



Broadcasting Authority of Ireland (BAI)

Stakeholder consultation to inform revised set of Access Rules

August, 2018



1 Introduction

The Broadcasting Authority of Ireland (BAI) Access Rules set out the levels of subtitling, Irish sign language and audio description that broadcasters in Ireland are required to provide in accordance with their statutory obligations. These rules, which have been in effect since March 2005, are 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, hard of hearing, partially sighted or blind.

The BAI conducted a review of the Access Rules in 2017. Informed by the review the proposed changes were set out by the BAI as part of a draft set of revised Rules in the form of a consultation document.

On 13th June, 2018 the BAI launched a public consultation on the proposed changes. Through the consultation the BAI sought responses from the general public, representative groups and broadcasters. The consultation process remained open until 27th July 2018.

To support this public consultation process the BAI also hosted a series of three workshop meetings across July 2018 in order to gather the views of both broadcasters and access service users. The workshop meetings were designed to provide opportunity for those participating to consider and respond to the consultation document.

The three workshop meetings were facilitated by an independent Chair, Hugh O'Connor of OCS Consulting.

The following report summarises the key issues surfaced across the three workshop meetings. The report should be read in conjunction with the draft Revised Access Rules and it assumes familiarity with the proposals contained therein.

2 Approach

Key task involved:

- **Meeting with the BAI** prior to the planned consultative meetings to discuss the relevant issues and agree an agenda.
- **Circulation of invites** to the meetings targeting relevant stakeholders.
- **Chairing of three workshop meetings** which included;
 - One workshop meeting with access service users who are deaf or hard of hearing and their representative bodies;
 - One workshop meeting with access service users who are blind or partially sighted and their representative bodies;
 - One meeting with broadcasters; (NB; BAI committed to consult separately with relevant broadcasters where targets are set for both Irish Sign Language and Audio Description provision.)

A list of attendees is provided at Appendix 1. The three meetings were facilitated at the BAI offices with the BAI supplying relevant access services for the workshop involving users of subtitling and Irish Sign Language.

3 Workshop findings

The BAI Access Rules Review Public Consultation document (June 2018) provided a structure for each of the three workshop meetings. An introduction or summary overview for each of the eight sections summarising the proposed changes to the Rules was provided by BAI officials. Question and answers on the proposed changes relevant to each of the sections were then facilitated. As part of this discussion workshop participants put forward views and recommendations in respect of proposed changes as set out across each of the key sections. A summary of the key views and recommendations surfaced across the workshops is provided across the following pages;

1. Introduction, Scope and Jurisdiction, Approach to setting Targets and Timeframes and Definitions (Sections 1 – 4 of the draft Rules)

Reference to legislation: View from access service users that this section would benefit from a greater emphasis on the relevant legislation which underpins the Access Rules together with the more general legislation which is likely to have an impact or influence in this space.

In particular, users recommended that direct reference be drawn to relevant sections of the Broadcasting Act (2009) in order to demonstrate that the Rules “have a strong legal basis” and “are not simply guidelines.” Users also suggested that reference could usefully be drawn to the Irish Sign Language Act (2017) which provides for the recognition of Irish Sign Language. The relevance of the Audiovisual Media Services Directive (AVMSD), the Convention on Right of Persons with Disabilities and the European Accessibility Act (2017) was also put forward by service users in this context.

Encouragement for online provision: Service users welcomed the investment made by RTÉ in developing an online hub or library for programmes with ISL and suggested that greater online provision by broadcasters of audio described content could usefully be encouraged by the BAI within the section of the Rules addressing ‘Scope’.

Definitions: With respect to ‘Definitions’ service users suggested that any definitions relating to either subtitling, audio description or Irish Sign Language could usefully be cross referenced for accuracy against definitions set out by ITU, the United Nations specialised agency for information and communication technologies. The need to define ‘peak time’ viewing was also recommended by broadcasters.

