	96.60%
CZ	0.34%	6.83%	MT	5.92%	*
DK	0.64%	12.74%	NL	0.23%	4.62%
EE	2.14%	42.74%	PL	0.07%	1.48%
FI	0.74%	14.87%	PT	0.32%	6.48%
FR	0.05%	1.07%	RO	0.12%	2.40%
DE	0.04%	0.84%	SK	0.66%	13.24%
GR	0.24%	4.79%	SI	1.81%	36.20%
HU	0.26%	5.21%	ES	0.06%	1.29%
IE	0.84%	16.74%	SE	0.43%	8.69%
			GB	0.05%	1%

Source: Ofcom's code on Television Access services 2017

### 13.3 Recent developments

Following a consultation regarding the obligations of non-domestic channels, the Ofcom published a statement regarding changes to the access service requirements in December 2016.<sup>163</sup> The main changes introduced were the following:

- Extending the transitional period for non-domestic channels with smaller audiences to provide additional subtitling in lieu of these requirements to December 2017<sup>164</sup>

<sup>163</sup> Ofcom (December 2016): Non-domestic TV channels: changes to access service requirements.

[https://www.ofcom.org.uk/data/assets/pdf\\_file/0023/95027/Non-Doms-signing-statement-FINAL-301116.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0023/95027/Non-Doms-signing-statement-FINAL-301116.pdf)

<sup>164</sup> Non-domestic channels had an initial transitional period of two years ending on 31 December 2015, to provide additional subtitling in lieu of these requirements. The purpose of the transitional period was to allow Ofcom to seek the views of sign language users and broadcasters on what arrangements would be most beneficial to sign language users.

- Requiring from January 2018 provision of access services (including subtitling, signing and audio description) by non-domestic channels serving those member states of the European Economic Area (EEA) to which the European Union's Audiovisual Media Services (AVMS) Directive applies (i.e. Iceland, Liechtenstein and Norway). Eventually the policy was extended to Norway only due to the fact that no channels licensed by Ofcom specifically target Iceland or Liechtenstein

In a separate development, the Digital Economy Bill became the Digital Economy Act in April 2017<sup>165</sup> and has paved the way for the introduction of obligations for on-demand service providers regarding accessibility (see under video on demand services, 13.4).

### 13.4 On-demand services and online content of broadcasters

In the UK, the Electronic Communications Broadcasting - The Audiovisual Media Services Regulations 2009<sup>166</sup> amended the Communications Act 2003 to implement aspects of the AVMSD, particularly in relation to on-demand services. Specifically, 368 C describes the duties of the appropriate regulatory authority: (2) The appropriate regulatory authority must encourage providers of on-demand programme services to ensure that their services are progressively made more accessible to people with disabilities affecting their sight or hearing or both.

Between 2010 and 2015 ATVOD (Authority for Television on Demand) was the designated body as the co-regulator of VOD in the UK. Since 1 January 2016, Ofcom has been the sole regulator for editorial content (programming) on UK video-on-demand services. ATVOD developed Access services best practice guidelines<sup>167</sup>, and between 2011 and 2015 they produced reports on the accessibility of on/demand services.

#### 13.4.1 Reporting of on-demand providers and the gathering of data

Currently the Ofcom is required only to 'encourage' providers to ensure that their services are progressively made more accessible to people with disabilities affecting their sight or hearing, or both. Their approach to this is outlined in the Ofcom Statement on accessibility of on demand programme services<sup>168</sup>, and mainly concerns the gathering of 'data on which ODPS (on Demand Service Providers) – and what proportion of programmes on those 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'.

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<sup>165</sup> Digital Economy Act, April 2017. Available here:

<http://www.legislation.gov.uk/ukpga/2017/30/contents/enacted/data.htm>

<sup>166</sup> Electronic Communications Broadcasting - The Audiovisual Media Services Regulations 2009 - 368C (2) of 2009. Available here: <http://www.legislation.gov.uk/uksi/2009/2979/contents/made>

<sup>167</sup> ATVOD (2012): Access services: best practice Guidelines:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0018/82242/access\\_services\\_best\\_practice\\_guidelines\\_final\\_120912.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0018/82242/access_services_best_practice_guidelines_final_120912.pdf)

<sup>168</sup> Ofcom (April, 2017): Accessibility of on demand programme services.

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0011/100226/accessibility-on-demand-programme-services-statement.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0011/100226/accessibility-on-demand-programme-services-statement.pdf)

The Statement of April 2017 outlined some changes in the way in which this data will be collected:

- Ofcom proposed that ODPS providers be required to submit access service data on a twice-yearly basis in line with the current requirement on television broadcasters. This would increase the frequency from the annual submissions previously required by ATVOD and by Ofcom in 2016.
- Ofcom also decided to require ODPS providers to submit data about each branded service they offer to consumers. Data for each branded service will still be required for each platform on which it appears. We will also request that providers (voluntarily) differentiate figures relating sign-presented and sign-interpreted content where they can.

Ofcom also supports the Television On Demand Industry Forum in its establishment of an access services policy working group (to provide an effective means for content providers and platform operators to share experience and technical know-how with a view to increasing accessibility).

Ofcom focuses its encouragement on the following types of on demand 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.

#### **13.4.2 Future regulation of accessibility for on-demand services?**

Most recently the Digital Economy Act<sup>169</sup> which became law in April 2017 amended the Communications Act 2003, and has paved the way for the introduction of obligations on providers of on demand services to include subtitles, sign language and audio description when providing video on demand. Before the development of any regulation, a consultation with all interested parties will be carried out. According to Ofcom, the Act provides for the Secretary of State to make regulations that will require mandate access services on video on-demand, after consulting with Ofcom.<sup>170</sup> Such a regulation will also require the Ofcom to draw up a code on accessibility for guidance to the on/demand providers.

##### **Digital Economy Act**

##### **On-demand programme services**

93 On-demand programme services: accessibility for people with disabilities

(1) The Communications Act 2003 is amended as follows.

(2) After section 368BB insert— "Accessibility 368BC Accessibility for people with disabilities

(1) The Secretary of State may by regulations impose requirements on providers of on demand programme services for the purpose of ensuring that their services are accessible to people with disabilities affecting their sight or hearing or both.

(2) The requirements that may be imposed include—

(a) requirements for programmes included in the services to be accompanied by subtitling;

(b) requirements for such programmes to be accompanied by audio-description for the blind;

(c) requirements for such programmes to be presented in, or translated into, sign language.

(3) The steps set out in subsections (4) to (6) must be taken before regulations are made under this section.

<sup>169</sup> Digital Economy Act, April 2017. Available here:

<http://www.legislation.gov.uk/ukpga/2017/30/contents/enacted/data.htm>

<sup>170</sup> Ofcom (March, 2017): Access and Inclusion in 2016 - Outcomes for consumers in vulnerable circumstances.

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0030/98508/access-inclusion-report-2016.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0030/98508/access-inclusion-report-2016.pdf)

- (4) The Secretary of State must ask the appropriate regulatory authority to consult such persons as appear to the authority likely to be affected by regulations under this section, including—
- (a) providers of on-demand programme services, and
  - (b) representatives of people with disabilities affecting their sight or hearing or both.
- (5) The appropriate regulatory authority must inform the Secretary of State of—
- (a) the outcome of the consultation, and
  - (b) any other matters that they think should be taken into account by the Secretary of State for the purposes of the regulations.
- (6) Where OFCOM are not the appropriate regulatory authority, the Secretary of State must consult OFCOM.
- (7) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

## **13.5 Distribution, delivery and findability of content**

### ***13.5.1 Issues regarding the delivery of accessible content online***

In the 2015 report of ATVOD, on the accessibility of on-demand services they noted that: Providers continue to point to barriers to accessibility on VOD, including technical issues in converting subtitles for multiple platforms, and the associated costs. Content providers (e.g. Fox) continue to disagree with platform operators (e.g. Virgin) over whose responsibility it is to make content accessible, and there is a lack of clarity over platform requirements and/or capabilities. However, more platforms appear to now support access services, and more content providers are working with platforms to get accessible content through to consumers.<sup>171</sup>

### ***13.5.2 Promotion and findability of content***

As in many other countries, the Ofcom requires television service providers “to promote awareness of the availability of their television access services to potential users of the services by making available accurate and timely information to electronic programme guide (EPG) operators listing their services, and by providing similar information on their website”.

## **13.6 Costs, grants, subsidies and co-operation**

### ***13.6.1 Cost assessments and exemptions***

For non-public service channels, the recent Access Report<sup>172</sup> details the process for exempting or reducing obligations: If the assessed cost of compliance for a channel with all the targets (Level One) would be more than 1% of the relevant turnover, its subtitling obligations (but not those for signing and audio description) are reduced by one third (Level Two). If that fails to bring estimated expenditure below 1% of relevant turnover, the channel’s subtitling obligations may be reduced by two thirds (Level Three). If, despite this, Ofcom’s assessment shows that it could not afford the reduced obligations by spending no more than 1% of relevant turnover, the channel will be exempted from providing access services altogether.

