

## **RNIB response to the DCMS consultation on proposals for implementation of the Audiovisual Media services Directive in the UK - 29th October 2008**

1. RNIB welcomes the opportunity to respond to the DCMS consultation on the implementation of the Audiovisual Media services Directive in the UK
2. RNIB is the largest charity representing the needs and interests of the two million people with a sight problem in the UK. Ofcom's 2006 Television Access Services review found that some 2.7 million people had a visual impairment which required them to take some measure to be able to continue to enjoy watching TV. In 2007 RNIB's corporate research, using a sample of 1007 blind and partially sighted people, found that around 87 per cent of them regularly watch TV.  
We take an active role in highlighting TV access issues and have been working to improve access to programmes, services and equipment, both by direct work with broadcasters and manufacturers and by influencing legislation.
3. Broadcast media play a vital role in the lives of blind and partially sighted people in providing access to news, information and entertainment. However, in order to be able to watch TV independently, people with sight problems need accessible TV equipment. This includes spoken channel identification and electronic programme guides. RNIB believes that clarification of the legal requirement for such accessibility features is needed. To render TV content accessible, people with sight problems need access to audio description (AD), an additional narration that uses the gaps in the dialogue to provide essential information about scenery, action, costumes etc.
4. Ofcom's research into awareness levels and demand for audio description reinforces the case for ensuring greater provision of audio description. Currently broadcasters are required by Ofcom's Code on Television Access Services, in accordance with the Communications Act 2003, to offer AD up to 10 per cent of their programmes. Earlier

this year Ofcom facilitated a substantial communications campaign involving 16 broadcasters and the RNIB, aimed at raising awareness of audio description services. This did much to improve the level of awareness of the service among people with sight problems. Their awareness levels rose from 43 per cent to 72 per cent thanks to the campaign. The research also found that “increasing the amount of audio described programming would be the main way of increasing usage (of audio description) among the visually impaired community”.

5. In short, there are many compelling reasons for the Government to act now to improve the accessibility of television. Among these are:

- The desire of blind and partially sighted people to watch television
- The current low level of audio description provision UK television
- Ofcom’s own research showing both the interest in the service and the demand for greater provision
- The wording in Recital 64 and Article 3c of the AVMS directive
- The requirement, enshrined in the UN Convention on the Rights of Persons with Disabilities (Article 30), for TV to be accessible to disabled people
- The prospect of the incidence of visual impairment increasing with the increase in the UK’s ageing and population
- Increasing use of new interactive and information services delivered over TV by the Government or by local authority services, access to which must be provided for all and which are often more relevant to disabled people than the rest of the population (such as health care)

### **Access for disabled people in the AVMS directive**

During the revision of the “Television without Frontiers” Directive, RNIB called for the EU institutions to include within the revised directive ( now the “AVMS directive” ) requirements for greater provision of access services for disabled people such as audio description, subtitling and signing. We therefore welcome the addition of Article 3c and recital 64 to the directive. They state:

“(64) The right of persons with a disability and of the elderly to participate and be integrated in the social and cultural life of the Community is inextricably linked to the provision of accessible audiovisual media services. The means to achieve accessibility should include, but need not

be limited to, sign language, subtitling, audio description and easily understandable menu navigation.”

*“Article 3c*

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.”

**Scope of the DCMS consultation**

6. RNIB notes from the introduction to this consultation that the Government intends to consult only on those aspects of the AVMS directive that will require legislation in the UK. Given that Article 3c does not require the UK to legislate, we expect that the Government does not intend to formally consult stakeholders on the implementation of the new provisions on disability. RNIB is concerned that the Government will thus miss an opportunity to examine seriously how to implement the new provisions of the directive in Recital 64 and Article 3c. **We urge the Government to consult on these new requirements, to ensure that broadcasters and other relevant parties can act upon them effectively.**
7. RNIB has limited its response to this consultation to those questions of relevance to blind, partially sighted and other disabled people.

## 8. Answers to consultation questions

### Scope. “Scheduled television broadcasting services

*1. Does the Communications Act 2003 need to be amended in order to ensure that it covers all scheduled television services within UK jurisdiction regardless of the platform over which they are provided? If so, how?”*

It is logical that the Communications Act 2003 should be extended to cover all scheduled television services within UK jurisdiction regardless of the platform over which they are provided, both because of the increasing diversity of converging platforms over which TV services are provided, and the fact that the scope of the AVMS directive now extends to all broadcast services including those which are on-demand or provided via broadband.

RNIB further believes it is appropriate also that the provisions in the AVMS directive for disabled people should also apply to on-demand services and non-linear viewing, which are playing an increasingly significant role in the provision of TV services.

We therefore believe an amendment to the Act is necessary to reflect the new requirements of Article 3c of the AVMS Directive, which call on the UK Government to encourage an increase in the provision of access services for disabled people.