Quality matters: The absolute importance of quality standards in respect of access service provision was emphasised by all participating access service users. Users, in particular, welcomed the proposal for broadcasters to monitor transmission output to ensure that appropriate quality levels are maintained. Users also referenced the importance of the BAI’s role in monitoring for quality of service provision - “If the quality (of the access service) isn’t good enough it can be pointless.”

The use of synthetic, computer generated voices and the variation in the volume of any audio description provided were two particular quality related criteria which service users suggested could be usefully considered further as part of ongoing access service development in an Irish context.

Broadcaster view

Reference to legislation: Broadcaster representatives expressed caution in respect of any plans to strongly reference legislation which may be relevant to the area given that it may introduce a further layer of legal complexity for broadcasters in their attempts to provide access services in line with defined targets.

Defining ‘broadcaster’: In terms of ‘definitions’ it was suggested that a definition of the term ‘broadcaster’ which would illustrate the range and variation of broadcast services operating in the Irish market would be useful; “We are very different from all other broadcasters. It would be very helpful if users were made aware of the unique differences which do apply.”

2. General Rules Applying to All Access Provision (Section 5 of the draft Rules)

Quality standards

Broadcasters monitoring content: Broadcasters requested that further clarity be provided in this section with regard to expectations and the boundaries within which such monitoring by broadcasters of their output is to take place; “More detail is needed here. We (broadcasters) can only monitor our own output. We can’t monitor what people experience in their own homes.” The role and responsibility of the platform providers was thought to be of particular importance in ensuring quality access services are carried “across the full supply chain.”

The development of a guideline or code of standards for platform providers was recommended by broadcasters in this context. RTÉ would like a reference to “best endeavours” included.

National Emergencies

Users welcomed the reference to ‘National Emergencies’ but recommended that use of phrasing ‘where practicable’ in the context of provision of Irish Sign Language ought to be strengthened. Such users suggested that the provision of key information via Irish Sign Language should, in the case of National Emergencies, be mandatory. Separately, one service user suggested that all news flashes, not just national emergencies, should be accessible. Some service users felt that moving some accessible programming to the RTE Player should not be used in place of carriage on TV as not everybody has good broadband.

Quality standards: It was suggested by service users that further clarity could be introduced to this section in respect of the standards expected for such access service provision. In particular, users emphasised that the signer ought to be ‘in shot’ continuously during any such coverage and that key information must be accompanied by subtitling in cases where a signer is not available.

Users also recommended that broadcasters would be required to engage proactively with government in the event of national emergencies so that any coverage to be provided would be as accessible as possible. In any event where subtitling or Irish Sign Language is not provided to accompany key information a caption should, according to users, be featured to explain why the information is not accessible.

Broadcaster view

Clarity re editorial control: Broadcasters highlighted that the absence of complete editorial control in such situations may prevent them from always successfully ensuring that the interpreter is ‘in shot’; “It’s not clear who retains the editorial control here over how the shot is framed. The Rules need to be clear about editorial control and who this will rest with. The potential for conflict will be considerable unless there is clarity here.” The development of a Guidance note or document for Government for such situations was therefore recommended by broadcasters.

Promotion of Access Provision

Consistent use of symbols: The significant variation in symbols used by the different broadcasters and across different media/content providers to indicate that access services are available can be problematic for users. Access service users called for consistent application of a single, standard symbol or set of symbols to promote such availability. It was suggested that such an issue could usefully be explored and advanced at any joint broadcaster-access user workshops which may be facilitated in the future by the BAI. The extension of such a joint meeting to include representatives of the platform providers could, according to access users, also be usefully considered by the BAI.

Communications in event of breakdown in access services: Access users proposed that broadcasters be required to communicate more broadly with the user community in the event of a breakdown or failure to provide access services. Email communication with a small number of intermediaries or representative bodies is not, in the opinion of service user workshop participants, sufficient in such instances.

Role of continuity announcer: Access service users also suggested that continuity announcers could play an important role in promoting the availability of audio description where it is provided for particular programmes.