Ofcom are also empowered to exempt certain types of content or services, having regard, in particular, to:

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<sup>171</sup> ATVOD (2015): Provision of Video on Demand Access Services -2015 Report  
[https://www.ofcom.org.uk/data/assets/pdf\\_file/0023/58811/as\\_survey\\_report\\_2015.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0023/58811/as_survey_report_2015.pdf)

<sup>172</sup> Ofcom (May 2017): Television access services report 2016. Available here:  
[https://www.ofcom.org.uk/data/assets/pdf\\_file/0009/102015/Access-Report-2016-17.5-NEW.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0009/102015/Access-Report-2016-17.5-NEW.pdf)

- a) the extent of the benefit which would be conferred by the provision of the assistance for disabled people in relation to the programmes;
- b) the size of the intended audience for the programmes;
- c) the number of persons who would be likely to benefit from the assistance and the extent of the likely benefit in each case;
- d) the extent to which members of the intended audience for the programmes are resident in places outside the United Kingdom;
- e) the technical difficulty of providing the assistance; and
- f) the cost, in the context of the matters mentioned in paragraphs (a) to (e), of providing the assistance

Regarding Technical difficulties, the Ofcom code also notes that:

*television access services need not be provided if Ofcom is satisfied that this would be impracticable on grounds of technical difficulty, including the following cases:*

- a) audio description of music and news programmes and services, where there is little space within the dialogue/sound track to provide audio description, and less need. However, broadcasters are required to ensure that producers, editors and presenters are trained in techniques to describe the significance of images for the benefit of the blind and partially-sighted audience. Broadcasters are required to provide a statement of the training they are providing within 12 months of becoming subject to the code;
- b) provision of subtitling that is not supported by commercially- available set top boxes (e.g. Chinese or Urdu); and
- c) provision of access services where a service is broadcast with several different language feeds, making the choice of language for access services problematic<sup>173</sup>

In addition, an alternative was introduced for smaller broadcasters the obligation to provide programmes with sign language interpretation: the contributions to the British Sign Language Broadcasting Trust (see below).

### **13.6.2 The British Sign Language Broadcasting Trust**

The British Sign Language Broadcasting Trust (BSLBT) commissions television programmes made in British Sign Language by Deaf people for Deaf people. BSLBT was set up in 2008, with Ofcom's approval, to offer an alternative way for commercial broadcasters to meet their regulatory requirements to provide sign language on their qualifying channels.<sup>174</sup> According to the BSLBT website, 'independent broadcasters with between 0.5% and 1% of audience share can choose either to source and broadcast programmes presented in sign-language themselves or to pay an annual subscription fee, set by Ofcom, to BSLBT to make programmes in sign language.' In 2015, 61 channels from 13 broadcasters contributed to the BSLBT providing an income of 1.2 million GBP. In the same year 18 programmes were commissioned or acquired from six different companies. In addition, the organisation has broadcasting slots (BSL Zone) on two Freeview channels (four 30 minute weekly slots).<sup>175</sup> Programming is also made available on the BSLBT website.

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<sup>173</sup> Ofcom Code on Television Access Services:

[https://www.ofcom.org.uk/data/assets/pdf\\_file/0020/97040/Access-service-code-Jan-2017.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0020/97040/Access-service-code-Jan-2017.pdf)

<sup>174</sup> Home page of British Sign Language Broadcasting Trust: <http://www.bslzone.co.uk/about/>

<sup>175</sup> Data according to the 'Report of the Trustees of the BSLBT, December 2015':

[http://www.bslzone.co.uk/files/1514/7584/2307/BSLBT\\_2015\\_accounts.pdf](http://www.bslzone.co.uk/files/1514/7584/2307/BSLBT_2015_accounts.pdf)

### **13.6.3 Other**

Section 303(10)(c) of the Communications Act allows Ofcom to impose alternative requirements with respect to the provision of assistance for disabled people in relation to any programmes or services it has excluded. In considering whether alternative requirements should be imposed on individual channels, it is open to Ofcom to take into account any voluntary arrangements entered into by broadcasters that would also meet the needs of sign-language users more effectively.

### **13.6.4 Film and media production funding**

In a review of a range of funding mechanisms in the UK, no specific funding was found for the production of accessible content.

## 14 SE - Sweden

### 14.1 Regulator and regulatory base

This chapter is largely based on a comprehensive report published by the Swedish regulatory authority in 2016 outlining the obligations on audiovisual media services from 2016 to 2020. The report included detail of obligations, developments and results of consultations.<sup>176</sup>

According to Section 5(12) of the Swedish Radio and Television Act Section 12<sup>177</sup>, which implements Directive 2010/13/EU on Audiovisual Media Services (AVMS Directive) the media service providers of television broadcasting, on-demand television, and searchable text TV shall design their service in such a way that it becomes available to persons with disabilities through subtitling, interpretation, spoken text or a similar technique.<sup>178</sup>

In the abovementioned report, the regulator stated that the impact of the obligations (first outlined in 2011) was that by June 2016, a large number of media service providers had lived up to the requirement to promote accessibility in their programming and that the number of hours of accessible programming has increased considerably

With regard to public service media, the obligations are set by the government, while the regulator deals with all other channels.

### 14.2 Categorisation of channels for access rules obligations

In Sweden, the regulator distinguishes between television channels with *General Obligations* and channels with *Special Obligations*.

#### 14.2.1 General obligations

In 2011, **General obligations** were imposed (for the period 2011-2016) on media service providers with an audience share of less than 1% to promote the availability of TV broadcasts in Swedish for people with disabilities. Promotion is via texting, sign language interpretation, Synthesis, spoken text or similar techniques.

The media service providers should report annually regarding how these requirements have been met, which contacts have been made including with representatives of the user groups, how the supplier intends to strengthen accessibility of TV shows, and what are the future plans for developing accessibility.

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<sup>176</sup> Swedish Press and Broadcasting Authority (2016): Requirements for access to television broadcasts by persons with disabilities, 1 July 2016.

[http://www.mprt.se/documents/tillg%C3%A4nglighet/krav%20p%C3%A5%20tillg%C3%A4nglighet%20tv-s%C3%A4ndningar%202016\\_tillg%C3%A4nglig.pdf.pdf](http://www.mprt.se/documents/tillg%C3%A4nglighet/krav%20p%C3%A5%20tillg%C3%A4nglighet%20tv-s%C3%A4ndningar%202016_tillg%C3%A4nglig.pdf.pdf)

<sup>177</sup> <http://www.mprt.se/Documents/Styrdokument/Radio%20and%20Television%20Act.pdf>

<sup>178</sup> Erik Ullberg (2016): IRIS Merlin. IRIS 2016-9:1/27. The Swedish Press and Broadcasting Authority's newest report on accessibility requirements for broadcasters in Sweden.

<http://merlin.obs.coe.int/iris/2016/9/article27.en.html>

From 2016 (regarding obligations for the 2016-2020 period), the changes to the obligations included ensuring that the programming was made available on all platforms, although the media provider could choose the allocation between the platforms according to user needs.

The re-use of programming with accessibility that is then made available on the on-demand (catch/up) platforms of the broadcaster can be credited as part of the obligations.

#### **14.2.2 Special obligations**

**Special obligations** exist for channels with a larger audience share, more than 1%. From 2011 (during the first period 2011-2016), they were relevant only to the broadcasting company TV4. These are a quantitative and gradually increasing requirement to make available the subtitling of pre-recorded and live TV programmes, sign language interpretation, audio description and spoken text. Only some of TV4's programme services to date had been the subject of special requirements. In 2015/2016: TV4, Seven, and TV12. The scope of requirements included:

- Increasing the level of services for the deaf and hard of hearing (subtitles etc.) from 25% in 2011 to 90% in 2016
- Increasing the levels of services for the blind and visually impaired (audio description, sign language) from a phase of testing from 2011 to 2013 / to 3% in 2016.

The programming should be available over terrestrial, satellite and cable but the company may choose the allocation between the platforms according to user needs.

From the second period (2016-2020), several changes have been made regarding the obligations. For this period, a more detailed list of specifications was introduced by the using quotas for the different types of access services (rather than general obligations with regard to visual and audio tools). These specific obligations now apply to all services with a share of more than 1% (in practice this is still only relevant for the services of TV4 AB).

- By mid 2017, 100% of pre/recorded programmes should have texting (subtitles/captioning)
- Captioning/ subtitling of live programmes should increase / starting at 40% mid 2017 and rising to 55% by 2020
- Sign language interpretation and visual interpretation (audio description) each should rise from 3 to 4% in the time period
- Spoken text rises from 0,5% to 2% in the same period.