To achieve this the Communications Act, section 303, should be amended as follows:

303 Code relating to provision for the deaf and visually impaired

(8) In complying with subsection (7), OFCOM must have regard, in particular, to—

- (a) the extent of the benefit which would be conferred by the provision of 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;

## **NEW REQUIREMENT:**

**(x) Recital 64 and Article 3c of EU Directive [Directive 2007/65/EC](#) (The Audiovisual Media Services Directive), which call on Member States to “encourage media service providers under their jurisdiction to ensure that their services are gradually made accessible to people with a visual or hearing disability”**

(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.

## **Scope - On-demand and non-linear viewing of audiovisual media services**

*Are there any services which you think should fall within the scope of regulation according to the Directive, but which the proposed definitions to be included in the Communications Act might exclude?*

The scope of the AVMS directive now covers on-demand services. It also now covers access services for disabled people. RNIB believes therefore that it is incumbent on the UK Government and Ofcom to ensure that the rules applying to access services for disabled people, as set out in the Ofcom Code on Television Access Services, should be applicable to on-demand services too. There is a danger that the shift to on-demand services, which necessarily requires the use of onscreen menus, could exclude disabled and elderly people. If on-demand becomes a large proportion of TV viewing it could become a new area of exclusion for disabled people, possibly in contravention to the DDA. RNIB urges DCMS to clearly set out a requirement and timetable to enable industry to deliver accessible on-demand services.

*9. Is it appropriate to treat scheduled and on-demand parts of the same overall service differently for regulatory purposes? Do you envisage any difficulties in identifying the boundaries between the scheduled and on-demand parts of the same overall service and/or in making different parts of the same overall service subject to different regulatory requirements and different regulatory bodies?*

The requirements for providing access services, including audio description and subtitling, should apply equally to on-demand parts of the same overall service. The requirements to provide these access services should be adjusted to keep up with these changes in the traditional broadcasting model. This is needed because consumer demand is giving rise to increasing levels of on-demand and "play again" services. Unless regulation requires these services to also carry access services, the amount of programming which is accessible to people with sight and hearing impairments will diminish significantly over time.

*10. Do you agree that the criteria at paragraph 9 (of Part 3A) are the right ones for determining the best regulatory option? Are there any other important criteria?*

These criteria quite rightly cover "consumer confidence". RNIB notes that they omit to mention accessibility. Given the requirements in the directive on accessibility, we believe that potential market failure to deliver accessibility for people with sight and or hearing impairments should also be criteria for assessing regulatory options.

### **Impact and Competition Assessment Related Questions**

*The Government would welcome responses to these questions in relation to each section of this consultation document: scope; regulation of programme content and advertising in on-demand audiovisual media services; product placement; and satellite television broadcasts from outside the EU.*

*43. What are the key technical and market developments and the likely future impact of these, including emerging strategic and business models?*

The convergence of audiovisual technology and the proliferation of platforms over which television is provided are key technical developments. Platforms such as IPTV and services such as video on demand need to be regulated to ensure their accessibility to disabled people. It is no longer enough to require only "traditional" television to be accessible to disabled people.

If the accessibility of these newer platforms is not addressed now, TV will not be at all accessible to people with sight problems in the years to come. Digital switchover would then over time lead to digital "switchoff" for thousands of blind people.

It should be remembered that Article 3c is in the “first tier” of the directive’s requirements and therefore the directive intends that the Government take steps to improve the accessibility of both scheduled and on-demand services.

## **9.RNIB summary**

RNIB regrets that the Government is not consulting on how the Government, Ofcom, industry and other stakeholders should meet the aspiration in Recital 64 and Article 3c of the AVMS directive.

Recital 64 and Article 3c of the AVMS Directive both also require the Government to work to improve the levels of audio description and other access services for disabled viewers. This requirement is **not** contingent upon other EU Member States reaching a certain level of access service provision in their jurisdiction. The UK may already provide a greater level of audio description than other EU Member States, but Article 3c is clear in asking Member States to **improve** the level of access services in “their jurisdiction”. RNIB believes that it is therefore not enough for the UK to wait for other EU Member States to “catch up” before improving the still low level of audio description available to UK viewers.

Furthermore, research published by Ofcom in July 2008 (“Access Services Audio Description: Research into awareness levels”) shows that there is now far greater awareness of audio description among blind and partially sighted people – one of the key conditions Ofcom said needed to be met before it could increase the requirement for audio described programmes from the current level of 10%. Among other things the research finds that “increasing the amount of audio described programming would be the main way of increasing usage among the visually impaired community”.

In order to meet the requirements on access services for disabled people which the AVMS directive now contains, RNIB believes the Government and Ofcom must ensure the target for the percentage of audio described programs is increased.

**RNIB therefore urges Ofcom to amend its code on television access services to require that 20 per cent of programmes be audio described.**

**Royal National Institute of Blind People (RNIB)  
October 29th 2008**