Obligation to Consult with Access Users

Broadcasters highlighted their commitment to engage with access service users and spoke of processes already in place to support same. The value in an annual joint broadcaster-access service user meeting which would be hosted by the BAI was put forward as an engagement mechanism which the regulator could usefully consider; ‘These kinds of meetings would, according to broadcasters, help to build awareness and an exchange of information and experience.’ Broadcasters emphasised that it would be important that an appropriate set of ‘principles of engagement’ would be established in advance to support the effective working of such a joint forum.

Access Liaison Officer

Access service users called for the Rules to define more clearly the expected role of the Access Liaison Officer and the means by which such officers could be contacted. Access users recommended that a toll free text or SMS number could usefully be provided by broadcasters to facilitate such contact. It was also suggested that a targeted or expected response time could usefully be included so that broadcasters would be required to respond to service user requests within a particular period of time. The requirement for users to have one, single point of contact for each broadcaster was also emphasised by service users.

Broadcaster view

A community TV representative highlighted how the appointment of a single, dedicated Access Liaison Officer “would not work for us as we are all volunteers who juggle a range of roles alongside our other professional commitments.”

Incrementality

Broadcaster view

RTÉ noted that the Draft Rules talk about incrementality and wondered did this mean that the targets always have to increase? Could the language be changed somewhat?

Carry over of under and over performance on Targets

Access service users were very strongly opposed to this proposal in the context of both Irish Sign Language and audio description given the relatively low levels of provision required for such services under the Rules.

Service users also recommended that carry over ought to be applied to subtitling only in the case of under-performance rather than both under *and* over performance on the target levels set.

Service users called for the duration of any carry over period to be defined more clearly should such provision be retained within the final set of Rules.

Broadcaster view

One broadcaster objected strongly to the proposal for a carry over on any recorded shortfall; “All that will do is put us in a bigger hole for the next year. We just won’t be able to catch up on the target at all.”

Other broadcasters highlighted the effect of unforeseen events such as severe weather which can impact on broadcaster ability to deliver subtitles at required levels; “During the snow earlier this year there were several days where key staff and providers could not get to work which meant that we could not provide subtitles as required. That will have an impact on target attainment.”

More generally, broadcasters noted that the current approach taken to dealing with non-compliance has worked well and should be retained.

3. Subtitling Rules (Section 6 of the draft Rules)

Length of broadcast day: Many of the access service users endorsed the 18 hour time frame for assessing delivery against subtitling targets on the basis that any provision would not be “overly allocated to off peak, middle of the night hours.” Some of the workshop participants did, however, favour a move to a 24 hour timeframe.

Higher target levels sought by service users: In respect of targets for subtitling, service users recommended that higher obligations be placed on all broadcasters with particular emphasis to be attached to the delivery of higher levels of subtitling during peak hours. The introduction of a higher obligation for subtitling delivery from c. 2020 was thought to be appropriate by the majority if not all participating service users. Many of the service users suggested that the larger broadcasters and particularly those with a public service remit ought to be capable of delivering subtitles at or close to 100% of all programming.

Incremental progression: Service users suggested that the Rules had, since their inception, been based on an incremental cycle of continuous improvement and that the proposed targets have not required the broadcasters to “progress or stretch themselves that much” in respect of subtitling provision.

The attainment of higher levels of subtitling delivery ought, according to access service users, to be relatively straight forward for those broadcasters who carry significant proportions of purchased in content “such as British soap operas.” Service users, in this context, suggested that the target set for broadcasters who carry purchased in soap operas is “very low.”

Children’s programming: Access users recommended that further clarity be introduced to the requirement for relevant broadcasters to allocate a proportion of the annual percentage increase in subtitling to children’s programming ‘where applicable’. Use of the term ‘where applicable’ was according to access user representatives “too vague” with service users calling for greater clarity in this context and, preferably, a specific target for subtitling for children’s programming.

Special interest broadcasts: Access users recommended the introduction of a particular requirement for subtitles to be carried for any programmes which may be developed specifically for Deaf and hard of hearing audiences. For example, where a deaf-themed movie is broadcast.