The rationale for the change to requiring quotas according to specific accessibility tools was to make it easily comparable to the system used in the UK as several broadcasters with significant market shares in Sweden are broadcast from the UK (and regulated there in relation to accessibility by the Ofcom).

The broadcasters with specific obligations may also use programming provided over their on-demand platforms for fulfilling the quotas (see more below).

#### **14.3 On-demand services and online content of broadcasters**

Swedish regulation does not impose any obligations on on-demand services but only on TV services distributed via terrestrial networks, satellite and cable. The provisions were extended to cable in 2013 mainly due to the digitisation of cable allowing for the addition of access services.



However, in the context of the quotas required by broadcasters, it is possible to obtain partial credit by including programming provided on their on-demand services. However, this 'credit' should not exceed 30% of the expected air time in the quotas. In addition, this is only relevant for the programming with audio description and sign language interpretation. Programming with subtitles that are made additionally available via on/demand do not count as part of the overall quotas.

## **14.4 Costs, grants, subsidies and co/operation**

### **14.4.1 Cost assessments and exemptions**

The Swedish law stressed that "in determining how and to what extent the service should be made accessible for persons with functional impairments, the provider's financial condition, and the technical development of the accessibility services should be considered

The new regulations state that the obligations need not be fulfilled where the cost of fulfilling exceeds 1% of a supplier's net sales for the previous year.

### **14.4.2 Film funding: Accessible cinema**

The Swedish film institute<sup>179</sup> provides funding for developing tools for making cinema more accessible for the blind and partially sighted under the scheme 'accessible cinema'. It involves the development of an app that can provide an audio description of the film. This description is part of the film sound track. Outlined in the document 'Available Cinema'<sup>180</sup>:

In June 2011, the government commissioned the Swedish Film Institute and the Swedish Post and Telecom Authority to develop a technical solution for transmitting recorded audio tracks for audio description and spoken subtitles synchronized with the film's sound to the cinema audience via a suitable receiver system. By gathering market intelligence and evaluating proposals for technical solutions, this project managed by the Swedish Film Institute under the name Tillgänglig Bio/Available Cinema has found and developed a solution based on audio recognition, a solution that does not require any installation in the cinema projection room.' This development plays a role in increasing content available for use on other platforms: 'Once the film has screened at cinemas, it is often released on DVD and/or sold to TV/VoD. Films screened on TV/DVD/VoD platforms use a different frame rate than when screened at the cinema. This means that the digital files in the DCP need to be converted, usually to 25 fps, if the film is to be shown on television, DVD or a VoD service.' A brief review of the film funding bodies in Sweden revealed no other specific grants for accessible content.

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<sup>179</sup> <http://www.filminstitutet.se/en/funding/funding-from-the-swedish-film-institute/available-cinema/>

<sup>180</sup> Svenska Filminstitutet (2015): Industry Standard –Available Cinema.

<http://www.filminstitutet.se/en/funding/funding-from-the-swedish-film-institute/available-cinema/>

## **15 Annexe 2: Overview of Access Rules in Non-European Jurisdictions**

These overviews will cover the national law, regulatory codes and voluntary initiatives. Where available, any consultation documents, reports or strategy documents will be reviewed in order to assess the following: any issues related to the implementation of regulation, or the monitoring and evaluation of the policy; relevant voluntary or industry codes or self- or co-regulatory systems; any available information relating to subsidies, issues of cost, or co-operation between broadcasters; the treatment of different kinds of broadcasters; trends in the on-demand world; overlap of approaches to access rules and rules on translation of content.

## 16 Australia

### 16.1 Regulator and regulatory base

The Australian Communications and Media Authority is the independent statutory authority tasked with ensuring most elements of Australia's media and communications legislation.<sup>181</sup> The relevant legislative framework includes: the captioning regulation under the Broadcasting Services Act (1992); Section 24 of the Disability Discrimination Act (1992); and the Broadcasting and Other Legislation Amendment (Deregulation) Bill 2015.

The Disability Discrimination Act (DDA)<sup>182</sup> prohibits disability discrimination in the provision of goods and services (s24). This has been held to include the broadcast of free-to-air television. The Broadcasting Services Act (1992) outlines the captioning obligations for broadcasters. It has been amended by the Broadcasting and Other Legislation Amendment (Deregulation) Bill 2015.

The Australian regulation relates only to the captioning of content.

### 16.2 Captioning obligations: Free-to-air

Free-to-air television broadcasters are currently (since July 2014) required to provide a captioning service on their main channel for programmes transmitted from 6 am to midnight each day (designated viewing hours) and news or current affairs programmes transmitted outside these hours. There are some exceptions from the basic rules. For example, television programmes or programme parts that are not in English are not required to be captioned.

Broadcasters are required to provide a captioning service for programmes transmitted on their SDTV or HDTV multi-channels if the programme has previously been broadcast with captions on their main channel or any of their multi-channels. If a broadcaster transmits an emergency warning at the request of an emergency service agency on any of its television broadcasting services, the broadcaster must transmit the whole emergency warning in text and speech, and caption the warning where practical.

#### 16.2.1 Annual reporting and record keeping requirements

National and commercial television broadcasters must provide annual compliance reports to the ACMA within 90 days after the end of a financial year. The reports must be in a form approved by the ACMA. The broadcasters must: keep written records for at least 90 days after they give their annual compliance reports to the ACMA; and keep audiovisual records for 30 days following the relevant broadcast. If a broadcaster becomes aware of a complaint about its compliance with captioning obligations under the BSA, the broadcaster must keep the audiovisual records for 90 days from broadcast.

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<sup>181</sup> Australian Communications and Media Authority: <http://www.acma.gov.au/>

<sup>182</sup> The Disability Discrimination Act 1992 (amended 2006)  
<https://www.legislation.gov.au/Details/C2006C00092>

### **16.2.2 Exemption orders and target reduction orders**

The ACMA has the power to make an exemption order or a target reduction order for a commercial or national television broadcaster if it is satisfied that refusing to do so would cause **unjustifiable hardship to the broadcaster**. An exemption order exempts a specified commercial or national television service provided by the broadcaster from the requirements of the basic rules for a specified period (one to five financial years). A target reduction order specifies a new reduced annual captioning target for the specified commercial or national television service provided by the broadcaster for a specified period. If a target reduction order is made, the basic rule does not apply during the specified period of the target reduction order.

## **16.3 Captioning obligations: Subscription TV**

From **1 July 2012**, subscription television services also must meet annual captioning targets for each financial year. There are different annual captioning targets for different categories of subscription television services. The annual captioning target for each service category increases each year until it reaches 100%. The different categories of subscription television services range from: Category A subscription television movie service (default for movie services) with an obligation to have 100% captioning by 2020; to Subscription television music services with an obligation to have 35% captioning by 2020.<sup>183</sup>

If a subscription television licensee transmits a television programme on a subscription television service and that programme has been previously transmitted with captions on the same or another subscription television service provided by the licensee, the licensee must provide a captioning service for that repeat television programme. This requirement only applies to programmes supplied by the same channel provider or part-channel provider. From the 2014–15 financial year, a subscription television licensee may aggregate the annual captioning targets for sports channels supplied by the same channel provider. Each individual sports channel must still maintain a certain level of captioning, which is at least two-thirds of the annual captioning target.

### **16.3.1 Exclusion of new subscription television channels from captioning targets**

New subscription television services are exempt from the annual captioning targets for one to almost two years depending on when the services commence. To qualify for the exemption, the subscription television service must predominantly consist of programmes not previously transmitted in Australia before the service commenced. The exemption from captioning obligations applies from service commencement until the financial year beginning on the first 1 July that is at least one year after the service commenced.

If a subscription television licensee transmits an emergency warning at the request of an emergency service agency on a subscription television service, the licensee must transmit the whole emergency warning in text and speech, and caption the warning where practical.

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<sup>183</sup> More detail is available here: <http://www.acma.gov.au/Citizen/TV-Radio/Television/Captioning/captioning-1>

### **16.3.2 Annual reporting and record keeping requirements**

National and commercial television broadcasters must give annual compliance reports to the ACMA within 90 days after the end of a financial year. The reports must be in a form approved by the ACMA. The licensees must: keep written records for at least 90 days after they give their annual compliance reports to the ACMA (that is, up to 180 days after the end of the relevant financial year); keep audio visual records for 30 days following the relevant broadcast. If a licensee becomes aware of a complaint about its compliance with captioning obligations under the BSA, the licensee must keep the audiovisual records for 90 days from broadcast.

### **16.3.3 Exemption orders and target reduction orders**

The ACMA has the power to make an exemption order or a target reduction order for a subscription television licensee if it is satisfied that refusing to do so would cause unjustifiable hardship to the licensee. The conditions are the same as those outlines above for free to air TV.

## **16.4 Captioning quality standard**

The Television Captioning Quality Standard (the Standard) aims to ensure that captions are meaningful to deaf and hearing impaired viewers. The Standard requires captions to be readable, accurate and comprehensible, so that they are meaningful to viewers.

All commercial television broadcasters, subscription television broadcasters and narrowcasters and national broadcasters must comply with the Standard. The Television Captioning Quality Standard was developed following extensive consultation with caption users, advocacy groups, the television industry and captioning providers.<sup>184</sup>

## **16.5 Codes of practice**

Under section 123 of the Broadcasting Services Act 1992, industry groups have developed codes of practice in consultation with the ACMA. Once implemented, the ACMA monitors these codes and deals with unresolved complaints made under them. Captioning is not covered in the Commercial Television Industry Code of Practice 2015.

The Australian Subscription Television and Radio Association (ASTRA) has developed the Subscription Broadcast Television Code, Subscription Narrowcast Television Code and the Open Narrowcast Television Code. Each of these codes includes provisions in relation to closed captioning: "where closed captioning programming is made available it will be clearly identified with programme schedule information provided to the press and in programme guides".<sup>185</sup> They also include in the code that any review of the code will be undertaken in full consultation with the public and representative organisations.

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<sup>184</sup> See more details here: <http://www.acma.gov.au/Citizen/TV-Radio/Television/Captioning/captioning-quality---the-standard>

<sup>185</sup> ASTRA Subscription broadcast television Code of Practice 2013. Available here: [https://www.astra.org.au/images/pages/ASTRA\\_Subscription\\_Broadcast\\_Television\\_Codes\\_of\\_Practice\\_2013.pdf.pdf](https://www.astra.org.au/images/pages/ASTRA_Subscription_Broadcast_Television_Codes_of_Practice_2013.pdf.pdf)

## 16.6 Lack of regulation on audio description

In Australia, there are currently no requirements on audio description. In April 2008, the government published a discussion paper on audio description, the findings of which are not available. However, a new initiative was launched in April 2017. The Government has set up a new taskforce with the aim of improving TV accessibility. They announced the formation of an Audio Description (AD) Working Group to examine options for increasing the availability of AD services in Australia. This initiative follows on from a trial of audio description carried out by the public broadcaster ABC over 15 months – known as the iView trial. The broadcaster provided 14 hours of audio-described content per week, which was accessible on a range of devices. It received positive feedback from users and the trial showed that AD can be successfully incorporated into programmes which are made available online.<sup>186</sup>

The terms of reference are outlined on the government website:

*The Audio Description Working Group will:*

- *identify options to sustainably increase access to audio description (AD) services for Australians who are blind or vision impaired and others who may benefit from AD;*
- *identify any impediments to implementation of such options, including technical, financial, cultural or capability issues;*
- *bring together industry and consumer stakeholders with relevant expertise and experience to provide advice on these options and impediments; and*
- *provide a report to the Minister for Communications and the Arts and the Assistant Minister for Social Services and Disability Services on its findings by 31 December 2017.*<sup>187</sup>

## 16.7 Recent developments

The most recent significant developments concerned the Broadcasting and Other Legislation Amendment (Deregulation) Bill 2015. It amended the captioning provisions in the Broadcasting Services Act 1992 (the BSA). The key amendments included the following:

- requiring the ACMA to consider differences (including time constraints for live content) between the captioning services for live television programmes and pre-recorded television programmes when determining captioning quality standard(s);
- requiring the ACMA to review, and vary the captioning standard(s) as appropriate, in light of the above legislative amendment by 19 March 2016;
- postponing the statutory review of the operation of the captioning provisions in the Broadcasting Services Act 1992 by one year (from end of 2015 to end of 2016);
- extending the deadline for lodgement of applications for exemption orders and target reduction orders by three months (to 31 March in the first financial year of an exemption period for which an order is being sought);
- exempting new subscription television services in Australia from the annual captioning targets for at least the first 12 months of operation;
- allowing aggregation of captioning targets across subscription television sports channels supplied by the same channel provider, subject to minimum levels being met on each individual channel of the channel provider (from the 2014 –15 financial year onwards);

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<sup>186</sup> For more information see the article on the Media Access Australia website:

[https://mediaaccess.org.au/latest\\_news/television/government-forms-working-group-on-ad-for-tv](https://mediaaccess.org.au/latest_news/television/government-forms-working-group-on-ad-for-tv)

<sup>187</sup> Australian Government (2017): Terms of Reference – Audio Description Working Group

[https://www.communications.gov.au/what-we-do/television/accessible\\_television](https://www.communications.gov.au/what-we-do/television/accessible_television)

- limiting the captioning requirement for repeat programmes on subscription television services that have previously been broadcast with captions by a subscription television licensee to those supplied by the same channel provider;
- amending record keeping requirements to differentiate between written records and audio-visual records; and
- extending the 'disregard' provision to breaches of the captioning quality standard (that resulted from significant and reasonably unforeseen technical or engineering difficulties).

The ACMA carried out a review of its captioning rules for TV services at the end of 2016, presenting a report in April 2017, inviting stakeholders to comment on the current rules. Its final summary report does not recommend specific legislative amendments. It does, however, identify some of the following issues that were raised:

- Stakeholder consensus about the complexity of the current framework for subscription television. The ACMA supports existing proposals to simplify this framework and increase transparency for audiences.
- Stakeholder concern about the legislative framework for exemptions and target reductions. The ACMA is of the view that it would be beneficial to review this framework, including the relevant criteria for making exemption or target reduction orders.<sup>188</sup>
- The high level of interest in the captioning requirements for free-to-air multichannels. While there is strong consumer support for extending captioning requirements to free-to-air multichannels, this is not supported by broadcasters. The ACMA is of the view that while extending captioning requirements would enhance viewer access, the associated benefits would need to be carefully measured against the additional costs to industry.
- Stakeholder support for audio description to assist viewers who are blind or visually impaired – although audio description is outside the scope of the statutory review.

## 16.8 Costs, grants, subsidies and co-operation

### 16.8.1 Film funding

In Australia, the main film funding body is Screen Australia (formerly the Australian Film Commission, the Film Finance Corporation Australia, and Film Australia Limited). Since 1st July, 2007, Screen Australia has required all the films which it finances to be captioned through its Terms of Trade. As of 10th January, 2011, the current requirements are as follows: Screen Australia requires that feature films it finances be captioned and audio described to provide access for the hearing and/or visually impaired, for cinemas and DVD. The producer will need to budget for these requirements. Feature film producers are also required by Screen Australia to use reasonable endeavours to ensure that all Australian distribution agreements include access for the hearing and/or visually impaired via captioned and audio-described theatrical screenings and DVDs. Screen Australia also encourages producers of all non-feature film content to budget for captioning and audio description, and for accessible web or game design, to provide access to their projects for both hearing and visually impaired audiences.<sup>189</sup>

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<sup>188</sup> <http://www.acma.gov.au/Citizen/TV-Radio/Television/Captioning/captioning-statutory-review>

<sup>189</sup> Screen Australia, Terms of Trade: <https://www.screenaustralia.gov.au/getmedia/2e7f34c9-1f1c-420e-a8d6-66e984ea3c92/Terms-of-trade.pdf?ext=.pdf>

## 17 Canada

### 17.1 Regulator and regulatory base

In Canada, the broadcasting and telecommunications sectors are regulated by the Canadian Radio-Television and Communications Commission (CRTC). The Canadian Broadcasting Act, S.C. 1991, c. 11 section 3(1)(p) states that *"programming accessible by disabled persons should be provided within the Canadian broadcasting system as resources become available for the purpose."*

Before describing the accessibility obligations, it is useful to note the definitions of terms used in Canada (see table below) which are slightly different to the European definitions.

**Table 16.1: Definitions of terms used by the Canadian Radio-Television and Communications Commission**

Term	Definition
Audio description (AD)	relies on a program host or announcer to provide a voice-over by reading aloud or describing key elements of programming, such as text and graphics that appear on the screen. It is often used for information based programming, including newscasts, weather reports, sports scores, and financial data. Most broadcasters are required to provide audio description.
Described video (DV) (This is what is generally termed 'audio description' in other jurisdictions including Ireland).	Described video, or video description, is a narrated description of a program's main visual elements, such as settings, costumes, and body language. The description is added during pauses in dialogue, and enables people to form a mental picture of what is happening in the program. Described video typically uses a separate audio track.
Closed captioning (This is what is generally termed 'subtitling' in other jurisdictions including Ireland).	Closed captioning makes TV programmes accessible for people who are deaf or hard of hearing by translating audio into text captions displayed on the screen. The captions also identify who is speaking and the emotions they are feeling, and include icons for elements such as music (♪ ♪).