Broadcaster view

Captioning: Broadcasters highlighted that in certain instances the proposed exclusion of captioning, from 2024, when assessing compliance with subtitling targets will be problematic; “For a range of legacy and cost related reasons we will always have some captioning...Irish language programmes, old purchased in programmes where the cost of producing a new subtitle file would be more expensive than the programme itself...Captioning should be accepted in such circumstances.”

Unique differences amongst broadcasters; The need to reconsider the influencing factors to better reflect the unique differences of the various broadcast services was suggested. This is the case whether the uniqueness relates to the specific cultural nature of the service or that the service is a niche service which addresses the interests of very specific audiences rather than having a broad format. ”

Off-set: Oireachtas TV held the view that the proposed target set in its case is “too high”. In particular, any decision to remove the ‘off-set’ facility whereby additional Sign Language provision can be off set against the services subtitling target “would mean we have little or no chance of reaching the target set. We can’t keep pace with the upward only nature of the increases proposed.”

Targets: The targets set for both 2019 and 2020 were largely welcomed by RTÉ but there was some concern expressed with the proposal to combine a target for other RTÉ services. It was also the view that the rules in

each case were not entirely clear and should be reviewed to bring greater clarity as to the intent and meaning of the use of combined targets.

The setting of specific targets for peak time provision will, according to RTÉ representatives, present some additional challenge for the broadcaster in attaining target levels proposed. The significant amount of live and unplanned broadcasts during peak hours was put forward as a key challenge in this respect; “The fluid nature of peak time programming which often involves a lot of unscheduled content and news items can make it difficult to get subtitling in place.” Broadcasters also noted that there is a difference between peak time programming and popular programming and they are not always the same. One broadcaster suggested that peak time should start at 5.30pm.

TV3 representatives welcomed the proposal for subtitling targets for TV3 services to be bundled with combined output to be measured across the relevant TV3 services. It was suggested that such an approach offered “much needed flexibility” while allowing the broadcaster to invest effort where it will have most impact and relevance for viewing audiences. The challenge in attaining “ever increasing targets” was described by this broadcaster as “very challenging” given the limited levels of finance which may be available to “fund continuous improvement.” The limited availability of particular post production skill sets was also highlighted as a barrier by this broadcaster.

In addition, broadcasters asked that the BAI make public the basis on which targets for each service has been set as this could bring greater awareness to the public and to services users and their representatives as to the basis on which the targets had regard to the particulars of each broadcaster.

Specialist broadcasters such as Eir Sport emphasised how problematic a specific target for live content might be; “We are defined by live content...most of what we do is live...so a specific live target for us would not work.”

Live subtitles: Oireachtas TV has a lot of live TV with no subtitles, but has a lot of subtitled programming at night time. RTÉ noted that they have the issue of a lack of subtitles for live TV from the Houses of the Oireachtas. Oireachtas TV feel that they are a special case and that this should be taken into account of when setting targets.

4. Irish Sign Language Rules (ISL) (Section 7 of the draft Rules)

Off-set: Some of the access service users disagreed with the proposals set out in Sections 7.4 and 7.5 of the draft, revised Rules whereby those broadcasters who do not have a mandatory obligation to provide ISL may be allowed to use ISL provision as an opportunity to offset against a proportion of their subtitling target. Such a view was put forward on the basis “that these (ISL and subtitling) are two very separate audience groups and additional provision for one should not come at the expense of provision for the other.”

Sustained quality: The need for high quality continuity of ISL provision throughout the duration of a broadcast was emphasised by access users on the basis that “five or 10 minutes of ISL across a half hour programme should not count towards the target set.” In this respect, broadcasters noted that the availability of skilled interpreters was essential to ensuring quality and quantity in respect of ISL and that the number of suitable staff living in the state was low.

Home produced programming: Service users suggested that, as part of Section 7.6, the setting of a specific target percentage for ISL to accompany home produced programming would be appropriate.