Source: documentation of the Canadian Radio-Television and Communications Commission

The earliest regulation with regard to the provision of accessibility services on television concerned the provision of **captioning** (known as 'subtitling' in Ireland, see above) and was set out by the CRTC in Public Notice CRTC 1995-48. This focused on English language broadcasters and since 2005 required these broadcasters to provide captioning on 90% of all programming and 100% of all news (with some exceptions). This applied to both public and private TV, and consideration was given to the (financial) means and target audience of the channel when considering exemptions. The policy was further developed 2007, with respect to captioning (Canadian Radio Television Communications Commission (2007): Public Notice CRTC 2007-54<sup>190</sup>) requiring all English and French language broadcasters to provide captioning for 100% of programming, excluding adverts and promos and allowing for exceptions arising from technical malfunctions.

The rules are not restricted to free to air broadcasting, but apply to all services including pay, pay per view (PPV), and video on demand services.

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<sup>190</sup> Broadcasting Public Notice CRTC 2007-54 <http://www.crtc.gc.ca/eng/archive/2007/pb2007-54.htm>



## 17.2 Current requirements for Captioning

The CRTC requires most broadcasters to:

- Caption 100% of their programmes over the broadcast day (from 6 AM to midnight)
- Ensure that 100% of advertising, sponsorship messages, and promotional content is captioned (a condition of licence to be in effect by the 4th year of the current licence, which for many broadcasters was by September 2014)
- Provide viewers with closed captioning for all programming aired overnight (from midnight to 6 AM) if captions are available

Following the 2013-2015 consultation and review process:

- *The Commission considered that online availability of closed captioning should be increased. Therefore, the Commission "expects that when programming with closed captioning for traditional television is made available on non-linear online platforms, the closed captioning should be included."*<sup>191</sup>

In addition, the CRTC requires broadcasters to report annually on the availability of closed captioning for their online content.

The broadcasters with obligations are the following:

- the public service broadcaster
- conventional television stations in English and French language
- A range of speciality and pay television
- pay-per-view and VOD services

## 17.3 Other languages and potential cross over with captioning requirements

The Canadian regulatory system includes policies on cultural diversity in the audiovisual sector with specific policies on

- Native Broadcasting Policy (audiovisual services such as the Aboriginal Television Network and other services aimed at preserving Aboriginal languages and culture).
- Ethnic Broadcasting Policy (licensing of ethnic and local ethnic services)
- Increased licensing of ethnic and third-language stations
- Expanded availability of non-Canadian, third-language services (since 2004, the CRTC has made it easier for more third-language, non-Canadian television services to be available in Canada).<sup>192</sup>

The Commission does not impose targets on 3rd language programming but it does encourage broadcasters to make programming more accessible and to caption third-language programming whenever possible, particularly when the third language uses the Western alphabet. Third-language broadcasters providing programming in English or French are subject to the same policy requirements when they broadcast English- and French-language programming.

The broadcasting policies on minority and third languages appear to operate in parallel to requirements regarding captioning. No reference is made to the substitution of foreign language subtitling for captioning.

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<sup>191</sup> Ibid

<sup>192</sup> CRTC: Offering cultural diversity on TV and radio [http://www.crtc.gc.ca/eng/info\\_sht/b3o8.htm](http://www.crtc.gc.ca/eng/info_sht/b3o8.htm)

## 17.4 Current requirements for described video programming

In 2001, the Commission introduced licence conditions requiring minimum levels of **described programming** (equivalent of audio description in Ireland, see above) on licensees of major English-language generalist television stations. In 2009, this policy was updated and obligations were extended to French-language services operated by private broadcasters and to the English-language and French-language television services operated by the public service broadcaster CBC.

Following the 2009 update of the policy on 'described video' (and 'audio description') the CRTC requires that <sup>193</sup>:

- Broadcasters must provide audio description for all in-house productions related to information-based programmes (note the definition of audio description in table X1)
- All conventional broadcasters, as well as certain French and English pay and specialty broadcasters, must offer four hours of described video per week. These are part of the licensing conditions: broadcast 2 hours per week of described priority programming during prime/time (at beginning of licence term, extending to 4 hours by end of licence term).
- At least 50 percent of these hours must consist of original programming.
- Types of programmes: drama, documentaries and children's programming, variety and general entertainment and human interest.
- Broadcasters are expected to display a described video logo, and to make an audio announcement before the start of a described program.

As noted above, this issue was again addressed in the Broadcasting Regulatory Policy CRTC 2015-104,<sup>194</sup> with the main aim being to increase the availability of described video.

Following this 2013-2015 consultation and review process:

- beginning in September 2019, broadcasters (currently subject to described video requirements) will be required to provide described video for all suitable programming broadcast between 7 PM and 11 PM (prime time) seven days a week, while all other non-exempt broadcasters will be required to provide four hours of programming with described video per week.
- and broadcasters are *encouraged* to make described programming available online

The broadcasters with obligations regarding described video are the following:

- the public service broadcaster
- conventional television stations in English and French language
- A range of speciality and pay television

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<sup>193</sup> See also consumer info : [http://www.crtc.gc.ca/eng/info\\_sht/b322.htm](http://www.crtc.gc.ca/eng/info_sht/b322.htm)

<sup>194</sup> Broadcasting Regulatory Policy CRTC 2015-104. Available : <http://www.crtc.gc.ca/eng/archive/2015/2015-104.htm>

## 17.5 On-demand services and online content of broadcasters

Video-on-demand services (such as SVOD) have (in general) a similar regulatory regime to pay television services. However, this is only in relation to the captioning of content. The specific requirements<sup>195</sup> regarding accessibility focus on captioning and require that:

- The licensee shall caption
  - 100% of the English- and French-language programmes in its inventory, consistent with the approach set out in a new policy with respect to closed captioning (Broadcasting Public Notice CRTC 2007-54, 17 May 2007), with the exception of original licensee-produced community programming and access programming.
  - 100% of original licensee-produced community programming by the end of the licence term.
- The licensee shall adhere to the quality standards on closed captioning developed by the television industry's working groups, and have a monitoring system in place to ensure that for any signal that is closed captioned, the correct signal is captioned, the captioning is included in its broadcast signal and this captioning reaches the distributor of that signal in its original form.

The Commission expects the licensee:

- to make its programme offering available to the maximum extent possible in both official languages.
- If captions are available, the Commission expects the licensee to provide viewers with a captioned version of all advertising, sponsorship messages and promos offered in its programming.
- to ensure that 100% of original access programming is captioned by the end of the licence term.
- to acquire and make available described versions of programming, where possible, and to ensure that its customer service responds to the needs of persons with a visual impairment, as set out in Accessibility of telecommunications and broadcasting services, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009.
- to display a standard described video logo and air an audio announcement indicating the presence of described video before the broadcast of each described program; and make information available regarding the described programmes that it will broadcast.
- to provide an audio description of all programming that ***provides textual or graphic*** information, including programming broadcast on the barker channel.

Regarding the **online content of traditional broadcasters**, as noted above, (under 'Current requirements for Captioning'), *the CRTC "expects that when programming with closed captioning for traditional television is made available on non-linear online platforms, the closed captioning should be included."*<sup>196</sup> In addition, the CRTC requires broadcasters to report annually on the availability of closed captioning for their online content. The CRTC also encourages broadcasters to add described video online.

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<sup>195</sup> Appendix 6 to Broadcasting Regulatory Policy CRTC 2014-444

Standard conditions of licence, expectations and encouragement for video-on-demand undertakings:

<http://www.crtc.gc.ca/eng/archive/2014/2014-444.htm>

<sup>196</sup> Broadcasting Regulatory Policy CRTC 2015-104. Available : <http://www.crtc.gc.ca/eng/archive/2015/2015-104.htm>

## 17.6 Distribution platforms – delivery accessibility functions

The CRTC also places obligations on BDUs (broadcasting distribution undertaking as defined by the CRTC, for example a cable, satellite or microwave distributor) to deliver the captioning on programming to their subscribers.

Following the recent consultation (Let's talk TV) the CRTC also amended the Broadcasting Distribution regulations: 7.3 Except as otherwise provided under a condition of its licence, a licensee shall make available to its subscribers such equipment, software or other technology that will allow any individual who is blind, visually impaired or who has fine motor skills disabilities to identify and have access to its programming services — including programmes with described video — if that equipment, software or other technology is available for purchase by the licensee and is compatible with its distribution system.<sup>197</sup>

## 17.7 Recent developments

In October 2013, the Commission launched a major consultation with the public regarding television services: *Let's Talk TV: A Conversation with Canadians*. Included in the issues under discussion were the "tools available to persons with hearing or visual disabilities". This led to a new broadcasting policy which addressed *inter alia* the issue of accessibility tools - the Broadcasting Regulatory Policy CRTC 2015-104.<sup>198</sup>

The three issues of the policy relating directly to access tools are:

- increasing the availability of described video for Canadians who are blind or have a visual impairment;
- increasing the quality and online availability of closed captioning; and
- increasing access to programming for Canadians with disabilities by making set-top boxes and remote controls more accessible.

An additional aspect of the policy is enhancing the possibility for users to make complaints regarding the quality of closed captioning.

## 17.8 Costs, grants, subsidies and co/cooperation

There are a significant number of approaches to encouraging the development of accessibility via funding and grants in Canada. These include specific funding for tools to promote access, and the obligations that production funding and grants require that accessibility tools are part of the production process.

In its policy on Broadcasting and Telecom Regulatory Policy<sup>199</sup> ('Described video and audio description' 111.), the Commission expressed the view that other means of increasing amounts of described video are available: Accordingly, the Commission recommends that producers and broadcasters work together to incorporate described video into the production process.

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<sup>197</sup> Broadcasting Distribution Regulations (SOR/97-555) <http://laws-lois.justice.gc.ca/eng/regulations/SOR-97-555/page-2.html#docCont>

<sup>198</sup> Broadcasting Regulatory Policy CRTC 2015-104. Available : <http://www.crtc.gc.ca/eng/archive/2015/2015-104.htm>

<sup>199</sup> Broadcasting and Telecom Regulatory Policy CRTC 2009-430. <http://www.crtc.gc.ca/eng/archive/2009/2009-430.htm>

It further recommends that the Canada Media Fund make the production of described video a criterion for funding television programmes and that other production funds do likewise. The Commission reminds broadcasters and producers that the production of described video is eligible for federal and provincial tax credits.

### **17.8.1 Film funding**

The main public funding body for the cinema sector is Telefilm Canada. This body funds both film and television productions. No evidence of specific funding for the provision of accessibility tools in the context of film production could be identified. However, it is set out in the application for the film fund Budgets and Production Financing Requirements<sup>200</sup> (A: General Principles Related to Budgets) that (inter alia): A closed-captioned version for the hearing impaired is required unless guaranteed by the producer's contract with the distributor. If the project is financed in whole or in part by the Talent Fund, the project must also be provided with described video.

The abovementioned Talent Fund for micro budget projects includes requirements regarding accessibility.<sup>201</sup> Under the terms of funding the following is included: Please note that all projects supported through this Program must be closed-captioned and available in described video, regardless of the distribution platform. Sufficient funds must be reserved for these elements in the project's production budget.<sup>202</sup>

### **17.8.2 Other funds**

In addition, the CRTC adapted its policy framework for Certified Independent Production Funds in 2016. It included the following: Requiring that all programming supported by CIPFs, regardless of the platform on which it is distributed, be closed captioned and provided with described video. Making accessibility a consideration early in the creative process—not only in post-production— will help create a cultural shift that will result in accessibility becoming just another consideration in the regular course of doing business.<sup>203</sup>

### **17.8.3 Accessibility tool funding**

In 2012, the CRTC approved the proposal of BTE (Bell Canada Enterprises) Canada to establish the Canadian Broadcasting Accessibility Fund.<sup>204</sup> The Broadcasting Accessibility Fund Inc.: is an independent and impartial funding body supporting innovative projects that provide solutions to promote the accessibility of all broadcasting content in Canada.

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<sup>200</sup> Telefilm Canada budget and production requirements: <https://telefilm.ca/wp-content/uploads/budget-and-production-financing-requirements.pdf>

<sup>201</sup> The Micro-Budget Production Program –Funding of Micro-Budget Projects from Emerging Filmmakers aims to stimulate the use of new digital distribution platfo

rms by emerging filmmakers and to allow these filmmakers to develop an expertise in digital marketing and promotion of audiovisual projects

<sup>202</sup> Telefilm (2016) MICRO-BUDGET PRODUCTION PROGRAM FUNDING –GUIDELINES: <https://telefilm.ca/wp-content/uploads/guidelinesmicro-budget-2017eng.pdf>

<sup>203</sup> Broadcasting Regulatory Policy CRTC 2016-343 : Policy framework for Certified Independent Production Funds: <http://www.crtc.gc.ca/eng/archive/2016/2016-343.pdf>

<sup>204</sup> The establishment of this fund was part of a much larger commitment required by the CRTC in the process of the take-over of CTVglobemedia, which involved BCE investing 245 million Canadian dollars in the Canadian Broadcasting industry. See CRTC approves BCE's purchase of CTVglobemedia: <http://www.ctvnews.ca/crtc-approves-bce-s-purchase-of-ctvglobemedia-1.615461>

The Fund will support projects that provide practical solutions to increase accessibility to broadcasting content and that, whenever possible, make use of inclusive design principles to promote accessibility at the earliest stages and in the most cost-effective manner for new technologies and applications in Canada.<sup>205</sup>

### **17.9 Issues regarding implementation that arose during the Let's Talk TV consultation**

Below are the main industry concerns regarding obligations for accessibility tools that emerged in consultations, extracted from the policy document.<sup>206</sup>

#### **17.9.1 Regarding described video:**

Various BDUs (broadcasting distribution undertakings) and broadcasters noted the significant costs associated with producing described programming. Others noted that technical limitations of direct-to-home satellite services make passing through an increased amount of described programming problematic. There was, however, a general consensus that it would be possible to reach the quantity of described video required, as long as an appropriate amount of time is provided to ramp up to the new level. Although concerns were voiced relating to additional costs to the system, there was general consensus among individual interveners and user groups that the costs involved with the provision of described video would decrease over time.

#### **17.9.2 Regarding captioning:**

Various BDUs and broadcasters addressed the quality of closed captioning by submitting that a high accuracy rate in the provision of closed captioning is difficult to reach, especially for live programming. Few broadcasters addressed the Working Document proposal that closed captioning should be made available on non-linear online platforms if it was present in the traditional system.

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<sup>205</sup> Broadcasting Accessibility Fund homepage: <http://www.baf-far.ca/en/home>

<sup>206</sup> Broadcasting Regulatory Policy CRTC 2015-104. Available : <http://www.crtc.gc.ca/eng/archive/2015/2015-104.htm>

## 18 New Zealand

### 18.1 No regulation but access services are subsidised

New Zealand does not currently have legislation requiring captioning (or audio description) of television programmes. The provision of accessible programming is subsidised by public funds.

Programming is captioned by a non-profit organisation, Able.<sup>207</sup> Able is funded by New Zealand on Air, which is a federal funding agency that invests in local TV, radio, and digital broadcasting.

According to their website: in late November 2013, Able (formerly known as TVNZ Access Services), became a separate entity under the governance of the Media Access Charitable Trust. Able provides access services for New Zealand's leading broadcasters TVNZ (public broadcaster), Mediaworks and SKY. Able fully funds Access Services to provide captioning and audio description services for hearing or vision-impaired TVNZ and TV3 audiences. They also work with a range of commercial clients on film and media projects, including captioning for television commercials and captioning and audio description for online videos and DVDs.

There is still considerable campaigning to advance the provision of access services. According to a recent report<sup>208</sup>, a Captioning Working Group (CWG) was founded in 2011 with a mission to make all TV and movies accessible to deaf and hard of hearing people in New Zealand. The group cites the UN's Convention on the Rights of People with Disabilities as an impetus to reach higher closed captioning standards for New Zealand TV. In an open letter to the New Zealand Minister of Broadcasting, the Chairperson of the Captioning Working Group, Louise Carroll, wrote: Research shows that until legislation is enacted, Broadcasters will not introduce a reasonable rate of captioning. We ask again if you will please introduce in the Broadcasting Act and the Telecommunications Act the mandatory requirement to apply captioning. The report also notes that. NZ On Air increased Able's 2015-2016 funding budget by \$400, 000 NZD, pushing captioning subsidies up to \$2. 8 million for the year. The work of Able has insured that approximately 35% of free to air TV is captioned.

### 18.2 Other access services

Audio description and sign language provision are also not regulated in the New Zealand market. These services are also provided by Able.

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<sup>207</sup> Home page of ABLE: <http://able.co.nz/>

<sup>208</sup> Additional info from : <http://info.3playmedia.com/wp-australia-new-zealand.html>

## 19 United States of America

### 19.1 Regulator and regulatory base

The Federal Communications Commission regulates the communications markets in the US. The relevant legislative acts are the Communications Act 1934 (s713) (as amended by the Telecommunications Act 1996) and the related Part 79.1 of the Code of Federal Regulations. The latter includes the detailed rules regarding captioning of content on video programming.

In 2010, the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) was passed in order to update federal communications law to increase the access of persons with disabilities to modern communications. The aim was to ensure that accessibility laws enacted in the 1980s and 1990s were brought up to date with 21st century technologies, including new digital, broadband, and mobile innovations.