Incremental progression: Access users recommended that any targets to be set for ISL provision across the 2021 – 2023 period ought to feature a degree of incremental increase in the sought after levels to be provided. Annual incremental increases of c 0.5% p.a. across this three year term were suggested, in this context, by the service users.

5. Audio Description (Section 8 of the draft Rules)

Service users proposed that the quantity of audio description provided by Irish broadcasters “must improve”. The setting of higher or “more demanding” targets will, according to such service users, be key to bringing about the levels required. It was noted that the targets proposed for the provision of audio description are “not even near half the target levels set by Ofcom for BBC.” A minimum target level of 10% was therefore thought to be more appropriate for relevant Irish broadcasters.

The proposed target set for TV3 was described by service users as “very low.”

Targets for 2021-2023: In respect of targets to be set for 2021 – 2023 service users recommended that the BAI apply “careful consideration” on the basis that a range of legislative changes (including both the AMVDS and the Convention on Right of Persons with Disabilities) are likely to have influence in this area. Service users would expect that each of the legislative changes referenced will require higher demands to be placed on the Irish broadcasters to deliver more audio described content.

Target for home produced content: Service users called for separate targets to be set for home produced and acquired programming.

Extension of targets to additional TV services: The extension of the targets for the provision of audio description to other Irish television services – similar to the proposed targets set for ISL – could, according to service users, be usefully considered by the BAI.

6. Complying with the Rules (Section 9 of the draft Rules)

Service users welcomed plans on the part of the BAI to publish an annual report detailing compliance by broadcasters with the Access Rules. Such a transparent approach would, in the opinion of service users, help to build required awareness and engagement levels on the part of a range of relevant stakeholder groups.

It was also suggested that the samples from which the BAI assess programme content for compliance could usefully be broadened out in order to better ensure that it is more representative of content broadcast across a given year.

The reporting and publications process associated with same was thought to present a valuable opportunity to engage further with the platform providers in respect of their role within this space.

Complaints

The importance in having complaints processes which are accessible to all was emphasised. The National Disability Authority’s (NDA) Standards and Toolkits supporting Communications with Customers could, according to service users, be usefully referenced in this context.

7. Appendix 1: Access Principles and Influencing Factors

Workshop participants recommended that a number of new or additional principles could usefully be considered for inclusion within the set of underpinning principles;

- “Commitment”, and in particular broadcaster commitment to delivering high quality access services.
- “Awareness”, and in particular the requirement to raise awareness as to the role and value of the access services to large cohorts of the Irish viewing public.
- “Cultural relevance” and the importance of ensuring home produced programming is accessible to all audiences.
- “Excellence” in the context of user requirement for high quality accessible services.

- “Language” in the context of the additional complexities involved when a second language is introduced.

Service users also referred to the relevance of the principle of “equivalent access” which would ensure that access service users have a comparable level of access to television as is the case with other audience groups.

The term ‘visually impaired’ ought, according to service users, to be replaced with “vision impaired.”

8. Appendix 2: Quality Standards

Service users recommended that any quality standards could usefully be reviewed against international best practice and both Ofcom and the ITU were referenced as relevant sources in this context.

Appendix 1 – List of Attendees

The list of attendees at the three workshops:

Workshop 1: (Deaf / hard of hearing) Susan Whelan (Irish Deaf Society), Julianne Gillen (Deaf Hear), Marianne Campbell, Anne Cogan, Alicia McGivern.

Workshop 2: (Blind or partially sighted) Gerry Ellis, Barry O'Donnell, Lina Kouzi (NCBI), Tony Scanlon, Julie Scanlon, Michael Lavin, Martin Kelly.

Workshop 3: (Broadcasters) Iris Park (DCTV), Barry Fitzgerald (Eir Sport), Donnacha McKeon (Oireachtas TV), Máire Aoibhinn Ní Ógáin & Trevor Ó Clochartaigh (TG4), Brian Dowling, Tracey Carr & JP Coakley (RTE), Mary Brennan & Andy May (TV3).