The table below outlines the definitions of terms used in the USA (which are similar to those used in Canada).

**Table 18.1: Definitions of terms used by the FCC**

Term	Definition
Closed captioning	Closed captioning displays the audio portion of a television program as text on the TV screen, providing a critical link to news, entertainment and information for individuals who are deaf or hard-of-hearing.
Video description	Video description is audio-narrated descriptions of a television program's key visual elements. These descriptions are inserted into natural pauses in the program's dialogue. Video description makes television programming more accessible to individuals who are blind or visually impaired.
Sign language	The US system does not place any obligations with regard to sign language
Electronic Newsroom Technique (ENT)	A technique that can convert the dialogue included on a teleprompter script into captions.

Source: Federal Communications Commission

### 19.2 Different categories of channels regarding access

Basic rules requiring all video programming distributors, including cable operators, broadcasters, satellite distributors and other multi-channel operators, to close caption their television programmes were established in 1996. The obligations for TV channels are based on an audience share criteria and also on the markets where the channels are available. The USA is divided into *Designated Market Areas (DMAs)*.<sup>209</sup>

### 19.3 Obligations regarding video description

Since July 2015, the FCC rules require local TV station affiliates of ABC, CBS, Fox and NBC who are located in the top 60 TV markets to provide 50 hours per calendar quarter (about 4 hours per week) of video- described prime time and/or children's programming.<sup>210</sup>

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<sup>209</sup> Unique, county-based geographic areas designated by The Nielsen Company, a television audience measurement service, based on television viewership in the counties that make up each DMA.

<sup>210</sup> Electronic Code of Federal Regulations. Title 47, Chapter I, Subchapter C, Part 79, Subpart A, §79.3 Video description of video programming.



The top five non-broadcast networks - Disney Channel, History, TBS, TNT and USA - must provide 50 hours per calendar quarter (about 4 hours per week) of video-described prime time and/or children's programming.

There are also obligations for the distributors of content to ensure prescribed levels of accessible content (see also 18.5).

## 19.4 Obligations regarding closed captioning

The obligations to provide closed captioning distinguish between new programming and older programming (created before the rules on captioning) are based on the Electronic Code of Federal Regulations.<sup>211</sup>

### 19.4.1 New non-exempt programming

Video programming distributors must ensure that 100% of new, non-exempt English language and Spanish language video programming that is being distributed and exhibited on each channel during each calendar quarter is closed captioned. Video programmers must provide closed captioning for 100% of new, non-exempt English language and Spanish language video programming that is being distributed and exhibited on each channel during each calendar quarter.

### 19.4.2 Requirements for pre-rule programming.<sup>212</sup>

(i) Video programming distributors must ensure that 75% of pre-rule, non-exempt English language and Spanish language video programming that is being distributed and exhibited on each channel during each calendar quarter is closed captioned. (ii) Video programmers must provide closed captioning for 75% of pre-rule, non-exempt English language and Spanish video programming that is being distributed and exhibited on each channel during each calendar quarter.

## 19.5 Delivery of accessibility functions: obligations to deliver, obligations to distribute

There are obligations on the "video programming owners" regarding the delivery of content to distributors. They must (i) send program files to video programming distributors and providers with captions as required by this section, with at least the same quality as the television captions provided for the same programming.

**A specific standard has been developed** the Society of Motion Picture and Television Engineers Timed Text format (SMPTE ST 2052-1:2010). If this standard is used, they have fulfilled the obligation to deliver captions to the video programming distributor or provider in an acceptable format. **A video programming owner and a video programming distributor or provider may agree upon an alternative technical format** for the delivery of captions to the video programming distributor or provider.

They must also (ii) With each video programming distributor and provider that such owner licenses to distribute video programming directly to the end user through a distribution method that uses Internet protocol, agree upon a mechanism to inform such distributors and providers on an ongoing basis whether video programming is subject to the requirements of this section.

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<sup>211</sup> Electronic Code of Federal Regulations. Title 47 → Chapter I → Subchapter C → Part 79 → Subpart A → §79.3 Video description of video programming.

<sup>212</sup> Pre-rule programming is: (i) Analog video programming that was first published or exhibited before January 1, 1998; and (ii) Digital video programming that was first published or exhibited before July 1, 2002.

Obligations are also placed on distributors. These are known as multichannel video programming distributors (MVPD). They must both “pass through” the access servers of the broadcasters, and also ensure a certain level of accessibility on their services.

With regard to video description (audio description): multichannel video programming distributor (MVPD) systems that serve 50,000 or more subscribers **must provide 50 hours of video description per calendar quarter** during prime time or children's programming, on each channel on which they carry one of the top five national non-broadcast networks.

MVPD systems of any size have (i) **obligations to “pass through” video description provided by broadcast stations and non-broadcast networks**, and the channel on which the MVPD distributes the programming has the technical capability necessary to pass through the video description, unless it is using the technology used to provide video description for another purpose related to the programming that would conflict with providing the video description;

They must maintain the quality of the captions provided by the video programming owner and transmitting captions in a format reasonably designed to reach the end user in that quality. A video programming distributor or provider that provides applications, plug-ins, or devices in order to deliver video programming must comply with additional requirements.

They must also (ii) with each video programming owner from which such distributor or provider licenses video programming for distribution directly to the end user through a distribution method that uses Internet protocol, **agree upon a mechanism to inform such distributor or provider on an ongoing basis whether video programming is subject to the requirements of this section**, and make a good faith effort to identify video programming subject to the requirements of this section using the agreed upon mechanism. A video programming distributor or provider may rely in good faith on a certification by a video programming owner that the video programming need not be captioned if it is programming listed as being exempt (see below under exempted programming).

## 19.6 Languages

The US regulations cover both English language and Spanish language programming. Under the section on the federal code regarding compliance, it is stated that: (e) (2) Open captioning or subtitles in the language of the target audience may be used in lieu of closed captioning. Hence, regulations explicitly state that subtitling from a foreign language can qualify as part of the captioning quota. Presumably there is not so much content that is in an additional language (aside for English and Spanish)

In addition, there is the possibility to use *Electronic Newsroom Technique (ENT)*. This can be used for live programming such as news and sports and other live discussion (as it takes text from teleprompters). It requires that programmes be scripted in advance. A range of rules have been developed regarding when this technique can be used, and how.

## 19.7 Regulations with regard to online and on demand content

Regarding online content, the CVVA introduced the obligation that captioning should be included in programming content if captioning was included in the content when broadcast on linear television.

### 19.7.1 Captioning of Internet Video Programming

The Internet closed captioning rules only apply if the video programming was shown on TV in the U.S. with captions.

- "Full-length video programming" is video programming that is shown on TV and is distributed to end users, substantially in its entirety, through the Internet.
- "Video clips" are excerpts of full-length video programming that are posted online. The rules require video programming distributors that show programming on TV to post captioned clips of their programming on their own websites or applications ("apps"). At this time, the video clips rules do not apply to third party websites or apps.
- Consumer-generated media (e.g., home videos) shown on the Internet are not required to be captioned, unless they were shown on TV with captions.
- Movies shown on the Internet are not required to be captioned unless they have been previously shown on TV with captions.

The following deadlines apply to video programming that is not in a distributor's Internet online library before it is shown on TV with captions. **Full-length Internet video programming** must be captioned if the programming is shown on TV in the U.S. with captions on or after the following dates: **September 30, 2012**, for pre-recorded programming that is not "edited for Internet distribution" **March 30, 2013**, for live and near-live programming. **September 30, 2013**, for pre-recorded programming that is substantially edited for Internet distribution.

**Internet video clips** must be captioned if the associated programming is shown on TV in the U.S. with captions on or after the following dates:

- **January 1, 2016**, where the video clip contains a single excerpt of a captioned TV program with the same video and audio that was shown on TV ("straight lift" clips).
- **January 1, 2017**, where a single file contains multiple straight lift video clips ("montages").
- **July 1, 2017**, for video clips of live and near-live TV programming (such as news or sporting events).

**Archival internet video programming.** The following deadlines apply to video programming that a distributor already shows on the Internet. Distributors have extra time to add captions to video programming that they already show on the Internet and that is later shown on TV with captions, as follows:

- Within 45 days after the date it is shown on TV with captions **on or after March 30, 2014 and before March 30, 2015**;
- Within 30 days after the date it is shown on TV with captions **on or after March 30, 2015 and before March 30, 2016**; and
- Within 15 days after the date it is shown on TV with captions **on or after March 30, 2016**.

### 19.7.2 On demand services, such as SVOD platforms

The regulation covers content supplied by on-demand services only if that content was originally broadcast with captioning. Original online content is not covered by the rules.

In 2011, the National Association of the Deaf had filed a lawsuit against Netflix (NAD V Netflix) claiming that their lack of closed captioning for streaming video was a violation of the (American Disability Act) ADA. The ADA Title III specifies that "places of public accommodation" must be accessible to people with disabilities.

Netflix argued that its business cannot be considered a “place of public accommodation” because it is not a physical place. The court ruled that it would be “irrational to conclude” that “places of public accommodation are limited to actual physical structures: “In a society in which business is increasingly conducted online, excluding businesses that sell services through the internet from the ADA would run afoul of the purpose of the ADA. It would severely frustrate Congress’s intent that individuals with disabilities fully enjoy the goods, services, privileges, and advantages available indiscriminately to other members of the general public.”

Netflix was ordered to caption its streaming video library by 2014, and to continue captioning content published thereafter. It also paid the NAD \$755,000 for legal fees and damages. As a result, the majority of content on Netflix is provided with captioning, and apparently, this has also influenced other on-demand providers to also provide captioning. In a separate case in 2011 (Cullen v. Netflix), the judge ruled that Netflix is not subject to the ADA because it is not a physical place. However, the first case appears to have set a legal precedent.

## **19.8 Costs, grants, subsidies and co-operation**

### **19.8.1 Types of programming and services that are exempt**

Alongside the differentiation between older (pre-rule) programming and newer programming, there are also a range of other types of programmes that are exempt: (1) *Programming subject to contractual captioning restrictions*; (2) *Video programming or video programming provider for which the captioning requirement has been waived*, (3) *Programming other than English or Spanish language* (except that scripted programming that can be captioned using the “electronic news room” technique is not exempt), (4) *Primarily textual programming* (e.g., program schedule channels or community bulletin boards); (5) *Programming distributed in the late night hours* (between 2 a.m. and 6 a.m. local time), (6) *Interstitials, promotional announcements and public service announcements* that are 10 minutes or less in duration; (7) *EBS programming* ( Educational Broadband Service licensee programming), (8) *Locally produced and distributed non-news programming with no repeat value*; (9) *Programming on new networks*. (for the first four years after it begins operation); (10) *Primarily non-vocal musical programming*; (13) *Locally produced educational programming*.

Further exemptions are provided on the basis of revenues:

- (11) Captioning expense in excess of 2 percent of gross revenues.
- (12) Channels/Streams producing revenues of under \$3,000,000.

Under the FCC’s rules, smaller broadcast stations, i.e. those that are not affiliated with the four major national broadcast networks (i.e., ABC, CBS, Fox and NBC), in the top 25 television markets as defined by Nielsen’s DMAs and all broadcast stations in DMAs below the top 25 are permitted to use ENT (Electronic Newsroom Technique, a technique that can convert the dialogue included on a teleprompter script into captions) for producing captioning (on a range of programming).

### **19.8.2 Application for exemption**

There also exists a system under the law for filing an application for an exemption.

(1) A video programming provider, video programming producer or video programming owner may petition the Commission for a full or partial exemption from the closed captioning requirements. Exemptions may be granted, in whole or in part, for a channel of video programming, a category or type of video programming, an individual video service, a specific video program or a video programming provider upon a finding that the closed captioning requirements will be economically burdensome.

(2) A petition for an exemption must be supported by sufficient evidence to demonstrate that compliance with the requirements to closed caption video programming would be economically burdensome. The term “economically burdensome” means significant difficulty or expense. Factors to be considered when determining whether the requirements for closed captioning are economically burdensome include:

- (i) The nature and cost of the closed captions for the programming;
- (ii) The impact on the operation of the provider or program owner;
- (iii) The financial resources of the provider or program owner; and
- (iv) The type of operations of the provider or program owner.

(3) In addition to these factors, the petition shall describe any other factors the petitioner deems relevant to the Commission's final determination and any available alternatives that might constitute a reasonable substitute for the closed captioning requirements including, but not limited to, text or graphic display of the content of the audio portion of the programming. The extent to which the provision of closed captions is economically burdensome shall be evaluated with regard to the individual outlet.

### **19.8.3 Funding for audiovisual production**

In the US, every state has its own film funding institution. A brief review of several of these did not reveal any specific funding for accessibility tools, or any requirement to make accessible the state funded content (however, it was not possible in the context of this research to review every one of the many funding bodies).

At the federal level, some funding is provided via the Department of Education’s **Educational Technology Media, and Materials for Individuals with Disabilities** programme. The purposes of the programme are to: (1) improve results for children with disabilities by promoting the development, demonstration, and use of technology; (2) support educational media services activities designed to be of educational value in the classroom setting to children with disabilities; and (3) provide support for captioning and video description that are appropriate for use in the classroom setting; and (4) provide accessible educational materials to children with disabilities in a timely manner.<sup>213</sup> The funding amount for this opportunity is \$2.5 million, to be used over the course of 5 years. The award amount for the 2017 fiscal year was \$500,000.<sup>214</sup>

In addition, there are a range of federal tax credits for the improvement of accessibility (in a broader sense) for smaller business and these also include the possibility to fund the provision of captioning.<sup>215</sup>

### **19.8.4 The Media Access Group**

The Media Access Group at WGBH (the Boston public broadcaster) has been delivering captioned and described media for more than 30 years to people in their homes, classrooms, at work and in the community. It also focuses on developing new solutions to access challenges.

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<sup>213</sup> <https://www.cfda.gov/index?s=program&mode=form&tab=core&id=3cec17doc1b62131d5520e6e5923e037>

<sup>214</sup> According to the website of 3Play Media: <http://www.3playmedia.com/2017/06/09/5-ways-to-pay-for-captioning-with-grants-and-funding/>

<sup>215</sup> US, IRS: Disabled Access Credit <https://www.irs.gov/pub/irs-pdf/f8826.pdf>

The organisation is part of the WGBH Foundation, and is funded via a variety of donations, sponsorships and the commercial provision of access services to clients.

The Media Access Group offers corporations »a variety of opportunities to enhance their exposure to the communities of people who are deaf, hard of hearing, blind, and visually impaired. These include sponsoring captioning and/or description on television programs; outreach and promotion campaigns, special events, or the installation of technology at movie theaters.<sup>216</sup>

According to its website, it captions more than 10,000 hours per year of broadcast and cable programming; web-based media; feature films; large-format and IMAX films; music videos; DVDs; and teleconferences. It also provides a descriptive video service and has provided this service for: PBS stations nationwide; Turner Classic Movies cable network; selected series on the CBS, Fox, and Nickelodeon networks; feature films; large-format and IMAX films; and DVDs.

#### **19.8.5 Carl and Ruth Shapiro Family National Center for Accessible Media (NCAM)**

Also part of the WGBH Foundation, NCAM is a research, development, and advocacy entity that works to make existing and emerging technologies in a broad range of media more accessible to all audiences. NCAM's innovative Strategic Partners Program engages the nation's leading technology and telecommunications companies in the development, implementation, and promotion of universal design to benefit all users. NCAM runs a range of projects that include enhancing access to digital television.

### **19.9 Most recent changes**

In 2010, the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) was passed. Title III deals with video programming and made the following changes to the law:

- Restored video description rules promulgated by the FCC in 2000 and authorized some expansion of those obligations over the following 10+ years.
- Required video programming that is closed captioned on TV to be closed captioned when distributed on the Internet (does not cover programmes shown only on the Internet).
- Establishes deadlines for the FCC to respond to requests for exemption from the closed captioning rules.
- Requires video programming distributors, providers, and owners to convey emergency information in a manner that is accessible to people who are blind or visually impaired.
- Expands the requirement for video programming equipment (equipment that shows TV programs) to be capable of displaying closed captions, to devices with screens smaller than 13 inches (e.g., portable TVs, laptops, smart phones), and requires these devices to be able to pass through video descriptions and emergency information that is accessible to people who are blind or visually impaired, if technically feasible and achievable.
- Requires devices designed to record TV programs to pass through closed captions, video description, and emergency information so viewers are able to turn on/off the closed captions and video description when the TV program is played back, if achievable.
- Requires interconnection mechanisms (cables) to carry (from the source device to the consumer equipment – e.g., TV set) the information necessary to permit the display of closed captions and make video description and emergency information audible.

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<sup>216</sup> The Media Access Group at WGBH: <http://main.wgbh.org/wgbh/pages/mag/getinvolved/funding-ops.html>

- Requires user controls for TVs and other video programming devices to be accessible to people who are blind or visually impaired, and requires TVs and other video programming devices to have a button, key, icon, or comparable mechanism designated for activating closed captioning and video description.
- Requires on-screen text menus and program guides displayed on TV by set-top boxes to be accessible to people who are blind or visually impaired and requires set-top boxes to have a button, key, icon, or comparable mechanism designated for activating closed captioning (when built-in to the set-top box).<sup>217</sup>

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<sup>217</sup> <https://www.fcc.gov/consumers/guides/21st-century-communications-and-video-accessibility-act-cvaa>



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